

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO E450 OF 2022

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT**

VERSUS

**DHL SUPPLY CHAIN
LIMITED.....RESPONDENT**

RULING

Background

1. The Claimant instituted the instant claim against the Respondent on behalf of twenty five (25) Grievants seeking to challenge the Respondent's decision to terminate the Grievants' contracts of service. It contends that on 28th April 2020, the Respondent wrote to the twenty five (25) Grievants informing them that their contracts were due to expire and that they will not be renewed.
2. The Claimant avers that the Respondent's decision to sever the employment relation with the Grievants constituted an irregular redundancy. As such, it prays for the various reliefs which are set out in the Statement of Claim.

3. The Claimant has now filed the application dated 19th March 2025 through which it prays for leave to amend the Statement of Claim to bring on board an additional twenty three (23) individuals as Grievants. It contends that the additional individuals are former employees of the Respondent and that they lost their employment in 2020 together with the twenty five (25) Grievants on whose behalf this suit was filed.
4. The Claimant contends that the twenty three (23) individuals were released from employment on 31st July 2020 for the same reason as the Grievants in the suit. However, it avers that suit was not filed on their behalf owing to the fact that the officer who was handling their claim left for studies in the USA before he had acted on the matter. And hence the failure to file the claim for the twenty three (23).
5. The Claimant avers that it is convenient to amend the Statement of Claim in the suit to bring on board the aforesaid individuals instead of filing a separate claim for them since the circumstances which led to the loss of their employment are the same as for the twenty five (25) Grievants. It contends that amending the Statement of Claim to include the twenty three (23) individuals as additional Grievants will

ameliorate the challenge of clogging the court registry with similar matters which can be decided through one suit.

6. The Respondent has opposed the Application by filing a Notice of Preliminary Objection dated 15th July 2025. It contends that the proposed amendment seeks to introduce claims which are statute barred contrary to section 89 of *the Employment Act* since the alleged causes of action arose in 2020.
7. Rule 48 of *the Employment and Labour Relations Court (Procedure) Rules, 2024* (ELRC Rules) entitles a party to oppose an application by either filing a replying affidavit or grounds of opposition or a preliminary objection. As such, the Respondent's preliminary objection is an appropriate response to the application under consideration.
8. The Respondent's case is straightforward. It contends that section 89 (formerly section 90) of *the Employment Act* fixes the timelines for instituting claims which arise from employment relations to three (3) years from the date of accrual of the cause of action. As such, a claim which is not presented within these timelines is statute barred.
9. The Respondent contends that the causes of action for the twenty three (23) proposed Grievants accrued in 2020 when

they left employment. As such, they ought to have filed suit within three (3) years from 2020. Consequently, the Respondent avers that the proposed amendment seeking to bring on board their respective claims, coming in 2025, is time barred.

10. The Claimant has responded to the objection largely through its submissions. It contends that refusing to allow the amendment will occasion extreme injustice to the proposed Grievants and their families. It asserts that the court is empowered by article 159 of *the Constitution* to overlook the preliminary objection and admit the impugned claims. It contends that allowing the application to amend will serve the greater interests of justice.
11. The Claimant contends that section 4(1) (a) of *the Limitation of Actions Act* entitles the court to enlarge time to file suit for the twenty three (23) proposed Grievants. It further contends that article 47 of *the Constitution* entitles the proposed Grievants to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
12. The Claimant contends that there is an apparent conflict between section 4 of *the Limitation of Actions Act* and section 90 (now section 89) of *the Employment Act*. It wonders

whether it will be just to subject vulnerable members of society to the injustice that is occasioned by the alleged conflict in the two statutes.

13. The Claimant further contends that the provision which the Respondent has invoked to anchor its objection (section 89 of *the Employment Act*) does not address the issue of limitation of actions. As such, it (the Claimant) contends that the objection is misplaced.

Analysis

14. If a party to a pending suit wishes to bring on board a new party, he ought to apply for leave to do so. It is only after such leave has been granted that the party may legitimately seek to amend his pleadings to reflect these changes.
15. The ELRC Rules do not provide for the procedure for moving the court to bring on board or remove a party from ongoing proceedings. The rules only provide for amendment of pleadings.
16. Initially, there was disagreement in the court regarding whether one could resort to *the Civil Procedure Act and Rules* to fill gaps in the ELRC Rules. However, the Court of Appeal has since resolved the controversy. In the case of ***TNT Express Worldwide (Kenya) Limited v Timothy Graeme***

Steel [2022] KECA 881 (KLR), the learned Judges of the court stated that one can fall back to provisions of *the Civil Procedure Act and Rules* to fill up lacunas in the ELRC Rules.

17. Order 1 rule 10 of *the Civil Procedure Rules* deals with the issue of substitution and addition of parties (including nominal parties such as the proposed Grievants) to a suit. As such, although the ELRC Rules are silent on the matter, litigants who wish to add or remove parties (including nominal ones) from proceedings pending before the Employment and Labour Relations Court ought to resort to provisions of *the Civil Procedure Rules* to fill the gap.
18. Consequently, if the Claimant wished to seek leave of the court to introduce additional parties to the action, it (the Claimant) ought to have moved the court for such leave under the aforesaid provision of *the Civil Procedure Rules*. However and as is apparent from the application before me, this is not what was done.
19. Instead, the Claimant moved straight to seek orders to amend the Statement of Claim to include the intended Grievants without first seeking leave to join them as parties to the action. To this extent, the application is fatally defective.

20. That notwithstanding, the Respondent has resisted the application on the ground that it seeks to bring on board individuals whose claims are time barred. As such, it contends that the application ought to fail for this reason.
21. It is not in doubt that the law allows litigants to amend their pleadings at any time during proceedings. However, the law frowns upon amendments which are intended to introduce, inter alia, claims which are statute barred.
22. In the case of ***Eastern Bakery v Castelino (1958) EA 462***, the court stated that a request to amend pleadings may be disallowed if the proposed amendment will take away a vested or accrued right or defense such as limitation of actions. A similar view was expressed in the case of ***Central Kenya Limited v Trust Bank Limited (2002) 2EA 365***.
23. In the instant case, the causes of action for the proposed Grievants are said to have accrued on 31st July 2020 when the Respondent relieved them of their employment. Therefore, the Respondent contends that if the Claimant desired to sue on their behalf, it ought to have done so within three years of the aforesaid date, that is to say, by 30th July 2023.
24. Section 89 of *the Employment Act* provides as follows:-

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

25. From this provision, there is no doubt that a suit which is founded on an employment contract must be presented to court within three years of the accrual of the cause of action unless it is a continuing injury claim which must be filed within twelve months of cessation of the injury. As such, the claim by the proposed Grievants ought to have been presented to court by close of July 2023.
26. The Claimant contends that section 4 of *the Limitation of Actions Act* entitles it to move the court in respect of the impugned claims outside three years of the date of accrual of the causes of action. However, section 89 of *the Employment Act* excludes the application of *the Limitation of Actions Act* to employment claims.

Determination

27. The upshot is that the claims which the Claimant seeks to introduce on behalf of the proposed twenty three (23) Grievants are time barred.
28. As such, it is impermissible to introduce them at this stage of the case.
29. Consequently, the application dated 19th March 2025 fails.
30. Costs of the application are granted to the Respondent.

**Dated, signed and delivered on the 29th day of January,
2026**

**B. O. M. MANANI
JUDGE**

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI