

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT KERICHO**

**ELRC CAUSE NO. E011 OF 2025**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**KENYA PLANTATION & AGRICULTURAL  
WORKERS UNION.....  
CLAIMANT**

**VERSUS**

**BROWNS EAST AFRICA  
PLANTATION PLC.....  
RESPONDENT**

**RULING**

**Introduction**

1. The Respondent filed a Notice of Preliminary Objection dated 30<sup>th</sup> May 2025 on the following grounds that:

***1. This Honourable court lacks the jurisdiction to admit, hear and determine this matter as it has been filed outside the mandatory statutory limitation prescribed by section 90 of the Employment Act, 2007.***

***2. The Claimant's cause of action arises out of employment contracts between the grievant***

- and the Respondent, which contract was terminated on 27<sup>th</sup> August 2020.***
- 3. The cause of action is therefore time-barred by virtue of section 90 of the Employment Act, 2007, as the claim arose in August 2020 and the cause of action has been instituted in May 2025.***
- 4. The suit is thus frivolous, incompetent for the above mentioned reasons.***
- 5. The suit ought to be dismissed with costs to the Respondent.***

**Claimant's replying affidavit**

2. In opposition to the notice of preliminary objection, the Claimant filed a replying affidavit sworn by Thomas Kipkemboi, Deputy General Secretary, dated 30<sup>th</sup> September 2025.
3. The Claimant avers that the Respondent had sought dismissal of the suit on the grounds that it was time-barred.
4. The Claimant argues that the union still has a legitimate interest in the matter, explaining that the

grievant, who was unfairly dismissed, had returned to the village and could not be traced until recently.

5. The Claimant emphasizes that no prejudice has been suffered by the Respondent due to the delay, whereas the grievant continues to suffer from unemployment caused by wrongful termination.
6. The Claimant further avers that the Respondent's documents lack substantial support and that dismissing the case prematurely would deny the grievant justice.
7. The Claimant avers that it is committed to having the matter heard and determined expeditiously if the court allows the suit to proceed.
8. Parties canvassed the Preliminary Objection by way of written submissions.

### **Respondent's written submissions**

9. The Respondent submitted that the Claimant was dismissed on 27<sup>th</sup> August 2020 and relied on section 4(1)(a) of the Limitation of Actions Act, which provides a six-year limit for actions founded on contract. However, ***section 90 of the Employment Act*** overrides this by imposing a stricter three-year limit for

filing claims arising from employment contracts, or twelve months in cases of continuing injury after cessation.

10. In the Court of Appeal case of ***Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] KECA 257***, the court held as follows:

***“Section 90 of the Employment Act 2007, which have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years.”***

11. Consequently, the Respondent submitted that the Claimant’s suit in this case is argued to be incompetent and time-barred, as it should have been filed by 27<sup>th</sup> August 2023.

12. ***In Divecon v Samani [1995-1998] EA 48***, the Court of Appeal stated as follows:

***“...to us, the meaning of the wording of section 4(1) .....is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary***

***to this is that no court may or shall have the right or power to entertain what cannot be done, namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action.....A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply, as the learned Judge of the Superior Court did, that “the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked (my emphasis).”***

13. In ***Riftvalley Railways (Kenya) Limited v Hawkins Wagunza Musuya & another [2016] KECA 213 (KLR)***, the Court of Appeal set aside the ruling of the High Court, which held that ***‘time stands still while other dispute resolution mechanisms are engaged. It re-starts when the negotiations or other mechanisms break down,*** and stated that, ***‘Where a statute limits time for bringing an action, no court has the power to***

***extend that time, unless the statute itself allows extension of time.'***

14. The Respondent submitted that ***section 12(4) of the Employment and Labour Relations Court Act*** empowers the Court to award costs as it deems just. Based on this provision, the Respondent argues that, given the evidence presented, the legal submissions made, and the demonstration of procedural fairness and substantive justification for the grievant's dismissal, the Claimant's suit should be dismissed. The Respondent further urge the Court to award costs to it as a matter of fairness and justice.

### **Claimant's written submissions**

15. The Claimant submitted that section 90 of the Employment Act requires employment claims to be filed within three years. The Claimant relied on sections 62 to 73 of the Labour Relations Act, which provides for conciliation by the Ministry of Labour before a matter is referred to court. Since conciliation is recognized under Section 87 of the Employment Act, the limitation period should run from the conciliator's decision rather than the date of dismissal.

16. The Claimant argued that delays arose because the grievant could not be traced after moving to his village, but once located, the suit was promptly filed. The Claimant emphasized that it is still interested in prosecuting the matter as it is a strong case, and that dismissing the case unheard would cause a miscarriage of justice, and **that Article 159(2)(d) of the Constitution** requires justice to be administered without undue regard to procedural technicalities.
17. The Claimant urges the Court to dismiss the Respondent's application with costs and allow the matter to proceed on its merits.

### **Analysis and determination**

18. The court has considered the preliminary objection, replying affidavit and the submissions on record. The issue for determination is whether the Preliminary objection is merited and if the court can allow a case that is file after expiry of time to be heard.
19. In ***Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd [1969] EA 696***, where Law JA stated as follows:

***“...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.”***

In the same case, Newbold, JA, set out the remit upon which preliminary objections would be founded as follows;

***“A preliminary objection is in the nature of what***

***used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained, or if what is sought is the exercise of judicial discretion”.***

20. In ***John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 Others [2021] KESC 39 (KLR)*** the Supreme Court stated that a preliminary objection consisted of a point of law which had been pleaded, or which arose by clear implication out of pleadings, and which if argued as a preliminary point could dispose of the suit.

21. ***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.”***

22. In this instant case, the Claimant filed this cause on behalf of its member, who was summarily dismissed by the Respondent on 27<sup>th</sup> August 2020. The Claimant appealed the dismissal, but the Respondent upheld its decision. The Claimant reported the matter to the Kericho Labour Office, where a conciliator was appointed. The conciliator concluded by recommending that the summary dismissal be reduced to termination, with the grievant entitled to terminal benefits and four months' salary compensation for wrongful dismissal. The Claimant filed the suit thereafter seeking several remedies including reinstatement, contractual entitlements under the CBA, compensation for leave not taken and leave travel allowance, twelve months' salary as

compensation for wrongful dismissal, damages for unlawful and unfair termination, and costs of the suit.

23. The case was unfortunately filed out of time in accordance with **section 89 of the Employment Act**, as the grievant was terminated in 2020 and filed the suit in 2025, which is 5 years down the line. The remedies that the Claimant is seeking on behalf of the grievant is statutory barred, as reinstatement for one is required to be done within three (3) years after termination as per **section 12(3)(vii) of the Employment and Labour Relations Court Act**.

24. The Court of Appeal in case of **BEATRICE KAHAI ADAGALA -VS- POSTAL CORPORATION OF KENYA (2015) KECA** held that **Section 90 of the Employment Act 2007** which we have quoted verbatim is in mandatory terms. A claim based on a contract of Employment must be filed within three (3) years.

25. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)** Nyarangi, J.A stated as follows:-

***"I think that a question of jurisdiction ought to be raised at the earliest***

***opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction .....***

In ***RIFT VALLEY RAILWAYS (KENYA) LIMITED - VS HAWKINS WAGUNZA MUSUYU & ANOTHER (2016) KECA*** the Court of Appeal stated that where statute limits time for bringing an action no court has the power to extend that time, unless the statute itself allows extension of time.

26. The court analysed the Preliminary objection, the submissions and decisional laws and has held that the court has no power to extend time on a case where the suit is time barred. The court has no jurisdiction

to proceed with the case and the Preliminary objection is allowed and the suit is therefore struck out.

27. Each party to bear its own costs.

It is so ordered.

**Dated, Signed and Delivered virtually at Nakuru  
this 20<sup>th</sup> Day of  
February, 2026.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this

course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**