

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

ELRC CAUSE NO E452 OF 2024

THOMAS MAINA MBOTE.....
.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA ALSO KNOWN AS ABSA BANK
LIMITED.....1ST
RESPONDENT

MINET INSURANCE BROKERS LIMITED.....2ND
RESPONDENT

RULING

Background

1. The Claimant instituted this action seeking various reliefs from the Respondents. He contends that he was an employee of the 1st Respondent but his contract of service was irregularly terminated on 30th September 2016 on medical grounds.
2. The Claimant further avers that the 1st Respondent did not pay him various benefits which he was entitled to under the contract of service. These include: three months' pay in lieu of notice to terminate his services; Ksh. 1,000,000.00 being the balance of the insurance benefits he was to receive from Sanlam Insurance Company Limited; one month's salary for

every year worked; and a portion of the loan amount which the 1st Respondent was to write off.

3. The Claimant also contends that the Respondents had an arrangement under which the 2nd Respondent was to pay him five years' earnings as compensation for disability and a monthly allowance of Ksh. 150,000.00 for five years. He contends that this sum was not paid. He has thus instituted the instant proceedings to recover these benefits from the Respondents.
4. The Respondents have filed two preliminary objections to the suit. They contend that the suit is time barred in terms of section 89 of *the Employment Act*. Further, the 1st Respondent contends that the Claimant has filed another case to wit MCOMMSU Cause No.E260 of 2025 in which he is pursuing the same reliefs. As such, the Respondents contend that the court has no jurisdiction to entertain the suit and that it should be struck out.
5. On 9th June 2025, the advocates for the parties were present in court when the Respondents' advocates informed the court that they had filed the aforesaid objections to the suit. Following this development, the court's Deputy Registrar before whom the matter had been mentioned directed that the file be placed before the trial Judge on 22nd September 2025 for directions on disposal of the objections
6. Although the Claimant's advocate was present in court on the aforesaid date, the record does not show that he denied

service and or knowledge of the preliminary objections by the Respondents. Neither did he express reservations regarding the order that the matter be placed before the trial Judge for directions on the objections.

7. On 22nd September 2025, the Claimant's lawyer did not attend court. The Respondents' lawyers reiterated the fact that they had pending preliminary objections to the suit. They also informed the court that the Claimant's lawyer had applied to withdraw from representing him.
8. Because the Claimant's lawyer was not present to take directions on his application to cease acting for the Claimant, the court directed that the cause be adjourned to 2nd October 2025 for directions on the application. On 2nd October 2025, the Claimant's lawyer still did not turn up in court. The court then listed the application to cease acting for hearing on 27th October 2025 with directions that the Claimant's lawyer be served with a Hearing Notice.
9. The court record shows that on 27th October 2025, the Claimant's lawyer still did not attend court prompting the court to adjourn hearing of his application to cease acting for the Claimant to 17th November 2025. Once again, the court asked the 2nd Respondent's lawyer to serve the Claimant's advocate for hearing of his application on this new date.
10. The court record shows that the Claimant's lawyer was served for 17th November 2025 as directed. An affidavit of service evidencing this fact was duly uploaded. Despite this,

the said lawyer still failed to show up to prosecute his application to cease acting for the Claimant leading to the motion being dismissed with the consequence that the Claimant's lawyer remains on record for him.

11. On 17th November 2025, the court fixed the matter for mention on 4th December 2025 for purposes of fixing a ruling date on the Respondents' preliminary objections. The record shows that the Claimant's lawyer was served for this date and an affidavit of service to evidence this fact duly uploaded.
12. Despite this, the Claimant's lawyer did not attend court on 4th December 2025. Neither did he file submissions on the objections with the consequence that the said objections are not opposed.

Analysis

13. As mentioned earlier, the objections are two pronged. They raise the issues of: limitation of actions; and *sub-judice*.
14. Regarding the issue of *sub-judice*, the 1st Respondent contends that the Claimant has another pending suit before the Magistrate's Court which raises the same grievances. As such, it contends that the instant suit is *sub-judice* and an abuse of the court process.
15. The court agrees that to file two separate suits to claim the same reliefs would be an abuse of the court process. However, the party asserting this must move the court by way of a formal application supported by affidavit evidence

to either strike out the suit for being an abuse of the court process or to stay it for being *sub-judice*. In the court's view, such a request cannot be presented through a preliminary objection because it requires the court to examine evidence to determine it. As such, the request to strike out the suit for being *sub-judice* is declined.

16. On the claim that the suit is time barred, the Respondents contend that the Claimant's suit is premised on the contract of employment between him and the 1st Respondent. They contend that under section 89 of *the Employment Act*, such claims ought to be presented within three years from the date of accrual of the cause of action.
17. The Respondents aver that since the Claimant's cause of action accrued on 30th September 2016 when his contract of service was allegedly irregularly terminated, he ought to have filed suit by close of September 2019. Yet, he commenced these proceedings in June 2024, more than six years down the line. As such, it is their case that the suit is time barred.
18. The Respondents assert that the question of limitation goes to the jurisdiction of the court to hear a matter. It is their case that once a matter is time barred, the court is deprived of the requisite jurisdiction to entertain it. As such, they pray that this suit be struck out.
19. 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.”

20. Essentially and by this provision, except for continuing injury claims which must be filed within one year of cessation of the injury, all other claims based on a contract of service must be filed within three years of accrual of the cause of action. As such, claims which are not presented within these timelines are deemed to be statute barred.
21. The Claimant asserts that the 1st Respondent terminated his services on 30th September 2016 on medical grounds. He avers that despite this, the Respondents did not pay him the various benefits alluded to earlier. As such, the court finds that the cause of action in the suit accrued on 30th September 2016.
22. Having regard to the provisions of section 89 of *the Employment Act*, the Claimant ought to have filed suit within three years of 30th September 2016, that is to say by midnight of 30th September 2019. However, he presented this case in June 2024, more than six years down the line. As such, the suit was already time barred at the time.

23. In a plethora of decisions, the court has observed that it has no jurisdiction to entertain an employment claim which is time barred (see for instance **Godfrey Shimoli Winjila v Radar Limited [2021] KEELRC 1299 (KLR)**, **Ndungu v Kingdom Bank Limited (Successor in Title to Jamii Bora Bank Limited) [2025] KEELRC 3285 (KLR)**, **Maweu v Safaricom Ltd [2025] KEELRC 1441 (KLR)** & **David Kizito Makokha v G4s Kenya Limited [2021] KEELRC 2356 (KLR)**). It thus requires no gainsaying that this court has no jurisdiction to entertain the instant suit as it was filed out of time.

Determination

24. The upshot is that the suit as presented is statute barred by virtue of section 89 of *the Employment Act*.
25. Consequently, it is hereby struck out.
26. There is no order as to costs.

Dated, signed and delivered on the 26th day of February, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the 1st Respondent

.....for the 2nd 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