

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

MISC. APPLICATION NO. E119 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

LILIAN WANJIRU KAMANDEAPPLICANT

VERSUS

THE KENYA INSTITUTE OF MANAGEMENT

.....RESPONDENT

RULING

1. The application before me for determination is the Applicant's Notice of Motion dated **30th April, 2025**. The Applicant seeks the following Orders:-

(a) *That leave be granted to the Applicant to file suit out of time.*

(b) *That the Court be pleased to make and give such further order and directions as it may deem just and fair.*

2. The application sets out on its face the grounds on which it is sought, and is predicated on the Applicant's supporting affidavit sworn on 30th April, 2025. It is deponed in the said supporting affidavit:-

(a) that the Applicant was employed by the Respondent on **4th October, 2005** as an Administrative Assistant and worked until **14th March, 2022** when she tendered her resignation, which the Respondent accepted vide an Internal Memo dated **30th March, 2022**.

(b) that the Applicant spent considerable time pursuing payment of her terminal dues; which the Respondent kept promising would be paid, but were not paid.

(c) that on **27th June, 2023**, the Applicant requested the Respondent to issue her with a certificate of service as she was unable to secure employment.

(d) that the Applicant wrote to the Respondent's Executive Director on **26th June, 2024**, computing the outstanding dues and requesting for payment; which she followed up with an email on **7th March, 2025**.

(e) *that the Applicant was misled by the Respondent into believing that her dues would be paid, until she was advised by her Advocates on record that the statutory time for filing suit had lapsed, hence the present application.*

(f) *that delay in filing suit was solely caused by lack of fees to secure services of an Advocate.*

3. Documents annexed to the supporting affidavit include copies of the Applicant's resignation letter dated **14th March, 2022**, the Respondent's Internal Memo dated **30th March, 2022** acknowledging receipt of the Applicant's resignation letter, the Applicant's letter (email) to the Respondent dated **24th May, 2022** asking for payment of her dues and the Respondent's evenly dated email to the Applicant acknowledging receipt and promising to advise the Applicant on payment.

4. Also annexed to the supporting affidavit is a copy of the Applicant's email to the Respondent dated **11th November, 2025** asking for payment of her dues.

5. The application is opposed by the Respondent vide a replying affidavit of **Raymond Mwangi** sworn on **26th August, 2025**. I have considered the depositions made in the said replying affidavit.
6. Both parties filed written submissions on the said application pursuant to the Court's directions in that regard.
7. The single issue for determination in the application herein, in my view, is whether the Order sought by the Applicant is capable of being granted.
8. **Section 89 (formerly Section 90) of the Employment Act** provides as follows:-

“Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, 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.”

9. The foregoing statutory provision **is couched in mandatory terms;** and does **not** provide for extension of time where a suit is not instituted within the time prescribed therein. According to the Applicant’s resignation letter dated **14th March, 2022**, termination of her employment with the Respondent by way of resignation took effect on **10th April, 2022**. The Respondent’s Internal Memo dated **30th March, 2022** states in part:-

“ . . . Subject to the provision of a duly filled Clearance Certificate, the Finance Department is advised to pay you your dues as follows:-

- Salary upto and including 10th April, 2022.**
- Two (2) leave days earned but not taken.**
- Severance pay at the rate of three (3) weeks’ pay for each completed year of service upto a maximum of 15 years pay calculated on the basic salary.”**

10. Time regarding the aforesaid separation/resignation and issues arising therefrom **started running as from 10th April, 2022**. The Applicant says that her dues were **not** paid by the Respondent, and that she did **not** file suit against the Respondent within the time prescribed by statute. She blames the Respondent for having misled her into believing that her dues would be paid.

11. Although it is clear from the material placed before me that the Applicant's dues **may not** have been paid by the Respondent, **the Court's hands are tied by the aforesaid law**. I cannot extend time or grant leave to the Applicant to file suit out of time as sought by her, as the law/statute does not extend such **Jurisdiction** to this Court. The Court of Appeal stated as follows in the case of **Beatrice Kahai Adagala - vs - Postal Corporation of Kenya [2015] eKLR:-**

“Much as we sympathize with the appellant, if that is true, we cannot help her as the law ties our hands. Section 90 of the Employment Act, which we have quoted verbatim herein above, is

in mandatory terms. A claim based on a contract of employment must be filed within 3 years.

As this Court stated in the case of *Divecon Limited - vs - Samani [1995 - 1998] EA - P. 48, . . .* the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the Applicant satisfies the requirements of Sections 27 and 28 of the Limitation of Actions Act.”

12. In **Attorney General & Another - vs - Andrew Maina Githinji & Another [2016] eKLR**, the Court of Appeal (Waki, JA) stated as follows:-

“. . . By expressly inserting Section 90, the intention of Parliament, in my view, at least in part, must have been to protect both the employer and the employee from irredeemable prejudice if they have to meet claims and counter-claims made long after the cause of action had arisen when memories have faded,

documents lost, witnesses dead or untraceable. .

. .”

13. The summary of all the foregoing is that the Order sought by the Applicant **cannot** issue. The Notice of Motion **dated 30th April, 2025** must fail, and is hereby dismissed.
14. Each party shall bear its own costs of the application.
15. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF MARCH 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Kioko for the Claimant

Miss Watiri for the Respondent

ORIGINAL