

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

ELRC CAUSE NO E911 OF 2024

NICHODEMUS MUTUBWA MALACK...
.....**CLAIMANT**

VERSUS

SEAL TOWERS LTD.....
.....**RESPONDENT**

RULING

Background

1. The parties to the instant dispute had an employment relationship which, according to the averments in the draft Memorandum of Claim, was terminated on 7th June 2020. From the averments on record, although the Respondent terminated the employment relationship on the aforesaid date, the proposed Claimant (hereafter called the Applicant) did not file suit in the appropriate court to challenge the decision within the timelines that are provided under section 89 (formerly section 90) of *the Employment Act*. As such, he has filed the application dated 31st January 2025 through which he seeks leave to file suit out of time.
2. The Applicant avers that after his contract of service was terminated, he instructed his erstwhile advocates to file proceedings to challenge the decision. However, he

contends that the said lawyers filed suit before the Magistrate's Court which did not have pecuniary jurisdiction to hear the case. As such, he avers that he was forced to withdraw the matter.

3. The Applicant asserts that at the time the suit before the Magistrate's Court was withdrawn, the time for filing suit before the appropriate court had lapsed. And hence the request for leave to commence the proposed proceedings out of time.
4. The Respondent has opposed the application. It contends that the law does not entitle the Applicant to file suit out of time. As such, it contends that the court is not entitled to grant the orders sought in the motion.

Analysis

5. Both parties agree that the Applicant's contract of service was terminated on 7th June 2020. Both parties also agree that section 89 of *the Employment Act* requires an employee who wishes to challenge a decision to terminate his services to move the court within three years of the decision. Indeed, it is in recognition of this reality that the Applicant is seeking leave of the court to file suit outside the three years that are sanctioned by the aforesaid provision of statute.
6. The Applicant appears to be under the impression that the time that is fixed by the aforesaid provision for filing suit can be enlarged. On the other hand, the Respondent does not think so. As such, the only thing which the court is called

upon to determine is whether it is entitled to enlarge the time for the Applicant to file suit.

7. Courts have pronounced themselves on this matter severally. From the various decisions, it is clear that the timelines which are set by section 89 of *the Employment Act* cannot be enlarged (see ***Ngugi v Square One Investments Limited [2025] KEELRC 807 (KLR) & Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR***). As such, the court has no jurisdiction to grant a request to expand the time for filing suit under the provision (***Samuel Onchonga v Ken-Knit Kenya Limited [2017] KEELRC 1368 (KLR) & Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another [2016] KECA 213 (KLR)***).

Determination

8. The upshot is that the court lacks jurisdiction to entertain the application for leave to file suit out of time.
9. As such, the application dated 31st January 2025 is dismissed.
10. Each party to bear own costs of the application.

**Dated, signed and delivered on the 19th day of March,
2026**

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant

.....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