



**Nyanchama v Sotik Tea Company Ltd (Miscellaneous Application  
E012 of 2024) [2026] KEELRC 717 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 717 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
MISCELLANEOUS APPLICATION E012 OF 2024**

**AN MWAURE, J  
MARCH 12, 2026**

**BETWEEN**

**MARY NYANCHAMA ..... APPLICANT**

**AND**

**SOTIK TEA COMPANY LTD ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein filed a Notice of Motion dated 29<sup>th</sup> October 2024 seeking the following orders that:
  1. This court be pleased to grant the Applicant leave to institute proceedings out of time against Sotik Tea Company Limited, following the Applicant's termination on 4<sup>th</sup> March, 2020, the Applicant was lawfully employed by the Respondent as a handplucker.
  2. Costs of this application be provided for.
2. The application is brought under section 90 of the *Employment Act*, Article 41(1) and 165(b) of the *Constitution*, Order 51 Rule 1 of the *Civil Procedure Rules* and section 1, 1A, 3A of the *Civil Procedure Act*.

**Applicant's case**

3. The Applicant avers that she worked for the Respondent from October 2004 until her termination on 4<sup>th</sup> March 2020 due to illness.
4. The Applicant avers that the Respondent only paid her dues on 19<sup>th</sup> September 2023, amounting to Kshs.175,040/=.



5. Dissatisfied, the Applicant avers that she sought assistance from the Kisii Labour Office, which referred the matter to the Kenya Plantation Allied Worker Union.
6. The Applicant avers that she could not have anticipated the payment would be inadequate within the statutory 3-year limit under section 90 of the *Employment Act*, and therefore seeks leave to file her claim out of time, emphasizing that failure to do so would cause her irreparable loss and damage.

### **Respondent's grounds of opposition**

7. The Respondent opposed the application vide grounds of opposition dated 12<sup>th</sup> November 2025 on the following grounds:
  1. The application offends the express provision of section 90 of the *Employment Act*.
  2. This Honourable court has no jurisdiction and/or discretion to extend time or grant leave to file suit out of time in respect of claims arising out of employment contracts.
  3. The Applicant has neither demonstrated a plausible reason for the delay in filing suit within time nor has she rendered any explanation for the subsequent delay in prosecuting the instant application, which was filed on, 2024 or thereabouts.
  4. The application is fatally defective, misconceived and constitutes a flagrant abuse of the court process.
8. Parties canvassed the application by way of written submissions.

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

9. The Respondent submitted that this court (ELRC) lacks jurisdiction to grant such leave under section 90 of the *Employment Act*. The Applicant contends that her employment ended on 4<sup>th</sup> March 2020 and seeks leave to file suit out of time, claiming her dues were not fully satisfied. The Respondent submits that the limitation period expired on 4<sup>th</sup> March 2023, and section 90 expressly bars extension beyond three years.
10. The Respondent placed reliance on *Joseph Thuku Muchira v Chai Co-operative Savings & Credit Ltd* [2015] KEELRC 461 (KLR), which held that courts have no discretion to extend time under section 90, and *Kenya Airports Authority v Shadrack Abraham Kisongochi* [2016] KECA 481 (KLR), reinforcing the strict limitation.
11. Consequently, the Respondent urges dismissal of the application with costs.

### **Analysis and determination**

12. The court has considered the application, supporting affidavit, grounds of opposition and submissions on record; the issue for determination is whether the application is merited.
13. 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.”



14. In *Josephat Ndirangu v Henkel Chemicals (EA) Ltd* [2013] KEELRC 890 (KLR), Radido J (as he was then) relied on the Court of Appeal case of *Divecon v Samani* (1995-1998) EA 48. The Court held itself thus,

“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).”

To my mind, similar principles in respect of what the Court of Appeal stated about section 4(1) of the *Limitation of Actions Act* apply in respect of section 90 of the *Employment Act* and I would for the sake of clarity state that no employee has the right or power to bring after the end of three years from the date of dismissal or termination, an action founded on a contract of service and that the Industrial Court has no right or power to entertain such claims or extend time for bringing such action.”

15. In this instant case, the Applicant avers that she was employed by the Respondent from October 2004 until her termination on 4<sup>th</sup> March 2020, on medical grounds due to her illness. She further avers that the Respondent only settled her dues much later, on 19<sup>th</sup> September 2023, by paying her a sum of Kshs.175,040/=. Dissatisfied, the Applicant sought assistance from the Kisii Labour Office, which referred the matter to the Kenya Plantation Allied Worker Union.
16. Even after 19<sup>th</sup> September 2023 the Claimant was paid her dues and of course that is when she found she was not paid the terminal dues she expected. The court is however in possession of the termination letter dated 4<sup>th</sup> March 2020. The Respondent set out the dues that they intended to pay the Claimant. She was invited for a hearing and was asked to take her representative. It is not clear if that was the final termination letter. Then the Claimant for reasons not explained was paid her dues on 19<sup>th</sup> September 2023 when she received Kshs.175,040/=.
17. It is the court’s considered opinion that the cause of action was from when she received her terminal dues and if it was 19<sup>th</sup> September 2023 then she can file a case if she is dissatisfied with the amount she was paid.
18. In the recent court of Appeal case *Francis Kimani Kiige v National Hospital Insurance Fund* 657 of 2019 it was held

“To be deduced is that the termination communicated through the letter of 12<sup>th</sup> September 2007 was tentative until the right to appeal was either waived or exhausted. Up to that point there was no real grievance that could found a cause of action.” This right of appeal is distinguishable from pursuit of out of court negotiations which are not provided or required in a contract of employment or as held by this court in *Rift Valley Railways Kenya Ltd* that are not court based and conducted within the law.”



19. The court finds the Applicant has established sound reasons to give her leave to file her claim even though she was terminated in March 2020. The termination was tentative until she received her payment and decided to approach court.
20. The Applicant is given leave to file and serve her claim within the next 14 days hereof because as far as the court is concerned time begun to run when she received her final dues. She could not have otherwise filed the case without the facts. She is granted leave to file her claim therefore in the next fourteen (14) days.
21. Costs will be in the cause.  
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 12<sup>TH</sup> DAY OF MARCH, 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**

