

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

**CAUSE NO. 242 OF 2020**

**ELIZABETH J OCHIENG.....**  
**.....CLAIMANT**

**VERSUS**

**SUNPAR PHARMACEUTICALS LTD.....**  
**.....RESPONDENT**

**JUDGMENT.**

**Introduction**

1. Before Court is the Claimant's Statement of Claim dated 1<sup>st</sup> February, 2020, where the Claimant seeks the following reliefs as against the Respondent: -
  - i. Reinstatement to her previous position/job without any loss of benefits;
  - ii. Salary arrears for the entire period the Claimant has been out of employment;
  - iii. Damages for wrongful and/or unlawful termination disguised as redundancy.
  - iv. Damages for discrimination and violation of the Claimant's constitutional rights of lawful expectation;
  - v. Maximum 12 months compensation for unlawful redundancy; and
  - vi. Costs of this suit and interest thereon.

2. The Respondent entered an appearance on 18<sup>th</sup> August, 2020, and subsequently filed a Statement of Response dated 23<sup>rd</sup> May, 2022, in response to the Claimant's claim.
3. The Claimant's case was heard on 11<sup>th</sup> March, 2025, when the Claimant (CW1) testified in support of her case. She adopted her witness statement dated 1<sup>st</sup> February, 2020, and produced her list and bundle of documents of even date as exhibits in the matter and were marked as Claimant's exhibits Nos. 1-3.
4. The Respondent's case was subsequently heard on 2<sup>nd</sup> July, 2025, when the Respondent's witness, Mr. Francis Muhando (RW1), testified in support of the Respondent's case. He adopted his witness statement dated 15<sup>th</sup> December, 2024, and produced the Respondent's list and bundle of documents dated 23<sup>rd</sup> May, 2022, as exhibits in the matter and were marked as Respondent's exhibits Nos. 1.
5. Submissions were received from both parties.

### **The Claimant's case**

6. The Claimant's case is that she was employed by the Respondent as a Receptionist on 7<sup>th</sup> September 2009 on a basic salary of Kshs.36,463.00.
7. The Claimant avers that she diligently worked for the Respondent for eight(8) years until May 2018, when she was verbally dismissed from her employment on account of

sickness, which she claims was a violation of her rights under Article 41 of the Constitution on discrimination and unfair labour practices.

8. The Claimant further particularizes the discrimination as the Respondent's sacking her while on sick leave, failing to treat her in a humane manner, cancelling her medical cover while on sick leave, flouting the procedures of lawful termination with respect to the Claimant, and violating her constitutional rights to fair hearing and lawful expectation.
9. It is the Claimant's assertion that in August, 2016, she fell sick and was hospitalized for some time when the Respondent terminated her, disguising it as redundancy with malice and without due regard to the Claimant's welfare and rights.
10. She avers that the Respondent was malicious in that it failed to inform her of the reasons or justification for redundancy. She avers that the Respondent terminated her while she was on sick leave and failed to give her adequate time to recover and resume her duties, resulting in the Claimant suffering great financial loss and damages to the tune of Kshs. 1,239,742.00 as special loss and damages.
11. On cross-examination, the Claimant stated that she was terminated in May, 2017 and that she filed this case on 17<sup>th</sup> June, 2020. She avers that she was unsure whether the case was filed after three years.

12.The Claimant further avers that her termination was disguised as redundancy, but did not provide evidence of the redundancy and did not submit the termination letter from the Respondent.

13.Further, she admitted to being paid while on sick leave and continued being an employee until May 2017, when she had a meeting with the Respondent and was terminated.

14.She further stated that she fell sick in August, 2015 and did not file any communication with the Respondent regarding her illness.

15.On re-examination, the Claimant stated that she was not sure whether she was paid in August 2015 and insists that the Respondent stopped paying her in August, 2015.

16.The Claimant finally prays that the Court grant her the relief sought in her Statement of Claim.

### **The Respondent's Case**

17.The Respondent's case is that it employed the Claimant as a Receptionist as claimed under her Statement of Claim, but denies her assertion of unlawful and malicious termination of employment and contends instead, that while she was undergoing treatment for the better part of the year 2014 and not 2016, the Claimant exceeded her sick leave days in 2014 by an additional 21 days.

18. The Respondent further denies terminating the Claimant on account of redundancy and stated that the Claimant failed to report to work and deserted her duties in 2015, violating her contract of employment and in disregard of Section 30 of the Employment Act.
19. The Respondent avers that despite the Claimant's absence, it continued to remit the Claimant's salary until August, 2015, when it became untenable to continue paying the Claimant for work not done.
20. On cross-examination, RW1 stated that in January, 2015, the Claimant accepted an offer of a salary increase, meaning that she was still an employee at the time.
21. That in 2014, the Claimant informed the Respondent that she was leaving for medical treatment, and in August, 2015, the Respondent issued the Claimant her last payslip.
22. RW1 stated that they tried reaching the Claimant through her husband via telephone without success, but no evidence was led on the attempt to reach out to her.
23. RW1 told the court that he is not aware that the Claimant reported back to work in May 2017 or that she was forced to resign. It is his argument that he remembers the Claimant being asked to come to work sometime in 2018, and that when she did, she met with a Mr. Khan, but does not know what their discussion was about.

24. In re-examination, RW1 clarified that the Claimant was in and out of the office since 2014 due to illness, during which period the Respondent paid her salary without fail. It is his position that the company was in communication with the Claimant's husband, who was also an employee of the Respondent.

25. RW1 confirmed further that the Claimant stopped reporting to work from January 2015, but the Respondent continued paying her salary until August 2015.

26. It is the Respondent's case that the Claimant is not entitled to the reliefs sought in the Claim and urges the Court to dismiss it with costs.

### **The Claimant's submissions**

27. It is the Claimant's submission that she was terminated unlawfully through a redundancy under Section 40 of the Employment Act.

28. She submits that she suffered a stroke in August 2015 after she became 2 months pregnant and was not paid her salary for that month, and her medical cover was suspended.

29. The Claimant submitted that she always kept the Respondent apprised of her progress and even sent the Respondent her medical report indicating that she could return to work and perform light duties, but the Respondent insisted that she could only be accepted back to work when fully recovered.

30.The Claimant further submitted that by the Respondent summoning her back to work, it indicated that she was still an employee, and the unlawful attempt to force her to resign from her work was unlawful.

31.The Claimant further submitted that the Respondent did not produce evidence demonstrating that the Company made an inquiry into her medical condition to determine whether or not she was able to perform her duties, hence her termination on account of redundancy was substantively unfair within the meaning of Section 45 (2)(a) and (b) of the Employment Act.

32.The Claimant submits that the Respondent failed to inform her of the reasons for discontinuing her salary from August 2015 and terminating her services in 2018, contrary to the provisions of Section 40(1)(c ) of the Employment Act.

33.It is her submission that since the Respondent substantively and unfairly terminated her employment on account of redundancy, the Court should award her the reliefs sought, including the maximum 12 months' compensation for unfair termination.

34.She prays that the Court allow the Claim with costs.

### **The Respondents' submissions**

35.The Respondent submits that the Claimant's suit was filed outside the statutory limitation period provided under Section 90 of the Employment Act, 2007.

36. It was submitted that the Claimant instituted the suit by a Statement of Claim dated 18<sup>th</sup> February, 2020, and filed on 17<sup>th</sup> June, 2020.

37. The Respondent argued that the pleadings were contradictory as the Claimant also alleged that her employment was terminated in August 2016 while on sick leave, and further stated in her witness statement that she was asked to write a resignation letter in May 2017. The Respondent contended that the Claimant was bound by her pleadings and could not depart from them, relying on the decision in ***Raila Amollo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others (2017) eKLR***, in which the court emphasized that the parties are bound by their pleadings.

38. The Respondent further submits that the Claimant's services actually came to an end in August 2015 when her name was removed from the payroll, as evidenced by her last payslip appearing in the Respondent's list of documents dated 23<sup>rd</sup> May, 2022.

39. It is argued that if the Claimant's employment ended on 1st September, 2015, the claim ought to have been filed on or before 31st August, 2018, in compliance with the three-year limitation period under Section 90 of the Employment Act, 2007. It submits further that, since the suit was filed on 17<sup>th</sup> June, 2020, the claim was filed out of time and the court therefore lacked jurisdiction to determine it. In support of

this position, reliance was placed on Stanley ***Miano v County Government of Nyeri(Cause E018 of 2022) [2022] KEELRC 13261 (KLR) (23 November 2022) (Ruling).***

40.The Respondent further submitted that even if the court were to rely on the Claimant's assertion that the termination occurred in May 2017, the suit would still be statute barred since it ought to have been filed by May 2020. It sought to rely on ***Ndirangu v Henkel Chemicals East Africa Limited(2013) eKLR***, where the court held that Section 90 of the Employment Act strictly limits employment claims to three years.

41.The Respondent further submits that the Claimant was not unfairly terminated, but instead deserted employment and absconded from duty in January 2015. It was submitted that the Claimant stopped reporting to work and the Respondent made several attempts to contact her, including reaching out through her husband, who was previously an employee of the Respondent, but these efforts were unsuccessful.

42.The Respondent also argued that although the Claimant alleged that she had failed to report to work due to illness, she did not comply with Section 30 of the Employment Act, which requires an employee to produce a certificate of incapacity to work. According to the Respondent, the Claimant admitted during cross-examination that she neither communicated her illness to the employer nor

produced any medical documentation or formal leave request.

43. The Respondent submits that the Claimant had alleged that her employment was terminated on account of redundancy, but had failed to produce any documentary evidence to support the allegation. The Respondent maintains that no redundancy process was ever conducted and relied on Section 107 of the Evidence Act, which places the burden of proof on the party asserting a fact.

44. The Respondent further denied the Claimant's allegation that she had been coerced by the Respondent's new Chief Executive Officer to sign a resignation letter, arguing that the Claimant failed to produce the alleged letter or any supporting evidence.

45. The Respondent submitted that the Claimant was not entitled to the accrued leave pay as claimed. It was argued that such a claim constituted a continuing injury and under Section 90 of the Employment Act, any claim based on a continuing injury must be filed within twelve months after the cessation of the injury. The Respondent submitted that since the Claimant's employment ended in August 2015, the claim filed on 17<sup>th</sup> June, 2020 was clearly outside the statutory period.

46. The Respondent relied on ***John Kiiru Njiiri v University of Nairobi (2021) eKLR***, which cited ***G4S Security Services (K) Limited v Joseph Kamau & 468 Others(2018)***

**eKLR**, where the court held that claims based on continuing injury must be filed within twelve months after cessation of the injury, failing which they are time-barred.

47. In conclusion, the Respondent urged the court to dismiss the Claimant's suit with costs on the grounds that it was filed outside the statutory limitation period and that the Claimant had failed to prove that her employment was unlawfully terminated or that any redundancy process was undertaken by the Respondent.

### **Analysis and Determination**

48. Upon careful consideration of the pleadings, the evidence adduced, the witnesses' testimony, and the parties' submissions, the following issues crystallize for determination: -

- i. Whether the Claimant's suit is statute barred under Section 89 of the Employment Act, 2007, and if not
- ii. Whether the Claimant's employment was unfairly terminated
- iii. Whether the Claimant is entitled to the reliefs sought.

### **Whether the Claim is Statute Barred**

49. The Respondent's position is that the claim herein was filed outside the limitation period prescribed under Section 90 (now 89) of the Employment Act, 2007, which provides that employment claims must be filed within three years of the act, neglect, or default complained of.

50. On her part, the Claimant gave different dates on which she contends the Respondent terminated her employment. In her claim, she argues that she was verbally terminated in May 2018, whereas in her oral testimony, she states that the termination occurred in May 2017. The Claimant further contends that her salary was stopped in August 2015.

51. The Respondent maintains that the Claimant's employment effectively ended in August 2015, when her salary ceased, and being the time, she was removed from the Respondent's payroll.

52. It is evident from the court record that the Claimant filed the instant Claim on 17<sup>th</sup> June 2020.

53. On cross-examination, the Claimant stated that she was terminated in May, 2017. She further admitted, on cross-examination, that she was paid a salary while on sick leave and remained an employee of the Respondent until May 2017, when she met with the Respondent and was terminated.

54. The Claimant told this court that she fell sick in January 2015 and that the Respondent stopped paying her salary in August 2015.

55. It is now settled that the limitation under Section 89 of the Employment Act is strict and jurisdictional. In the case of ***Josephat Ndirangu v Henkel Chemicals (EA) Ltd***

**[2013] KEELRC 890 (KLR)**, also cited by the Respondent, the court held that:-

***“Section 90 sets a strict limitation period of three years within which employment claims must be filed, and courts lack jurisdiction to entertain claims filed outside that period.”***

56. In my considered view, a cause of action arose the moment the Claimant's salary was stopped, and the wait to be formally communicated to, albeit verbally, of her termination, did not stop time from running. Waki JA, in upholding a Preliminary Objection based on Section 90 of the Employment Act in ***Attorney General & another v Andrew Maina Githinji and another [2016] eKLR***, held as thus: -

***“.....Having found that the cause of action arose on 2<sup>nd</sup> February 2010 and that the claim was filed on 16<sup>th</sup> June 2014, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time-barred as at 1st February 2013.”***

57. Further, even if the Court were to adopt the most favourable date to the Claimant (May 2017), the claim ought to have been filed by May 2020. The present claim was filed on 17<sup>th</sup> June 2020, which period is similarly outside the statutory period.

58. Limitation goes to the jurisdiction of the court, as was succinctly emphasized in ***Owners of the Motor Vessel 'Lillian S' v Caltex Oil Kenya Ltd 1989] KECA 48 (KLR)***, where the court held that:-

***“Jurisdiction is everything and without it a court must down its tools.”***

59. Consequently, this Court finds and holds that the Claimant's Statement of claim was filed outside the statutory limitation period and is therefore statute barred.

60. On this ground alone, the Court lacks jurisdiction to determine the merits of the claim and must now down its tools.

61. The other issues then fall by the wayside.

62. The Claim is struck out with no orders on costs.

63. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Okondo h/b for Ms. Guserwa for the Claimant  
Ms. Ochieng h/b for Mr. Manyara for the Respondent  
Ms. Esther S- C/A

ORIGINAL