



Njeru v Kenya Airways Plc (Employment and Labour Relations Cause E276 of 2025) [2026] KEELRC 1158 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 1158 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E276 OF 2025**

BOM MANANI, J

APRIL 30, 2026

BETWEEN

VICTORIA MICHERE NJERU CLAIMANT

AND

KENYA AIRWAYS PLC RESPONDENT

RULING

Background

1. The Claimant instituted the instant suit to challenge the Respondent's decision to deny her the benefit of rebate concession ticket. She contends that she resigned from the Respondent's service on 24th January 2022 after ten years of service. She further avers that the Respondent's Human Resource Manual entitles employees who have been in its service for ten years and above to the aforesaid benefit. However, she asserts that the Respondent has denied her the benefit which, in her view, is discriminatory.
2. The Claimant avers that the Respondent communicated its decision not to grant her the benefit on 5th April 2022. As such, she contends that the cause of action accrued on this date.
3. The Respondent filed a preliminary objection to the suit on account of limitation of actions. It contends that the suit is time barred by virtue of section 90 (now section 89) of the *Employment Act*.

Analysis

4. 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.”

5. The above provision requires a claim which is based on the Act or a contract of service to be instituted within three years from the date of accrual of the cause of action or within twelve months of cessation of an injury in the case of a continuing injury claim. As such, a claim which is instituted outside these timelines is considered to be statute barred.
6. The Respondent asserts that the Claimant’s cause of action is based on the continuing injury principle. As such, it avers that suit ought to have been filed within one year of cessation of the injury she is complaining about.
7. On the other hand, the Claimant contends that the suit is not time barred because she filed it on 4th April 2025 in respect of a cause of action which accrued on 4th April 2022. She contends that at the time she instituted the case, she still had a day before the suit could become time barred.
8. Black’s Law Dictionary defines the phrase “cause of action” to mean the following:-

“A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.”
9. From this definition, it is apparent that the term “cause of action” denotes the state of affairs which gives one the legal or equitable right to sue. It is the trigger for an action to seek legal or equitable redress.
10. In the instant suit, the trigger for the Claimant’s suit was the Respondent’s refusal to grant her the contested benefit of rebate concession tickets. This denial occurred on 5th April 2022 when the Respondent sent the Claimant an email contending that it had exercised its discretion to decline to grant her the benefit.
11. According to section 89 of the [Employment Act](#), the Claimant was entitled to sue the Respondent to challenge this refusal within three years from 5th April 2022 if her cause of action was not based on the continuing injury principle. This means that her suit ought to have been instituted on or before the close of 5th April 2025.
12. According to the evidence on record, the instant suit was filed on 4th April 2025 which was one day before the cause of action became time barred. As such, the suit was arguably filed within time.
13. But this appears not to be the Respondent’s complaint. As seen earlier, the Respondent’s case appears to be that the claim falls within the category of continuing injury claims. As such, it contends that suit ought to have been filed within one year of cessation of the injury.
14. Even assuming that the Claimant’s claim is based on the continuing injury principle, the Respondent’s contention would still be misplaced. The Claimant’s grievance is that she has been wrongfully denied the rebate ticket benefit. If the Statement of Claim is anything to go by, her case is that this denial was still subsisting at the time she filed suit. As such, the injury complained of had not ceased at the time she approached the court. That being the case, the Respondent cannot invoke the continuing injury principle to assert that the claim is time barred because the impugned injury is not said to have ceased before suit was filed.

Determination

15. The upshot is that the preliminary objection is devoid of merit.
16. Accordingly, it is dismissed with costs to the Claimant.



DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....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.

