



**Juma & 5 others v Mada Holdings t/a Baobab Sea Lodge Kilifi Limited (Civil Appeal E034 of 2022) [2025] KECA 817 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KECA 817 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPEAL E034 OF 2022  
KI LAIBUTA, SG KAIRU & GWN MACHARIA, JJA  
MAY 9, 2025**

**BETWEEN**

**DANIEL JUMA ..... 1<sup>ST</sup> APPELLANT  
DANIEL MWAZONGA KALAMA ..... 2<sup>ND</sup> APPELLANT  
MARK SHIDA KENGA ..... 3<sup>RD</sup> APPELLANT  
PETER KAZUNGU KENGA ..... 4<sup>TH</sup> APPELLANT  
GEORGE MWAMUYE ..... 5<sup>TH</sup> APPELLANT  
DAVID WAMBUA ..... 6<sup>TH</sup> APPELLANT**

**AND**

**MADA HOLDINGS T/A BAOBAB SEA LODGE KILIFI  
LIMITED ..... RESPONDENT**

*(Being on appeal from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Malindi (Manani, J.) delivered on 27th September 2022 in ELRC Cause No. 2 of 2020)*

**JUDGMENT**

1. This appeal is from the Judgment and Order of the Employment and Labour Relations Court (Manani, J.) delivered on 27<sup>th</sup> September 2022 in ELRC Cause No. 2 of 2020. The trial court dismissed the appellants' claims as being time barred under section 90 of the Employment Act due to the expiration of the three-year limitation period since the respective causes of action arose. The appellants now appeal that Judgment seeking to overturn the decision and have their claims reinstated.
2. A brief context into the facts in dispute are as pleaded in the Amended Statement of Claim dated 15<sup>th</sup> June 2022. The appellants (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Claimants respectively) filed a suit against their



former employer, Mada Holdings, regarding allegations of unfair termination, severance pay, unpaid house allowance, annual leave pay, public holiday pay and compensation for unlawful termination. They had been employed as security guards by the respondent on diverse dates between 2011 and 2012. They claimed that they were verbally declared redundant by their employer in June 2016 and, as a result, sought various reliefs under the Employment Act. The original claim was filed on 24<sup>th</sup> June 2019 in the Employment and Labour Relations Court at Malindi. The employment dates vary as follows: 19<sup>th</sup> March 2011, 16<sup>th</sup> April 2011, 6<sup>th</sup> April 2012, 13<sup>th</sup> August 2012, 11<sup>th</sup> October 2011 and 18<sup>th</sup> April 2011 respectively.

3. The specific dates of redundancy as pleaded were:
  - a. 15<sup>th</sup> June 2016 for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> appellants;
  - b. 21<sup>st</sup> June 2016 for the 3<sup>rd</sup> appellant;
  - c. 24<sup>th</sup> June for the 4<sup>th</sup> appellant; and
  - d. 17<sup>th</sup> June 2016 for the 6<sup>th</sup> appellant.
4. The appellants claimed that they reported the matter to Kenya Hotels and Allied Workers Union (KHAWU) in an attempt to resolve the dispute. However, the respondent failed to attend a scheduled reconciliation meeting.
5. In their testimonies, the appellants testified that they were not given written contracts of employment; that they worked until the middle of 2016 when the respondent's management called them individually and informed them of their termination, which communication was done orally; that the reason of termination was that the respondent could no longer afford to pay them; that their daily wage was an aggregate of about Kshs.300 which most often would be paid in two instalments, one in the middle of the month and the other at the end of the month, or as the employee wished.
6. The respondent, vide their Amended Response to the Claim dated 6<sup>th</sup> July 2022, denied the allegations that the appellants were verbally declared redundant. They averred that the respondent had not experienced problems to render its employees redundant; that the month of June when the appellants alleged to have been declared redundant is a high season month for the tourism industry; that the appellants deserted duty; and that, they therefore voluntarily left employment.
7. The respondent further averred that the appellants were casual labourers who were free to leave employment as and when they wished; that if they chose to leave, the respondent had no responsibility to compensate them; that they deserted duty after they were told to account for their misconduct at work such as sleeping while on duty; that it treated the appellants well and in accordance with the law; that their salaries were guided by the applicable Wage Order as sanctioned by the Government; that the appellants were provided with staff houses, but that they opted to stay away from staff quarters; and that, for the foregoing, the respondent was not liable to pay or compensate the appellants for anything.
8. In his oral evidence, PW1 (the 2nd appellant), testified in both chief and cross examination that he was terminated on 15th June 2016 but, in re-examination, stated that he was terminated on 17th August 2016. PW2 (the 3rd appellant) testified that his employment contract was terminated on 21st June 2016. PW3 (the 4th appellant) testified that he was terminated on 25th June 2016. PW4 (the 6th appellant) testified that he was terminated on 15th July 2016, and that he had erroneously stated 15th June 2016. PW6 (the 1st appellant) testified that he was terminated on 15th June 2016.
9. Mr. James Nzigu testified as the only defence witness and adopted his witness statement dated 19<sup>th</sup> September 2022. He stated that he was the General Manager of the respondent having worked for the



respondent for 16 years; that the appellants were casual laborers, and that they had been engaged by the respondent on diverse dates with the 3<sup>rd</sup> and the 5<sup>th</sup> appellants having been employed on 4<sup>th</sup> April 2011 while the 6<sup>th</sup> appellant was hired in the year 2006; that the appellants were paid every 15<sup>th</sup> and 30<sup>th</sup> day of each month, and that the payment would only be for the days worked; and that the appellants signed a casual employee register and were given four days off duty every month with the option of working the whole month. He produced a casual labourer's form in this regard. He testified that a pay slip was therefore not necessary.

10. It was his further testimony that the appellants were summoned for misconduct; that, instead of addressing the issues raised with them, they left; that the allegation that the appellants were declared redundant for attempting to join a worker's union was not true; that the respondent had staff quarters; and that employees had the choice to reside within the premises or outside.
11. In cross examination, he stated that he was transferred in the year 2020 to Kilifi after the appellants were terminated; that he could not tell what had transpired at the time of termination as it was one Mr. Njoroge who was then in charge of the Kilifi branch; that no disciplinary sessions were held since the appellants were casual laborers; and that there were no employment contracts on the terms of their engagement.
12. After considering the facts and the arguments by both parties, the learned Judge was of the view that the suit could not be sustained since it was filed in a court with no competent jurisdiction. The learned Judge referred to section 90 of the *Employment Act*, which he held is cast in stone in terms of its provisions in so far as the limitation of time of filing the suit was concerned; that the court can only assume jurisdiction over suits in respect of employment matters if the suits are filed within three years of the cause of action arising; that the only exception to the edict is where the injury or damage were continuing; and that, in the latter scenario, the suit must be filed within 12 months of the injury and damages complained of ceasing to happen.
13. The learned judge went on to hold that the appellants' claims were premised on the decision of the respondent to terminate their contracts of employment, which they alleged was irregular; that, in respect of the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> appellants, the decision to declare them redundant was taken on 15<sup>th</sup> June 2016, which is the date that the cause of action arose; that the three years' period within which the claim ought to have been filed lapsed on the midnight of 14<sup>th</sup> June 2019; that the claim having been received by the court on 24<sup>th</sup> June 2019, means that it was ten days late; that the same fate befell the 3<sup>rd</sup> and the 6<sup>th</sup> appellants whose causes of action arose on 21<sup>st</sup> June 2016 and 17<sup>th</sup> June 2016 respectively; that their last date of filing their claims lapsed on 20<sup>th</sup> June and 16<sup>th</sup> June 2019 respectively; that, however, their original memorandum of claim was received in court on 24<sup>th</sup> June 2019; that, although the 2<sup>nd</sup> and the 6<sup>th</sup> appellants indicated in their respective witness statements that they were terminated in August 2016, they did not amend their claims to align them with such assertion; that the limitation of actions under section 90 of the *Employment Act* is cast in stone as was held in the case of *John Kipsang Mutai v Teachers Service Commission* [2018] eKLR; that limitation of action is a jurisdictional issue; and that, a jurisdictional issue can be raised suo moto by the court notwithstanding that it was neither pleaded nor raised by the parties. The court went on to hold that with the exception of the 4<sup>th</sup> appellant, whose claim was filed within time, the claims by the other appellants were in violation of section 90 and were accordingly dismissed.
14. Aggrieved, the appellants are now challenging the decision of the trial court by citing 12 grounds of appeal in their Memorandum of Appeal dated 13<sup>th</sup> October 2022, which we have condensed into three, namely that: the learned Judge erred in finding that their Claims were time barred; the learned Judge erred in raising a preliminary objection as to when the issue of the exact date when the appellants'



contracts were terminated was a contested question of fact; and that the learned Judge erred in failing to consider substantive merits of the case.

15. The appellants proposed that the appeal be allowed; the Judgment of the trial court (Manani, J.) delivered on 27<sup>th</sup> September 2022 and any consequential orders be set aside only with respect to the claims by the affected appellants; and that their claims be allowed with cost.
16. We heard this appeal on 3<sup>rd</sup> December 2024. Learned counsel Mr. Odhiambo appeared for the appellants while learned counsel Mr. Musyoki appeared for the respondent. Counsel wholly relied on the respective parties' written submissions without highlighting them.
17. In their written submissions dated 16<sup>th</sup> January 2024, the appellants contended that the trial court dismissed the appellants' claims on grounds that they were time-barred; that this conclusion was erroneous as it ignored the dates of termination provided in their witness statements and oral testimonies, which were not contested by the respondent. They pointed out inconsistencies between the dates of termination as alleged in the statement of claim, those stated in their witness statements, and those as testified in court. The discrepancies were as follows;

Claimant	Pleaded Date	Witness Statement Date	Oral Testimony Date	Respondent's Date
Daniel Juma	15 <sup>th</sup> June 2016	15 <sup>th</sup> June 2016	15 <sup>th</sup> July 2016	15 <sup>th</sup> June 2016
Boroko Kalana	15 <sup>th</sup> June 2016	15 <sup>th</sup> June 2016	17 <sup>th</sup> August 2016	15 <sup>th</sup> June 2016
Mark Shida	21 <sup>st</sup> June 2016	21 <sup>st</sup> June 2016	21 <sup>st</sup> June 2016	18 <sup>th</sup> June 2016
George Mwamuye	15 <sup>th</sup> June 2016	15 <sup>th</sup> June 2016	15 <sup>th</sup> June 2016	15 <sup>th</sup> June 2016
David Wambua	17 <sup>th</sup> June 2016	17 <sup>th</sup> August 2016	17 <sup>th</sup> August 2016 /24 Aug*	14 <sup>th</sup> August 2016

18. The appellants argued that time cannot run until the date of actual termination, which in this case was unclear as no termination letters were issued. They emphasized that witness statements and oral testimony should take precedence over the pleaded dates, particularly where facts can be clarified in court; and that the burden of proving the date and reason of termination lies with the employer, who failed to provide any documentary proof. They relied on the case of *Oraro v Mbaja* [2005]1 KLR, arguing that a preliminary objection on limitation cannot be upheld where material facts are contested; *Kenya Hotels and Allied Workers Union v Armo Acquaricus Ltd t/a Lily Palm Resort* [2021] eKLR, emphasizing that a preliminary objection must be on pure points of law and not facts; and *Greystone Farm v Kenya Plantation & Agricultural Workers Union (Civil Appeal No. 93 of 2016)* for the proposition that pleadings should not override clarified oral evidence, and that the court should have considered the latter.
19. The appellants submitted that the circumstances of the 4<sup>th</sup> appellant were identical to all, and that the same reasoning should have applied uniformly; and that the respondent did not appeal the finding in favour of the 4<sup>th</sup> claimant, and thus the trial court's reasoning remains binding. They cited *Kenya Airways Ltd v Aviation and Allied Workers Union Kenya & 3 Others (Civil Appeal No. 46 of 2013)* to



support the argument that employees who are declared redundant are entitled to remedies under the law if due process for termination is not followed.

20. The respondent, by its written submissions dated 24<sup>th</sup> November 2024, contended that it is a settled principle of law that parties are bound by their pleadings, and that a party cannot rely on evidence or claims that were not originally pleaded. It pointed out that the appellants clearly stated their dates of termination in the amended statement of claim and that, as such, could not depart from those dates during the hearing; that the trial court did not err in finding that the appellants' claims were time-barred under section 90 of the Employment Act, which provides a three-year limitation period for employment-related claims; that the Judge properly assessed the dates as pleaded and rightly concluded that the court lacked jurisdiction to hear the claims; and that the dates in the statement of claim and witness statements were consistent, and that any discrepancies only emerged during oral testimony which, it was argued, could not override the formal pleadings. To support the trial court's action, the respondent relied on the case of Pacis Insurance Company Limited v Mohamed F Hussein (Civil Suit No. 92 of 2015) [2017] KEHC 7020 (KLR), arguing that a court can raise the issue of jurisdiction on its own motion (suo moto).
21. It was the respondent's case that, since the trial court found that it lacked jurisdiction to hear the matter due to the claims being statute-barred, it followed that the learned Judge did not err in dismissing the appellants' claims.
22. This being a first appeal, the primary role of a first appellate court is to re-evaluate, re-assess and reanalyze the extracts from the record of appeal in order to determine whether the conclusions reached by the learned trial Judge stand or not and give reasons either way. See Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212 where it was held, inter alia, that:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence”
23. We have considered the entire record of appeal, the respective rival submissions and the law. We have deduced that two issues fall for our consideration, namely whether the trial court erred in holding that it had no jurisdiction to hear and determine the appellants' claims on account of want of jurisdiction as the claims were time barred; and, based on the answer to the foregoing, whether the appellants were entitled to the reliefs sought.
24. From the outset, we wish to highlight that it is the learned Judge who decided suo moto to address the issue as to whether the appellants' claims were time barred by virtue of the time limitation provided under section 90 of the Employment Act. After he had analysed the dates on which each of the appellants was terminated vis a vis the date on which the claims were filed, he concluded that, apart from the claim in respect of the 4<sup>th</sup> appellant, all the other claims were filed outside the time of the three-year period as stipulated in section 90. Consequently, he held that he had no jurisdiction to determine the claims filed out of time, and accordingly, he downed his tools.
25. The common ground for both parties is that the subject of the dispute touches on jurisdiction. The issue of jurisdiction as raised is a pure point of law and goes to the very root of the matter, which, as the Judge rightly directed himself, had first to be dispensed with. Indeed, it is a position widely acknowledged that a jurisdictional issue can be brought up by the court suo moto or be raised as an



- objection by a party at any stage of the proceedings. And, being a matter of law, jurisdiction must be settled before a court can delve into the main dispute.
26. The landmark case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR is widely cited for its authoritative pronouncement on jurisdiction in Kenyan law. Nyarangi, J. stated:
- “Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
27. Section 90 of the *Employment Act*, 2007 provides that:
- 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 of, or in the case of continuing injury or damage within twelve months next after the cessation thereof.
28. Section 90 creates a statutory time limit for filing employment- related claims. Once the three-year limitation period lapses, the Employment and Labour Relations Court (ELRC) lacks jurisdiction to hear the matter. The lapse is not just a procedural bar, but is a substantive legal restriction on the court's power to adjudicate.
29. This links directly to the doctrine that statutory limitation periods are jurisdictional in nature; and that failure to file a claim within the prescribed time extinguishes the claim. Kenyan courts have consistently held that jurisdiction is foundational, and that a court can raise and determine the issue on its own motion (*suo moto*), even if none of the parties has raised it. That said, where a court raises a matter of this nature on its own motion, it should give the parties an opportunity to be heard on the same.
30. The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others* [2012] eKLR stated that:
- “A court’s jurisdiction flows either from *the Constitution* or legislation or both and a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
31. The Supreme Court emphasized that a court cannot assume jurisdiction where none exists. This reinforces the fact that, once a jurisdictional issue comes to the attention of the court or is raised, a court must consider it first, for it cannot arrogate to itself jurisdiction where none exists.
32. It has been established that there is a discrepancy between the dates pleaded and those given during the hearing. As regards the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> appellants, their Amended Memorandum of Claim is dated 20<sup>th</sup> June 2022. In it, they state that the date on which the decision to declare them redundant was made was 15<sup>th</sup> June 2016. Therefore, the cause of action arose on 20<sup>th</sup> June 2016. As was held by the learned Judge, the last date on which the claim ought to have been filed was 14<sup>th</sup> June 2019. The original claim having been filed on 24<sup>th</sup> June 2016 means that it was ten (10) days late and therefore statutorily time barred.
33. As regards the 3<sup>rd</sup> and 6<sup>th</sup> appellants, they claim in the Amended Memorandum of Claim that they were declared redundant on 21<sup>st</sup> June and 17<sup>th</sup> June respectively. Again, as rightly held by the learned Judge, the last date on which they ought to have filed their claims was on or before 20<sup>th</sup> and 16<sup>th</sup> June 2016



respectively. The initial Memorandum of Claim having been filed on 24<sup>th</sup> June 2016 means that they were statutorily barred by 4 and 8 days respectively.

34. There are clear discrepancies regarding the dates that the appellants claimed they were terminated as per their witness statements and oral evidence as demonstrated in paragraph 17 above.
35. The appellants argue that the trial court should have considered the date they were rendered redundant to be the date they gave in their oral evidence and submissions. However, it is settled law that a party is bound by its pleadings. A court also decides the case premised on a party's pleadings. Oral evidence and submissions buttress what a party has pleaded. Where circumstances warrant, the route to follow is obviously in amendment of pleadings.
36. In *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR, this Court stated:

“It is now a settled principle of law that parties are bound by their pleadings and any evidence that tends to depart from the pleadings must be ignored.”
37. The Court in the same case quoted the Nigerian Supreme Court case of *Adetoun Oladeji (Nig) Ltd v Nigeria Breweries Plc SC 91/2002*, Judge Pius Aderemi, JSC who said as follows:

“...it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”
38. As observed in the above decision, a party cannot introduce evidence at variance with what is pleaded, and the court cannot also base its decision on such extraneous material.
39. This Court in *G4S Security Services (K) Limited v Joseph Kamau & 468 Others* [2018] eKLR had the following to say:

“This position is fortified by the decision of this Court in the case of *Attorney General & another v Andrew Maina Githinji and another* [2016] eKLR where in upholding a Preliminary Objection based on Section 90 of the *Employment Act*, Waki, JA. held as follows:  
  
‘... The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not. Having found that the cause of action arose on 2nd February 2010 and that the claim was filed on 16th 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, and I so hold.’”
40. The appellants, save for the 4<sup>th</sup>, filed their claims on 24<sup>th</sup> June 2019. As observed above, by this date, more than three years had lapsed since the date of the alleged termination. They ought to have amended their respective claims so that they accord with the dates they claimed in evidence were the dates of their terminations. Short of this, the trial court could only rely on the pleaded dates as the correct dates of termination.



41. The Court of Appeal in *Beatrice Kahai Adagala v The Postal Corporation of Kenya* [2015] eKLR held that:

“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* 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within three 3 years. As the court stated in *Divecon Limited v Samani* [1995- 1998] 1 EA p. 48 ... the limitation period is never extended in matters based on contract.”

42. The superior court (ELRC) in *Nicodemus Marani v Timsales Limited* (2014) eKLR) upheld a preliminary objection ruling that the suit was filed beyond the three-year limitation period mandated by section 90 of the *Employment Act*. This underscored the strict enforcement of statutory time limits in employment disputes. It highlights the necessity for claimants to file suits within prescribed periods, as courts have no discretion to extend such deadlines in the absence of specific statutory provisions.

43. We therefore conclude that the trial court did not have jurisdiction to entertain the claims by the appellants as it was statute barred. Having found that the claims were statute barred, the learned Judge could not move one more step. In the same vein, we cannot fault the learned Judge for downing his tools in determining the claims for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents for want of jurisdiction.

44. In the upshot, we find no merit in this appeal. We uphold the Judgment of the learned Judge (Manani, J.) delivered on 27<sup>th</sup> September 2022. Accordingly, the appeal is hereby dismissed with costs to the respondent to be paid by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> appellants. We make no orders as regards the 4<sup>th</sup> appellant whose claim was determined in his favour.

**DATED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**S. GATEMBU KAIRU, FCI Arb**

**JUDGE OF APPEAL**

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**DR. K. I. LAIBUTA CARb, FCI Arb.**

**JUDGE OF APPEAL**

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**G. W. NGENYE-MACHARIA**

**JUDGE OF APPEAL**

I certify that this is the true copy of the original

signed

**DEPUTY REGISTRAR**

