



REPUBLIC OF KENYA



**Mpaayei v CMC Motors Group Limited (Cause E482 of 2024)  
[2025] KEELRC 140 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 140 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E482 OF 2024  
S RADIDO, J  
JANUARY 30, 2025**

**BETWEEN**

**KENNETH MPAAYEI ..... CLAIMANT**

**AND**

**CMC MOTORS GROUP LIMITED ..... RESPONDENT**

**RULING**

1. Kenneth Mpaayei (the Claimant) sued CMC Motors Group Ltd (the Respondent) on 26 June 2024, alleging unfair termination of employment.
2. On 29 November 2024, the Claimant filed a Motion seeking orders:
  - i. ...
  - ii. That the Honourable Court be pleased to grant the applicant leave to file suit out of time and/or enlarge the time within which to file the Statement of Claim.
  - iii. That the Statement of Claim filed herein be deemed to be duly filed.
  - iv. That the costs of this application be provided for.
3. The grounds in support of the Motion were that the Claimant was dismissed on 10 March 2021, but because of health challenges could not follow up with his advocate to initiate legal proceedings within the prescribed time and that the Claimant had financial incapacity rendering him not able to properly instruct an advocate.
4. When served, CMC Motors Group Ltd (the Respondent) filed Grounds of Opposition on 15 January 2025, contending:
  - i. That the application is fatally defective for the reason that section 12 of the Employment and *Labour Relations Act* cap 8E (relied upon by the applicant) does not contemplate nor provide



for the orders for leave or enlargement of time within which to file an employment claim as sought in the instant application.

- ii. That section 27 of the *Limitation of Actions Act* does not give jurisdiction to this Honourable Court to enlarge time for filing suit in cases involving contract or any other causes of action other than those founded on tort.
  - iii. That section 90 of the *Employment Act* caps the statutory limitation period for causes of action based on breach of employment contract to three years and equally does not contemplate nor provide for extension of time to file a claim.
  - iv. That the Court of Appeal in *Rift Valley Railways (K) Ltd v Hawkins Wagonza Musonye & Ar* (2016) ECLR rightfully found that where a statute limits time for bringing an action, no Court has the power to extend that time, unless the statute itself allows extension of time.
  - v. That the Honourable Court therefore lacks the jurisdiction to enlarge time or grant leave to file an employment claim out of time, as otherwise sought by the Claimant/applicant herein.
  - vi. That the instant application is therefore an abuse of the court process and should be dismissed with costs.
  - vii. That the entire suit filed herewith being statute barred should be dismissed.
5. The Claimant filed his submissions on 20 January 2025 (should have been filed and served before 13 December 2024). The Respondent filed its submissions on 21 January 2025.
  6. The Claimant drew the Court's attention to sections 27(1)(c) and 28 of the *Limitation of Actions Act* and *Beatrice Kahai Adagala v Postal Corporation of Kenya* (2014) eCLR to urge that the Court had the jurisdiction to grant the orders sought.
  7. The Respondent cited *John Kiiru Njiiri v University of Nairobi* (2021) eCLR and *Rift Valley Railways (K) Ltd v Hawkins Wagonza Musonye & Ar* (2016) eCLR to argue that the Court did not have the power to grant leave to file suit outside the prescribed limitation period.
  8. The Court has considered the Statement of Claim, Motion, affidavit in support, Grounds of Opposition and submissions.
  9. In the Statement of Claim, the Claimant pleaded that the Respondent summarily dismissed him on 10 March 2021.
  10. By dint of section 90 of the *Employment Act*, 2007, the Claimant should have lodged his claim within 3 years, that is on or before 20 March 2024. The Statement of Claim was filed outside the prescribed 3-year window.
  11. The Courts have dealt with the question of granting leave to file contractual claims out of time and the laws are fairly well settled.
  12. In *Divecon v Samani* (1995 – 1998) 1 EA 48, the Court of Appeal had this to say:

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. "It is therefore the defendants' case that the court does not have jurisdiction to adjudicate over this matter.

13. The Court of Appeal addressed the issue again in *Rift Valley Railways (K) Ltd v Hawkins Wagunza Musonye & Ar* (2016) eKLR as follows:

For us it is clear from our reading of section 90 aforesaid that there are no exceptions to the three-year limitation period, save for cases of continuing injury or damage where action or proceedings must be brought within twelve months after the cessation thereof. This was not a case of a continuing injury or damage but one of a single act of termination. In any case the respondents have not specified when the injury or damage ceased for time to have begun to run.

14. The above authorities set out the law on the enlargement of time with respect to contractual (employment) actions. The authorities are binding on this Court, and they have been in place for some time now.
15. This Court has no power or jurisdiction to do what the Claimant is asking it to do. To compound the situation, the Claimant filed a Statement of Claim well outside time without any directions or leave from the Court.
16. The Motion and Cause cannot survive.

#### **Orders**

17. The Motion filed on 29 November 2024, and the Statement of Claim filed on 26 June 2024 are without merit and do not lie.
18. The Motion and Statement of Claim are dismissed with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant J.A. Guserwa & Co. Advocates

For Respondent Ogembo & Associates Advocates

Court Assistant Wangu

