



**Mucheke v Teachers Service Commission (Miscellaneous Application E294 of 2024) [2025] KEELRC 143 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 143 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E294 OF 2024**

**S RADIDO, J  
JANUARY 30, 2025**

**BETWEEN**

**SAMMY THURANIRA MUCHEKE ..... APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. Sammy Thurania Mucheke (applicant) was dismissed through a letter dated 21 May 2021 by the Teachers Service Commission (the Respondent).
2. The applicant appealed and the decision on the appeal was made on or around 9 March 2022.
3. On 9 October 2024, the applicant moved the Court seeking orders:
  - i. That this Honourable Court be pleased to enlarge time and grant the applicant leave to file and proceed with the suit herein out of time against the Respondent.
  - ii. That the costs be in the cause.
4. The singular reason given by the applicant in seeking leave is that the conclusion of the internal appellate process caused the delay in moving to Court.
5. The Court gave directions on 18 November 2024, and the applicant filed his submissions on 17 December 2024.
6. In the submissions, the applicant cited *Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 7 Ors* (2014) eKLR to urge that the Court had an equitable discretion to extend time.



7. By dint of section 90 of the *Employment Act*, 2007, the applicant had 3 years within which to challenge the dismissal. The applicant was dismissed on 21 May 2021. He had up to 20 May 2024 to commence legal action.
8. The appellate process invoked by the applicant was concluded on 9 March 2022.
9. The applicant has not explained why he did not institute legal proceedings immediately after the conclusion of the appellate process.
10. Nevertheless, the question is whether the Court has the discretion to extend time or grant leave as sought by the applicant.
11. The answer is that the Court has no such discretion.
12. In *Divecon v Samani* (1995)-1998) EA 48 the Court of Appeal held:

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.

13. In this Court’s view, the interpretation given in respect to section 4(1) of the *Limitation of Actions Act* applies with equal force to actions implicated by section 90 of the *Employment Act*, 2007.
14. In *Attorney General & Ar v Andrew Maina Gitbinji & Ar* (2016) eKLR the majority Court of Appeal stated:

The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2<sup>nd</sup> 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.

15. The applicant’s cause of action accrued at the time of dismissal and not conclusion of the internal appellate process. He should have moved the Court on or before 20 May 2024. He did not.
16. This Court has no power to extend time or grant leave to file Cause out of time.

### Orders

17. The application dated 7 October 2024 is dismissed with no order on costs.
18. For the record, the Deputy Registrar to serve copy of this Ruling upon the Respondent.

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

**RADIDO STEPHEN, MCIARB**

**JUDGE**



Appearances

For applicant Mwenda A.K. & Co. Advocates

Court Assistant Wangu

