



**Waringa v Principal Secretary, Ministry of Environment and Forestry & 2 others  
(Miscellaneous Application E38 of 2023) [2025] KEELRC 62 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 62 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION E38 OF 2023**

**JW KELI, J  
JANUARY 22, 2025**

**BETWEEN**

**MICHAEL ODUNGU WARINGA ..... CLAIMANT**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF ENVIRONMENT AND  
FORESTRY ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF CONSERVATOR KENYA FOREST SERVICES ... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

(On the Notice of Motion application dated 16<sup>th</sup> October 2023 and the Notice of preliminary objection dated 16<sup>th</sup> November 2023 by the Respondents)

1. The applicant/claimant filed in court application by way of Notice of Motion dated 15<sup>th</sup> August 2023 seeking for the enlargement of time within which to file an employment claim the time for filing having lapsed. The application was listed for hearing on the 9<sup>th</sup> October 2023 and due the absence of the applicant and respondent the application was dismissed and the file marked as closed. The applicant further filed the instant application vide Notice of Motion dated 16<sup>th</sup> October 2023 brought under sections 1A,1B,13, and 3A of the Civil Procedure Act, Order 12 Rule 6 (1) and rule 7 of the Civil Procedure Rules 2010 and all enabling provisions of the law seeking for the following orders:-
  1. Spent
  2. That the court sets aside the dismissal order made on 9<sup>th</sup> October 2023.
  3. That costs of the suit be costs in the cause.
2. Grounds of the application



- a. That the court needs to grant leave for the filing of the cause out of the time.
  - b. That the matter was filed in Machakos ELRC and the Registry informed that the file would be sent to Nairobi ELRC.
  - c. That therefore the orders made would be communicated to the Applicant.
  - d. That the Applicant later learnt that the Application was dismissed for non-attendance.
  - e. That no notice was given to the Applicant that the matter was coming for hearing on that particular date.
  - f. That the Applicant needs to have his day in court so that the end of justice may be served.
3. The application was further supported by the affidavit of the applicant's advocate to the effect that the court registry made a mistake and failed to inform the parties of the hearing date hence the lack of attendance leading to the dismissal of the application which they seek to be reinstated and heard on merit.
  4. The Respondent filed a notice of preliminary objection dated 16<sup>th</sup> November 2023 raising a point of law in the application dated 16<sup>th</sup> October 2023 as follows:-
    - 1). That the application is defective and bad in law for reasons that the applicant has not attached a copy of the ruling and or order delivered d by Hon Justice Ocharo of the Employment and Labour Relations Court Nairobi on the 9<sup>th</sup> October 2023 dismissing the application dated 16<sup>th</sup> October 2023 which he prays to reinstate so that this Honorable court can establish clear reasons as to why the application was dismissed other than the non- attendance advanced by the applicant.
    2. That the application is frivolous and bad in law and a waste of judicial time
    3. That the application is incompetent and ought to be struck out with costs. ‘’
  5. The court directed that the application and the Notice of Preliminary Objection be canvassed together by way of written submissions. Both parties filed.
  6. The court found that the Notice of Preliminary Objection raised a technical issue of lack of annexure of the ruling on the application. There was only one sentence in the Order to the effect that the application was dismissed for want of prosecution. The submissions by the Respondent were on the issue of enlargement of time. The Court then found that the Notice of Preliminary Objection was more of a response and not truly a point of law.
  7. The Court finds the issue for determination was whether the application for reinstatement of the dismissed application seeking enlargement of time to file a claim out of time was merited.
  8. The applicant approached the court through the [Civil Procedure Rules](#). The Court has its own rules and the [Civil Procedure Rules](#) are only applied in cases of lacuna in the Court rules like in the case of execution.
  9. On enlargement of time, Rule 80 of the [ELRC Procedure Rules 2024](#) states”:-‘The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.’’



10. The applicant submitted that he was denied pension for the period he had been dismissed and later reinstated by the Public Service Commission . That he came to know of the omission upon retirement. That this was a pension issue arising from employer employee relationship.
11. The court finds that to exercise its discretion as regards the application for reinstatement of the dismissed application it has to decide on the issue of jurisdiction. The dismissed application sought enlargement of time to file claim. Annexure MOW1 was the notice of intention to sue and stated the intention was to seek for reinstatement of employment, general damages, salary arrears and costs which notice the Applicant submitted led to his reinstatement. The applicant annexed a draft claim among others seeking for declaration that the claimant’s dismissal was unlawful and for salary arrears and pension.
12. Section 89 of the Employment Act (Rev. 2024) reads:- “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.”
13. The applicant submitted that the decision relied on by the respondent in Sunyai v Judicial Service Commission & another [2017] KEELRC 107 (KLR) was distinguishable from their case as the claimant since retirement had been corresponding on his pension dues.
14. The court finds that the said decision is very relevant as it was about a claim filed out of timelines under section 90 of the Employment Act (Rev 2024 to section 89). In the instant case, the claims for pension and unpaid salary emanate from employment. The cause of action arose on the retirement date. The applicant from the filed draft claim retired on 22<sup>nd</sup> November 2016 upon attaining a mandatory retirement age of 60 years. On retirement, the cause of action arose for any claims he had against the employer. The last date to file any claim within the three years of section 89 of the Employment Act was on or about 21<sup>st</sup> September 2019. He filed the dismissed application on the 20<sup>th</sup> of September 2023.
15. The court upholds the decision cited by the Respondent in Sunyai v Judicial Service Commission & another [2017] KEELRC 107 (KLR) to apply in the instant case. The Court in the case cited several decisions where it was held the Court has no jurisdiction to extend the limitation period in employment claims as follows:- “ In the case of Peter Nyamai & 3 Others v M. J. Clarke Limited that has been relied upon by the 1<sup>st</sup> respondent, the court held that this court has no jurisdiction to extend limitation period. The court relied on the decision of the Court of Appeal in Divecon v Samani and the High Court decision in Timothy M. Mukalo v Reuben Alubale Shiramba & 3 Others. Again in the case of Charles Musa Kweyu v Wananchi Marine products and in Augustine Odhiambo Abiero v K.K. Security Ltd the court held that a suit that is time barred is incompetent and bad in law.”
16. The Court holds that the dismissed application sought to be reinstated has no legs to stand on as the court lacks jurisdiction to enlarge the time to file claims under employer-employee relations. The court holds that it would be an exercise in vain and a waste of judicial time to reinstate an application for which it has no jurisdiction to grant the prayers sought.
17. The application dated 16<sup>th</sup> October 2023 is held to lack merit for lack of jurisdiction by the court to grant prayers in the application sought to be reinstated. The application is dismissed with no order as to costs taking into account the relationship between the parties and the cause of action.
18. It is so ordered.



**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY, 2025.**

**JEMIMAH KELL,  
JUDGE.**

In the presence of:

Court Assistant: Otieno

Applicant : - Absent

Respondent: Ms Karbolo h/b Ms Akuno

