



REPUBLIC OF KENYA



KENYA LAW
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**Gongera v Mount Kenya University (Cause E958 of 2021)
[2025] KEELRC 661 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 661 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E958 OF 2021
JW KELI, J
FEBRUARY 28, 2025**

BETWEEN

PROF GEORGE GONGERA CLAIMANT

AND

MOUNT KENYA UNIVERSITY RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated 26th October 2023 in the suit on the following ground:-
 - a. That the Honourable court has no jurisdiction whatsoever in the circumstances of this matter to hear the suit and/ grant the prayers sought for the reason the suit herein is statute barred as it offends the mandatory provisions of section 90 of the *Employment Act*. The respondent sought for the amended statement of claim dated and amended 24th January 2022 be struck off with costs.
2. The court mindful of the importance of dispensing with issue of jurisdiction once raised in limine (Nyarangi JA in Owners Of The Motor Vessel “Lillian S v Caltex Oil (Kenya) Ltd, (1989), e KLR) directed parties to canvass the application by way of written submissions on a priority basis. Both parties complied.

Decision

3. The objection was to effect the claim is statute-time barred under section 90 of the *Employment Act* (now section 89 under 2024 statute amendment) which states:-⁹ 89. Limitations

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.”

4. The court on perusal of the record noted a similar objection had been filed in court by the respondent dated 21st January 2022. This is a court of record. On perusal of the court record, I established that the preliminary objection dated 21st January 2022 was determined by Justice Ocharo Kebira vide judgment delivered on the 27th July 2023 in the suit. The judgment was set aside on application of the respondent, the same being a default judgment . The court held on the objection:-

“Considering the material placed before me, the following issues emerge for determination, thus; whether the Claimant’s claim herein is time-barred; and whether the Claimant is owed Kshs.1,400,000.

10. Notwithstanding the fact that the respondent didn’t file any response to the claimant’s claim, the issue raised of limitation of time under section 90 of the Employment Act is a point of law, a jurisdictional issue that must be dealt with nonetheless.
 11. 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 or in the case of continuing injury or damage within twelve months next after the cessation thereof.
 12. One looking at the claimant’s amended statement of claim, will gather a quick impression that the claimant’s claim is time-barred and I think that is what the respondent did, hence the preliminary objection. With great respect, the impression would be justified since the claimant’s pleadings are poorly crafted. However, the impression is only possible if one were to look at the pleadings only without venturing into considering the documentary and oral evidence presented by the claimant.
 13. It was claimant’s case that the debt was at all material times acknowledged by the Respondent as owing to him and that through an internal memo by the Vice-Chancellor dated January 14, 2022, the respondent University acknowledged owing its lecturers, him inclusive, for services they rendered at various times. This evidence remained uncontroverted. In my view, the acknowledgment gave the claim a new lease of life, consequently, time for purposes of section 90 of the Employment Act started running afresh from the stated date. By reason of this, I hold that the claimant’s claim is not timed barred.”
5. The Court, took into account the foregoing decision and held the subsequent duplicate preliminary objection dated 26th October 2023 as resjudicata according to section 7 of the Civil Procedure Act to wit:- “7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court



competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

6. The court pronounced itself on the merit of the objection in the same suit. It was the opinion of the court that what was set aside in the ruling of the court of 19th October 2023 was the decision on merit of the suit. The decision on the preliminary objection stands and it would be resjudicata and a waste of judicial time for the court to pronounce itself twice on the objection.
7. I uphold the decision delivered on the 27th July 2023 in the suit to determine the subsequent preliminary objection dated 26th October 2023 and dismiss the same for being res judicata with costs to the claimant in the cause.
8. Mention 17th March 2025 for directions.
9. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In the presence of:-

Court Assistant: Otieno

Claimant- Nyakundi

Respondent - Omondi h/b Kenyatta

