



**Railways Workers Union (K) v Africa Star Railway Operations Company Limited
(Cause E.455 of 2022) [2025] KEELRC 438 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 438 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E.455 OF 2022
HS WASILWA, J
FEBRUARY 20, 2025**

BETWEEN

RAILWAYS WORKERS UNION (K) CLAIMANT

AND

AFRICA STAR RAILWAY OPERATIONS COMPANY LIMITED RESPONDENT

RULING

1. The application before court is an application dated 28th July 2022 filed by the Respondent, Africa Star Railway Operations Company Limited, seeking to have the suit struck out at the earliest instance. The Respondent objects to the suit on the grounds that it is fatally and incurably defective and should be struck out with costs. Additionally, the Respondent contends that the suit is time-barred pursuant to Section 90 of the *Employment Act*, 2007, as the Claimant's employment was terminated more than three years before the institution of the suit. The Respondent, therefore, prays that the suit be struck out with costs.
2. The application is supported by the Respondent's submissions dated 21st January 2025. The Respondent, Africa Star Railway Operations Company Limited, submits that the suit is time-barred under Section 90 of the *Employment Act*, 2007, and is fatally and incurably defective. The Grievant, Philemon Ruto, was employed as a Coupler Worker Level 10 Grade 47 at the Respondent's Nairobi Station. During his employment, he submitted a medical report from Tenwek Hospital dated 5th November 2018 requesting lighter duties. However, a second medical report from the Respondent's doctor contradicted this, giving him a clean bill of health.
3. The Respondent subsequently terminated his employment for withholding vital health information, and since he was still under probation, a show cause letter was not necessary. The Respondent contends that the Grievant lost interest in the matter by failing to attend conciliation meetings. The suit was filed on 27th June 2022, yet the Grievant's employment was terminated in November 2018, meaning he ought to have filed the claim by November 2021, making the claim time-barred.



4. In support of this, the Respondent relies on Section 90 of the *Employment Act*, 2007, which provides that no civil action arising from employment can be instituted more than three years after the cause of action. The Respondent cites *Gathoni v Kenya Co-operative Creameries Ltd*, Civil Application No. 122 of 1981, where the court emphasized that limitation laws protect defendants from unreasonable delays. The Respondent further relies on *Nicodemus Marani v Timsales Limited*, Industrial Cause No. 204 of 2013, where the court held that there is no power to extend the three-year limitation period under Section 90. In *Wariahe v Teachers Service Commission*, Employment and Labour Relations Petition E011 of 2023 [2023] KEELRC 2777 (KLR), the court affirmed that the limitation period starts when the employee is notified of termination. Similarly, in *Wamae v Mount Kenya University*, Cause E725 of 2023 [2024] KEELRC 1236 (KLR), and *Attorney General & another v Andrew Maina Githinji & another* [2016] eKLR, the courts held that suits filed outside the prescribed period under Section 90 are incurably defective.
5. Further reliance is placed on *G4S Security Services (K) Ltd v Joseph Kamau & 468 others* [2018] eKLR, *Maxwell Sifuna v Teachers Service Commission* [2022] eKLR, and *Mutuku v Multichoice Kenya Limited & another*, Cause E1039 of 2023 [2024] KEELRC 1028 (KLR), where the courts reiterated that jurisdiction is central, and without it, the court must decline to entertain a suit.
6. In *Nyakundi Okerio & another v Elijah Sokobe Obot & 2 others* [2021] eKLR, the court underscored that limitation is a jurisdictional issue. The Respondent argues that the limitation period started in November 2018 and expired by November 2021, making the claim filed on 27th June 2022 time-barred. The importance of limitation laws is emphasized, as they protect parties from defending claims when witnesses are unavailable, documents are lost, and memories fade. The Respondent, therefore, prays that the suit be struck out with costs.
7. I have examined all evidence and submissions of the applicant herein. It is indeed true from the pleading herein that the cause of action arose on 21/11/2018 as per para 9 of the claim.
8. In terms of section 90 of the *employment act* 2007, the window within which the claimant was to file this claim expired on 20/11/2021. The claim was however filed in July 2022. The claim is therefore time barred. The preliminary objection indeed has merit and is allowed. The claim is dismissed accordingly. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025.

HELLEN WASILWA

JUDGE

