



**Kenya Union of Commercial, Food and Allied Workers v Lake  
Victoria South Water Works Development Agency & 2 others (Cause  
E076 of 2024) [2025] KEELRC 434 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 434 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E076 OF 2024  
JK GAKERI, J  
FEBRUARY 19, 2025**

**BETWEEN**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT  
AGENCY ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL WATER CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**GULF WATER SERVICES COMPANY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The claimant union commenced the instant suit on 25<sup>th</sup> September, 2024 vide a Memorandum of claim dated 18<sup>th</sup> September, 2024.
2. The claimant sued for the recovery of salary arrears owed by the respondents to 9 employees, though some have since retired from employment.
3. The grievants were employed on diverse days from 1989 to 2001.
4. According to the claimant, the genesis of the dispute is that during the months of February, March, May, June, August, October, November and December 2013 and April, May, July, August and October 2014, the grievants incurred salary arrears while working for the 4<sup>th</sup> respondent amounting to Kshs.1,583,355.00 and the issue had not been addressed by 30<sup>th</sup> June, 2021 when an unauthenticated letter on record was sent to the 1<sup>st</sup> respondent. Suffice to state that the dispute was referred to conciliation and the conciliator furnished a report to the parties dated 1<sup>st</sup> December, 2022 recommending that the 1<sup>st</sup> and the 3<sup>rd</sup> respondent take partial liability for the salary arrears.



5. By a response to statement of claim dated 26<sup>th</sup> November, 2024 the 3<sup>rd</sup> respondent stated that it would raise a Preliminary Objection for dismissal of the entire claim for want of jurisdiction by the court.
6. The 3<sup>rd</sup> respondents Notice of Preliminary Objection seeks the striking out or dismissal of the instant suit on the premises that the suit relates to causes of action which allegedly accrued in 2013 and 2014 and are thus time barred under the provisions of Section 90 of the Employment Act, 2007 and the court lacks jurisdiction to entertain the claim.

### **3<sup>rd</sup> respondent's submissions**

7. Counsel for the 3<sup>rd</sup> respondent submitted that a plea of limitation was a proper point of law and could be raised as a Preliminary Objection under the test in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* [1969] EA 696.
8. Reliance was made on the sentiments of the court in *Mehta V Shah* [1965] EA 321 and *Kober & 2 Others V Korkoren (Chairman) & Another* [2023] KEELC 18168 (KLR) on the effect of limitation of actions to urge that the claimants suit is statute barred.
9. Reliance was also made on the decision in *sMichira & 41 Others V Aegis Kenya Ltd t/a Leopard Beach Hotel* [2023] KEELRC 2551 (KLR) and *645 Security Services (K) Ltd V Joseph Kamau & 468 Others* [2018] KECA 827 (KLR) on when time starts running and the effect of conciliation and urge that even if the claim was a continuing injury, the 12 months window closed in 2015 and the action was statute barred by dint of Section 90 of the Employment Act 2007.

### **Claimant's submissions**

10. The claimant identified no specific issues but submitted on the right to salary entitlement under Section 18 of the Employment Act, to urge that the denial of salary violated Article 47(2) of the Constitution of Kenya as the respondents refused to honour their part of the bargain for the period 2013 – 2014.
11. Reliance was also made on the provisions of Article 22(3)(b) and (d) of the Constitution of Kenya on the rules made pursuant to the Article, to urge that the issue herein is a Constitutional issue and the 3<sup>rd</sup> respondent was aware that time was running out.
12. Reliance was also made on Article 24 of the Constitution of Kenya on limitation of rights and fundamental freedoms to urge that it would be improper for the court to strike out the suit due to time as the 3<sup>rd</sup> respondent has not demonstrated how it addressed the issues raised by the grievants.
13. The claimant union submits that the suit raises a matter of enormous magnitude and the same should not be sacrificed at the altar of a technicality “baptized limitation of action”.
14. That dismissal of the suit is a recipe for mental anguish and emotional stress for the grievants.
15. Reliance was made on the provisions of Article 159(2) of the Constitution of Kenya on the guiding principles in the exercise of judicial authority by courts and tribunals in Kenya.
16. It is common ground that the 3<sup>rd</sup> respondent's Notice of Preliminary Objection meets the threshold of a Preliminary Objection as exquisitely captured by Law JA and Sir Charles Newbold P. in *Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd* (Supra).
17. It requires no belabouring that when a Preliminary Objection is raised, it ought to be disposed of at the earliest possible instance since it has the potential to terminate the case before the same is heard on merits.



18. Contrary to the claimant union's submissions that it is wrong, unfair and inhuman for the court to strike out quash a matter on a technicality "baptized" limitation of actions, the principle of limitation of actions is not a mere judicial technicality, it is a foundational principle of law in the administration of justice by courts and tribunals. It serves a salutary purpose.
19. It ensures that justice is administered not long after the event or occurrence when witness memories are still fresh, documentary evidence is accessible and witness are still traceable. It imbues vigilance on the part of persons whose rights have been violated and discourages state cases.
20. Ultimately, justice is for both the claimant and the respondent. There cannot be justice for one party in an adversarial system such as ours.
21. There is sufficient judicial authority on the object and or function of limitation of actions. See *Gathoni V Kenya Co-operative Creameries Ltd*, Civil Application No. 122 of 1981.
22. More significantly however, a plea of limitation implicates the court's jurisdiction, which is everything as held by Nyarangi JA in his celebrated rendition in *The Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] IKLR as follows:
 

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction..."
23. Similarly, in *Peter Gichuki King'ara V Independent Electoral and Boundaries Commission & 2 Others* [2013] eKLR, the court held that:
 

"...Jurisdiction is either present ab initio or absent forever".
24. And not even consent of the parties can confer jurisdiction as held in *George C. Gichuru V Senior Private Kioka & Another* [2013] eKLR.
25. See also *Equity Bank Ltd V. Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR.
26. The rough logic of the foregoing is that a court of law has no jurisdiction to entertain or determine a statute barred suit.
27. As to whether the 3<sup>rd</sup> respondent's Notice of Preliminary Objection is merited, the Court is satisfied that it is as the documentary evidence filed so far, a fact the claimant union is in agreement with, lays it bare, that the action is time barred.
28. It is not in dispute that the claimant union's case is based on salary arrears that accrued to the grievants in 2013 – 2014 and the respondents remained unresponsive until the claimant union was looped in by the grievants, who appear to have joined the union in 2020.
29. Since the salary arrears accrued in 2013 and 2014, time started running then and run to the full and the claims became statute barred.
30. The issue of running of time has been addressed in countless decisions.
31. A cause of action arises when the event or occurrence on which it is grounded upon occurs.



32. For instance, a cause of action on termination of employment arises from the date of termination or dismissal as that is the earliest date the employee could have lodged a suit challenging the dismissal or termination of the employment relationship.
33. See *George Hiran Ndirangu V Equity Bank Ltd* [2015] eKLR and the Court of Appeal decisions in *Attorney General V Andrew Maina Githinji* [2016] eKLR and *G4S Security Services Ltd V Joseph Kamau & 486 Others (Supra), Rift Valley Railways (Kenya) Ltd V Hawkins Wagunza Musonye & Another* [2016] eKLR and *Times Newspaper Ltd V O' Regan* [1977] I.R.LR101.

Section 90 of the *Employment Act* 2007 provides:

Notwithstanding the provisions of section 4 (1) of the *Limitation of Actions Act*, 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.

34. Since the salary arrears being claimed by the claimant union relate to services rendered in 2013 and 2014 the causes action arose in 2013 and 2014 respectively.
35. Even assuming that the claims related to a continuing injury or damage, as correctly argued by the 3<sup>rd</sup> respondent, the claim would still be statute barred and the court would not have had jurisdiction to neither hear nor determine it.
36. Since the suit herein was filed in September, 2024 and the cause of action sought to be enforced arose in 2013 and 2014, a fact the claimant union acknowledges, it is patently clear that the suit is statute barred by virtue of the provisions of Section 90 of the *Employment Act* 2007, notwithstanding the union's effort to denigrate the law of limitation of actions.
37. From the submissions, it is discernible that the claimant was aware the suit is statute barred but for unexplained reasons, opted to file it.
38. The upshot of the foregoing is that the 3<sup>rd</sup> respondents Notice of Preliminary Objection dated 26<sup>th</sup> November, 2024 is merited and the court has no jurisdiction to hear or determine the claimant's suit and hereby downs its tools.
39. The suit is struck out with no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

