



**Maroa v Edgelock Security Limited (Cause E044 of 2024)
[2025] KEELRC 1007 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1007 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E044 OF 2024
RC RUTTO & RC RUTTO, JJ
MARCH 28, 2025**

BETWEEN

DANIEL MWIATA MAROA CLAIMANT

AND

EDGELOCK SECURITY LIMITED RESPONDENT

RULING

1. Through a Statement of Claim, which was filed on 17th January 2024, the Claimant avers that he was employed by the Respondent as a security guard with effect from 1st January 2020 and was earning a monthly salary of Kshs 12,000/=.
2. It is the Claimant’s case that he worked for the Respondent with diligence and faithfulness until 4th March 2021, when he was terminated from employment without any colour of right contrary to the principles of natural justice and Section 41 of the *Employment Act*. His claim against the Respondent is for the sum of Kshs 456,960/= being notice pay, house allowance, severance pay, leave allowance, overtime pay and compensatory damages for wrongful termination.
3. Upon being served with the Statement of Claim, the Respondent entered appearance through the firm of Amalemba & Associates Advocates and filed a Memorandum of Response as well as a Notice of Preliminary Objection, both dated 26th March 2024. The Preliminary Objection is premised on the following grounds:
 1. This Honorable Court lacks the requisite Jurisdiction to hear and determine the Claims arising out of this Suit on for reason that the Claim is time barred by reason of Section 90 of the *Employment Act*, 2007.
 2. That the Claimant was terminated vide a Letter dated 23rd October 2020 and ought to have instituted this Suit within three years from the stated date on or before the 22nd of October 2023 and as such the Claim is time barred.



3. By virtue of Gazette Notice No. 6024 of 22nd June 2018, the jurisdiction to hear and determine this matter is vested in the Magistrates Court and the Employment & Labour Relations Court only enjoys Appellate jurisdiction arising out of decisions of the Magistrates Court.
4. Contemporaneously filed with the Notice of Preliminary Objection was the Notice of Motion dated 26th March 2024, through which the Respondent seeks an order to strike out the Statement of Claim dated 2nd August 2023. The Motion is premised on the grounds set out on the face of the Application and the Supporting Affidavit of Shariff Arfan, who describes himself as the Director of the Respondent/Applicant.
5. Mr. Arfan deposes that the Claimant received double payment of salary and when called upon to explain the same, he did not show up at work until 23rd October 2020, when he was issued with a letter of termination, which he acknowledged and received. That on the same date, the monies wrongly paid to the Claimant were deducted from his notice pay and he was paid terminal dues in the sum of Kshs 1,363/= through Mpesa.
6. According to Mr. Arfan, he is advised by his Advocate on record which advice he verily believes to be true, that this Court lacks jurisdiction to hear and determine the claims arising out of this suit for the reason that the claim is time-barred by reason of Section 90 of the *Employment Act*, 2007.
7. The Claimant opposed the Motion through his Replying Affidavit sworn on 27th November 2024. The Claimant avers that he worked for the Respondent diligently until 4th March 2021, when his employment was unlawfully terminated. To this end, the Claimant referenced a copy of his National Social Security Fund (NSSF) member statement of account for the period beginning 1st February 2008 until 28th February 2021.
8. With respect to the letter of termination dated 23rd October 2020, the Claimant contended that the signature appearing on the said letter of termination is strange to him and is not his.
9. In response to the Claimant's Replying Affidavit, the Respondent/Applicant filed a Further Affidavit sworn by Shariff Arfan on 4th December 2024. Mr. Arfan deposes that the Claimant's allegation regarding his NSSF statement as a basis for his continued employment is not factual. With respect to this, Mr. Arfan, deposes that the Claimant used to be paid by way of Mpesa and he has not shown that from the period of termination on 23rd October 2020, he continued to receive any payments for work done or services rendered to the Respondent.
10. It is Mr. Arfan's further deposition that as per the NSSF statement, there were several months where NSSF remittances were never remitted by the Respondent and to update these payments, the same were likely adjusted in the months after his termination and did not in any way denote the existence of an employer-employee relationship. It was Mr. Arfan's further contention that the Claimant has not produced any shred of evidence to demonstrate that he received any salary beyond the date of termination through Mpesa statements.
11. It is the aforementioned Notice of Preliminary Objection and Notice of Motion that now come up for determination.

Submissions

12. Pursuant to the Court's directions issued on 5th December 2024, the Preliminary Objection and the Notice of Motion were canvassed through written submissions. Only the Respondent complied and the Court has considered the said submissions.



13. In support of the Objection and the Motion, the Respondent has submitted that the suit herein was filed outside the statutory limitation period of three years and the same ought to be struck out in limine for want of jurisdiction on the part of the Court to entertain any of the Claimant's claims. On this score, reliance was placed on the case of Attorney General vs Andrew Maina Githinji & Another (2016) eKLR.
14. Referencing the case of Beatrice Kahai Adagala vs Postal Corporation of Kenya (2015) eKLR, the Respondent has further submitted that the Court lacks jurisdiction to enlarge time within which to file the suit.
15. The Respondent urged the court to down its tools and allow the Preliminary Objection and Notice of Motion and strike out the suit.
16. The Respondent has further submitted without prejudice that this Court does not have jurisdiction to hear and determine the suit based on Gazette Notice No. 6024 of 2018 which vested jurisdiction on matters where the gross salary is less than Kshs 80,000/= to magistrates' courts.

Analysis and Determination

17. It is clear to my mind that the singular issue for determination is whether this Court has jurisdiction to hear and determine the suit herein by dint of Section 90 of the *Employment Act* and Gazette Notice No. 6024 of 2018.
18. It is the Respondent's contention in the Preliminary Objection and the Notice of Motion that this Court lacks the requisite jurisdiction to hear and determine the claims arising out of this suit for the reason that the Claim is time-barred by dint of Section 90 of the *Employment Act*.
19. The aforementioned Section 90 of the *Employment Act* provides as follows:-

[90] 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.
20. Fundamentally, a mandatory time bar of three years is placed on matters arising out of the *Employment Act* or on a contract of service, as the one herein.
21. Therefore, a claim becomes statute-barred if it is not filed within three years from the date the cause of action arose.
22. In the present case, the question that begs for an answer is when the cause of action arose. This being an employment dispute where unfair termination has been alleged, it follows that the cause of action arose when the employment relationship was severed. As can be discerned from the record, this is an issue the parties herein have taken diametrically opposite positions. Indeed, this is a fact that has been hotly contested by both parties.
23. Whereas the Respondent has averred that the Claimant's employment was terminated from employment on 23rd October 2020, the Claimant holds otherwise and contends that his employment was terminated on 4th March 2021.
24. In support of its position, the Respondent has placed reliance on the letter of termination dated 23rd October 2020, which was annexed to the Supporting Affidavit of Mr. Arfan.



25. On his part, the Claimant has disputed receiving the said letter of termination and has gone ahead to disown the signature appearing on the said letter.
26. To support his assertion that he was terminated from employment on 4th October 2021, the Claimant seeks to rely on his NSSF statement, which in his view, demonstrates that the Respondent made remittances to the NSSF in his favour until February 2021.
27. In light of the foregoing rival positions, it is evident that the question as to the date when the Claimant was terminated from employment by the Respondent cannot be determined by way of Affidavit evidence and more so, before such evidence is tested in cross-examination.
28. In any event, it will be draconian to summarily determine the matter and strike out the suit based on Affidavit evidence which has been challenged by contrary evidence.
29. In light of the foregoing, it is only prudent that the determination as to whether the Claim is time-barred by dint of Section 90 of the *Employment Act* be made upon the Court evaluating the facts and evidence on record. Such determination will be preceded by viva voce evidence from both sides.
30. The Respondent has further raised an objection with respect to this Court's pecuniary jurisdiction in light of Gazette Notice No. 6024 of 2018. The Respondent has contended that this Court lacks jurisdiction to transfer the suit to the Chief Magistrates' Court for want of jurisdiction.
31. Pursuant to Gazette Notice No. 6024 of 22nd June 2018, Magistrates of the rank of Senior Resident Magistrates and above were appointed by the Hon. Chief Justice as Special Magistrates designated to hear and determine employment disputes within their respective areas of jurisdiction where inter alia, an employee's gross monthly pay does not exceed Kshs 80,000/=.
32. It should be appreciated that despite the pecuniary jurisdiction set out under Gazette Notice No. 6024 of 2018, the Employment and Labour Relations Court has exclusive original jurisdiction to hear and determine all disputes relating to employment and labour relations, pursuant to Article 162(2) (a) of *the Constitution*. As such, it cannot be said that this Court is bereft of jurisdiction to hear and demine the suit herein.
33. In sum, the Notice of Preliminary Objection and the Notice of Motion both dated 26th March 2024, are disallowed.
34. In the interest of justice and bearing in mind that the Claimant's last salary was below the sum of Kshs 80,000/=, the suit herein is transferred to the Chief Magistrates Court at Milimani for hearing and determination.
35. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Mwaura

For the Respondent Mr. Amalemba

Court Assistant Millicent



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 15th March 2020 and subsequent directions of 21st 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 had 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.

STELLA RUTTO

JUDGE

