



**Ngugi v Square One Investments Limited (Cause E1002 of 2023)
[2025] KEELRC 807 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 807 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1002 OF 2023
L NDOLO, J
MARCH 13, 2025**

BETWEEN

JAMES MUIRURI NGUGI APPLICANT

AND

SQUARE ONE INVESTMENTS LIMITED RESPONDENT

RULING

1. This ruling determines the Applicant’s application brought by an Originating Summons dated 12th November 2024, seeking leave to file suit against the Respondent, out of time.
2. The application is supported by the Applicant’s own affidavit and is based on the grounds that:
 - a. The Applicant was employed by the Respondent as a Heavy Commercial Driver;
 - b. The Applicant appointed an Advocate to file suit for recovery of terminal benefits arising from unfair termination of his employment by the Respondent;
 - c. The appointed Advocate filed a claim dated 2nd November 2020 in the lower court, which the Claimant later came to learn was devoid of jurisdiction;
 - d. After the matter went to full trial, the Chief Magistrate’s Court dismissed the claim on 11th August 2023, for want of jurisdiction;
 - e. On 1st December 2023, upon learning that the matter had been dismissed for want of jurisdiction, the Applicant proceeded to instruct the Advocate to file the necessary application, and even signed the affidavit in support to enable filing of the application at the appropriate court;
 - f. Sometime in June 2024, the Applicant came to learn that the application was never filed;



- g. The Applicant now wishes to have time enlarged to enable him file suit in the appropriate court;
 - h. The delay involved is not inordinate and is excusable in the circumstances as mistakes of Counsel ought not be visited on an innocent litigant.
3. The Respondent filed Grounds of Opposition dated 6th December 2024, stating that:
- a. The present application is frivolous, vexatious and amounts to an abuse of the court process;
 - b. Cause No E1076 of 2020, which was heard and determined on 11th August 2023, had similar parties as the present suit;
 - c. The Applicant has not demonstrated any reasonable explanation that led to the inordinate delay to prosecute the suit afresh, in the proper forum;
 - d. The Applicant is not honest in blaming the Advocates, who represented him because they were on record as having attended all court sessions until the suit was dismissed for want of jurisdiction and all the Applicant needed to do was to instruct the Advocates to file suit in the proper forum;
 - e. The Applicant has not provided any evidence to prove that he instructed Counsel to file the suit in the proper court;
 - f. Nothing stopped the Applicant from representing himself in the matter, when he realised that his Advocates were not willing to act on his behalf;
 - g. The application is an afterthought meant to derail the course of justice and ought to be struck out.
4. By his application, the Applicant seeks extension of time, to bring an employment claim against the Respondent, out of time.
5. Limitation of time with regard to actions arising out of employment is provided under Section 90 of the [Employment Act](#) in the following terms:
90. 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 3 years after the act, neglect or default complained or in the case of continuing injury or damage within 12 months next after cessation thereof.
6. It is now well settled that Section 90 of the [Employment Act](#) leaves no room for extension of time. In *Beatrice Kahai Adagala v Postal Corporation of Kenya* [2015] eKLR the Court of Appeal stated the following:
- “Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the [Employment Act](#) which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years.”



7. Following on this trajectory in Samuel Onchonga v Ken-Knit Kenya Limited [2017] eKLR Onyango J stated thus:

“The *Employment Act* does not provide for extension of limitation period...The jurisdiction of courts is provided for by law. A court cannot arrogate to itself a jurisdiction that it does not have.”

8. I do not need to say more. The law on limitation of time in employment claims leaves no room for discretion. That settled, the only thing to do is to dismiss the Applicant’s application dated 12th December 2024, which I hereby do.

9. Each party will bear their own costs.

10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY MARCH 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Kwamboka for the Applicant

Mr. Mwangi for the Respondent

