



REPUBLIC OF KENYA



KENYA LAW
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**Ntoror v Transmara Sugar Co Ltd (Cause E028 of 2024)
[2025] KEELRC 718 (KLR) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 718 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E028 OF 2024
JK GAKERI, J
MARCH 10, 2025**

BETWEEN

JOHN NTOROR CLAIMANT

AND

TRANSMARA SUGAR CO. LTD RESPONDENT

JUDGMENT

1. The Claimant instituted this case against the respondent on 9th April, 2024 alleging that the respondent had terminated his employment unlawfully on 18th March, 2021 and prays for:
 - i. A declaration that termination of employment by the respondent was unlawful.
 - ii. Damages for unlawful termination amounting to Kshs.2,956,475.04.
 - iii. Interest on (ii) above at court rates from date of filing until payment in full.
 - iv. Certificate of service.
 - v. Costs of the claim.
 - vi. Any other or further reliefs that the court deems fit.
2. The claimant's case is that he was employed by the respondent on 11th July, 2014 at a gross salary of Kshs.28,750.00 which was reviewed upwards in January 2015 to Kshs.31,050 and to Kshs.110,250 as basic salary, Kshs.16,528.00 house allowance, and Kshs.5,512 as leave allowance from 1st March, 2018 under a new contract.
3. The claimant avers that he served until 8th March, 2021 when he received a notice of termination of his employment from the respondent allegedly for use of "insulting language fabricated to demean the positive repute of a senior employee of the respondent.



The claimant avers that the entire process was a witch-hunt.

Respondent's case

4. The respondents admits that it employed the claimant initially as a Human Resource Assistant in 2014 and offered him permanent employment in 2015 and promoted him to Senior Human Resource Officer in January 2017.
5. It is the respondent's case that the claimant declined to acknowledge receipt of a notice to show cause on 1st December, 2020 following a verbal confrontation with one Mr. Gareth, a fellow employee, whom the claimant accused of a near accident the respondent's gate and had used insulting language and did not respond to the notice.
6. The respondent avers that it invited the claimant for a hearing on 5th December, 2020 vide letter dated 3rd December, 2020 but the same was rescheduled to 12th January, 2021 and the claimant was notified vide letter dated 7th January, 2021 and hearing took place and the panel recommended summary dismissal of the claimant for the claimant's malicious allegations against Mr. Gareth.
7. It is the respondent's case that upon receipt of the termination letter on 8th March, 2021, the claimant attempted to assault the Human Resource Manager who was rescued by the Chief Security Officer but the claimant smashed and damaged the manager's laptop, printer, water dispenser and scanner and neither appealed the dismissal nor collect his dues and a certificate of service dated 26th March, 2021.
8. Similarly, it is the respondent's case that the claimant had attended previous disciplinary hearings in 2018. was issued with a final advisory in July 2019 and a final warning in June 2020 for other forms of misconduct.
9. The respondent urges that the claimant's conduct justified a summary dismissal and the instant action ought to be dismissed with costs.
10. In his testimony tendered in open court on 28th January 2025 the claimant admitted that he was notified of the reasons for termination but was not accorded an opportunity to be heard but received the invitation letter to attend a hearing on 12th January, 2021.
That his complaint was that he was almost hit by a motor vehicle.
11. He admitted having attended the hearing and signed the minutes and further admitted having declined to acknowledge receipt of the termination letter even after request to do so and hid the letter in the pocket.
12. He confirmed that he was charged in a criminal case for his conduct on the date of termination of employment and was not involved in any accident as captured by the Dashcam of Mr. Gareth's motor vehicle.
13. He further admitted at the hearing that he was prone to mistakes and denied having been unruly after receiving the letter or involved other persons.
14. He testified that his salary was Kshs.176,527.00 and the payslip depicting the same as Kshs.155,866.00 was his, as well.
15. He admitted that he had received previous warning letters, and in contradiction of earlier testimony, the claimant admitted that he was given an opportunity to explain himself.



16. On re-examination, the claimant testified that he did not report the incident to the police as he had no ill-feelings and talked to colleagues in Human Resource and related well to all attendees of the disciplinary hearing but alleged that it was not fair and had been exonerated from wrong doing in the criminal case but the Office of Director of Public Prosecutions (ODPP) appealed.

Respondent's case

17. RWI, Mr. Yoshiah Ole Meitiaki confirmed that there was a requirement for an employee to acknowledge receipt of a notice to show cause by signing and the claimant insulted a senior employee of the respondent.
18. According to RWI the claimant had stated that “Huyu Mzungu anataka kuniuwa” meaning this white man wants to kill me. That he followed Mr. Gareth to his office and wrote an email on the incident.
19. According to the witness, it is neither an offence nor insult to state that “a driver almost run over me”.
20. The witness testified that the Chief Security Officer (CSO) of the respondent was in his office when chaos erupted and was injured and police were not called immediately.
21. That the chaos arose after the termination letter was handed over to the clamant as he communicated to the people on phone and was heard asking the person at the end of the line “where are you” in the Maasai language which RWI understood as he is a Maasai.
22. When this testimony was given in court on 28th July, 2025 the claimant clicked to express his distaste for the evidence.
23. RWI confirmed that the claimant had received four (4) warning letters and one advisory and was accorded time to respond to the allegations.
24. It was RWI's testimony that the payslips on record came from the claimant not the respondent and the respondent's compound had CCTV cameras.
25. On re-examination RWI testified that he trained the claimant and he was accorded the opportunity to be heard and notified of the right to appeal but did not.
26. That the claimant organized the intruders and the police investigated the matter and took action.
27. RWII, Rael Nyamalo, the Human Resource Assistant confirmed, on cross-examination that the claimant was his senior in the department and knew him well as former colleague and sat at the disciplinary hearing which had 5 members and all participated in the deliberations and their statements captured.
28. It was her testimony that the claimant smashed certain items in the Manager's Office and testified in the criminal case.
29. That security was called into the Manager's Office when the claimant refused to stop using the computer and leave his office after dismissal.

That the claimant threatened those present as follows:

“You have dismissed me. Do you think you will continue sitting here on my soil?”

30. That he smashed the manager's computer and the police were eventually called in and calm was restored.

Claimant's submissions



31. As to whether dismissal of the claimant was unfair, the claimant's advocate cited the decisions in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, *Nicholas Otinyu Muruka v Equity Bank (K) Ltd*, *British Leyland UK Ltd v Swift* [1981] I.R.L.R. 91, *David Gachena Omuya v Mombasa Maize Millers Ltd* [2014] eKLR as well as *Jacqueline Kanja v Visa Cemea Holdings Ltd* [2014] eKLR, among others and the provisions of section 45 (2) (4)(b) and 41 of the *Employment Act* to underscore the burden placed on an employer, and submit that the alleged reasons for the claimant's dismissal from employment were invalid as none of the persons adversely mentioned testified in court against the claimant and the dismissal was substantively unfair.
32. On procedure, the claimant's advocate cited Section 41 of the *Employment Act* and case law to urge that the claimant did not face his accuser at the hearing and had no opportunity to cross-examine him and decision to dismiss him from employment had already been made.
33. That the minutes on record did not reflect the claimant's oral presentation during the hearing. Counsel submitted that the termination of the claimant's employment was procedurally unfair.

Respondent's submissions

34. In its submissions filed on 3rd March, 2025, the respondent's advocate cited the provisions of Section 43 and 45 of the *Employment Act* and the evidence adduced in court submit that the respondent had proved that the reason for termination of the claimant's employment was valid and fair.
35. On procedural fairness, reliance was made on the sentiments of the court in *Pius Machafu Isindu v Lavington Security Guards Ltd* [2017] and *Langat v Unilever Tea Kenya Ltd* [2022] KEELRC 1238 (KLR) to urge that termination of the claimant's employment was procedurally fair.
36. The advocate submitted that the claimant was a problematic employee whose ideology was incompatible with the respondent's work ethic and culture and the relationship between the parties was irretrievably broken down.
37. On the reliefs sought the advocate for the respondent submitted that the claimant was only entitled to terminal dues as termination of employment was fair.

The court was urged to dismiss the suit.

Analysis and determination

38. It is common ground that the claimant was an employee of the respondent effective 11th July, 2014 until 8th March, 2021 when his employment was terminated vide letter dated on even date which the claimant refused to acknowledge receipt. Previously, the claimant had been issued with a notice to show cause, which he also refused to acknowledge receipt or respond to as requested. He, however, attended the hearing on 12th January, 2021, unaccompanied by a colleague.
39. It is equally not in contest that the claimant rose from the position of Human Resource Assistant to a Senior Human Resource Officer within a fairly short time and had had a fair share of previous disciplinary hearings which culminated in several warnings and an advisory on various infractions a fact he admitted on cross-examination.
40. The bone of contention is whether the termination of the claimant's employment by the respondent on 8th March, 2021 was unlawful and unfair within the meaning of Section 45 of the *Employment Act*.



41. Both the claimant's statement of claim and the respondent's memorandum of response dated 9th April, 2024 and 1st October, 2024 are unambiguous that the claimant's employment was terminated vide letter dated 8th March, 2021 and the instant suit was filed on 9th April, 2024.

The salient issues for determination are:

- i. Whether the claimant's suit is statute barred.
Depending on the answer to (i) above;
 - ii. Whether termination of the claimant's employment was unfair and;
 - iii. Whether the claimant is entitled to the reliefs sought.
42. As to whether the instant suit is statute barred, it is trite law that parties are bound by their pleadings.
43. See *Jospeh Mbuta Nzui V Kenya Orient Insurance Co. Ltd* [2015] eKLR, where the court relied on the Nigerian Supreme Court case of Adetouri Oladeji (NIG) Ltd V Nigeria Breweries P.L.C SC 91/2002, citing the sentiments of Pius Aderemi J.S.C.
44. In *Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* [2014] eKLR the court cited the Malawi Court of Appeal decision in *Malawi Railways Ltd v Nyasolo* [1998] MW SC 3 where judges had extensively quoted from an Article by Sir Jack Jacob entitled The "Present Importance of Pleadings" 1960 Current Legal Problems at page 174, *Galaxy Paints Co. Ltd v Falcon Guards Ltd* Civil Appeal No. 219 of 1998 *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR and the Tanzanian Court of Appeal decision in *Salim Said Mtomekela v Mohamed Abdalla Mohamed* Civil appeal No. 149 of 2019.
45. Although the respondent did not raise, the issue of limitation of actions implicates the court's jurisdiction to hear and determine the suit and can be raised by the court suo motu as held in *Bosire Ogero v Royal Media Services Ltd* [2015], eKLR where the court held:
- "The law of limitation of actions is intended to bar the plaintiffs from instituting claims that are stale and aimed at protecting defendants against unreasonable delay in the bringing of suits against them. The issue of limitation goes to the jurisdiction of court to entertain claims and therefore if a Matter is statute barred, the court has no jurisdiction to entertain the same. And, even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the court cannot entertain a suit which it has no jurisdiction over. See the case of Pauline Wanjiru Thuo vs David Mutegi Njuru *CA 2778 of 1998*..." The issue of jurisdiction can be raised at any stage even by the court".
46. As adverted elsewhere in this judgment, both the claimant and the respondent are in agreement that the claimant's employment was terminated on 8th March, 2021, which suggests that the cause of action accrued on that day.
47. In *Letang v Cooper* [1964] 2 All ER 929 at 934, Lord Diplock defined a cause of action thus:
- "A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person".
48. When does a cause of action arise or accrue in a termination of employment?



49. In *G4S Security Services (K) Ltd v Joseph Kamau & 468 Others* [2018] eKLR, the Court of Appeal held thus;

“It is not in dispute that the alleged causes of action arose in the years 2008, 2009 and 2010 upon the respondent’s termination of employment by their employer. Pursuant to the provisions of Section 90 of the *Employment Act* those claims became time barred in 2011, 2012 and 2013 respectively three years after the respective causes of action arose...”

50. In *Attorney General & Another v Andrew Maina Gitthinji & Another* [2016] eKLR, Waki JA held as follows:

“...the respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 2019. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not. Having found that the cause of action arose on 2nd February, 2010 and that the claim was filed on 16th June, 2014, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time barred as at 1st February, 2013, and so I hold”.

51. The foregoing sentiments of the Court of Appeal establish beyond peradventure that in an employment relation, a cause of action generally accrues on the date of termination of employment or dismissal.

52. In the instant case, since the claimant’s employment was terminated on 8th March, 2021, time started running and lapsed on 7th March, 2024 and had no action to enforce when he purportedly did so on 9th April, 2024. Although, the claimant missed the 3 year threshold by a small margin, the sagacious aphorism that “a miss is as good as a mile” applies on all fours and the claimant’s action was statute barred by virtue of the provisions of Section 89 of the *Employment Act* which provides-

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.

53. Notably, the provisions of section 89 of the *Employment Act* are couched in mandatory terms and are phrased in the negative to underline that no claim based or arising under the Act or contract of service lies after 3 years.

54. See the sentiments of the Court of Appeal in *Beatrice Kahai Adagala v Postal Corporation of Kenya* [2015] eKLR.

55. In the instant case, since the claimant did not file the suit herein within the prescribed duration, the court lacks jurisdiction as jurisdiction is everything as held by Nyarangi JA in *Owners of the Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd* [1989] KLR, and without it the court is obliged to down its tools in respect of matter before it as I hereby do.

56. In the upshot, the claimant’s suit is struck out for want of jurisdiction.

57. The respondent shall, however, issue a Certificate of Service by dint of section 51 of the *Employment Act*.

Parties shall bear own costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 10TH DAY OF MARCH, 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 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 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

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