



**Kigamba v Mount Kenya University (Miscellaneous Civil Application E001 of 2025) [2025] KEELRC 1267 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1267 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CIVIL APPLICATION E001 OF 2025**

**BOM MANANI, J**

**APRIL 30, 2025**

**IN THE MATTER OF ARTICLE 165(6) AND (7) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 1A, 1B, 2, 3, 3A, 11, 15, 17 AND  
18 OF THE CIVIL PROCEDURE ACT, CAP 21 LAWS OF KENYA**

**AND**

**IN THE MATTER OF TRANSFER OF THIKA CMCC NO. E194  
OF 2024 TO THE NAIROBI ELRC COURT AT MILIMANI**

**BETWEEN**

**JOHN GAKINYA KIGAMBA ..... APPLICANT**

**AND**

**MOUNT KENYA UNIVERSITY ..... RESPONDENT**

**RULING**

**Background**

1. The Applicant was an employee of the Respondent until 2017 when the employment relationship between the parties came to a close. The Applicant contends that on 12<sup>th</sup> September 2017, the Respondent's Human Resource Manager informed him that the Respondent's Finance Director had been instructed to process and pay his terminal dues.
2. The Applicant further contends that the said Human Resource Manager asked him to return the Respondent's properties in his possession. It is the Applicant's case that he returned all the Respondent's assets which were in his custody in compliance with this directive.



3. The Applicant avers that despite clearing with the Respondent as instructed, the latter did not release his terminal dues totaling approximately Ksh. 2,229,500.00. The Applicant contends that he made all efforts to follow up on the matter but to no avail. As a result, he contends that he was forced to file suit through Thika Chief Magistrate's Court Civil Case No. 194 of 2024 to compel the Respondent to settle the matter.
4. The Applicant contends that it has come to his realization that the Magistrate's Court has no jurisdiction to entertain his case. As such, he has moved this court through this application seeking an order of transfer of the suit from the Magistrate's Court to this court.
5. The Respondent has objected to the request to transfer the suit. It, inter alia, contends that the suit before the Chief Magistrate's Court was instituted outside the set statutory timelines. As such, it is a nullity.
6. The Respondent contends that neither this court nor the Chief Magistrate's Court has jurisdiction to entertain the case outside the set timelines. Consequently, it (the Respondent) contends that this court cannot entertain the instant application to transfer the case from the Magistrate's Court.

### **Analysis**

7. The single question which falls for determination is whether this court has jurisdiction to transfer the case from the Magistrate's Court to itself. It is apparent from the record that the parties have conflicting positions on the matter.
8. The objection by the Respondent is premised on section 89 of the *Employment Act* which provides as follows:-

“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.”
9. The provision requires all actions founded on a contract of service to be instituted within three years of accrual of the cause of action. The only exception relates to causes of action founded on a continuing injury. This latter category must be filed within one year of cessation of the injury in question.
10. The ramifications of the provision are plain. A case arising from a contract of service is time barred if it is instituted after the lapse of three years from the date the cause of action accrued or in the case of a continuing injury claim, if it is filed more than one year from the date the injury in question ceased.
11. What is the effect of the foregoing on the jurisdiction of a court to entertain a suit? Limitation of actions obliterates the court's jurisdiction to entertain a claim. Once a claim is demonstrated to have exceeded the timelines within which it was to have been presented to court, the court's jurisdiction to entertain it (the claim) is lost. As such, an objection founded on limitation of actions goes to the jurisdiction of the court to entertain a matter (*Mohamed v Walker Kontos Advocates & another* (Miscellaneous Application E008 of 2020) [2022] KEHC 16797 (KLR) (Civ) (22 December 2022) (Ruling)).
12. In the instant case, the Respondent contends that the Applicant's cause of action accrued in 2017 when the employment relation between them was terminated. As such, it contends that if he wished to pursue recovery of his terminal benefits through court, he ought to have done so within three years from 2017.



13. The Respondent contends that the Applicant's suit before the Chief Magistrate's Court was filed in 2024 well outside the three year window provided for under section 89 of the *Employment Act*. As such, the suit is time barred and neither the Magistrate's Court nor this court has jurisdiction to entertain it.
14. The Applicant admits that the suit before the Chief Magistrate's Court was filed in 2024. However, he contends that this court has power to transfer it to itself.
15. There is no doubt that this court has powers to transfer a suit that is pending before the Magistrate's Court to itself. However, the question before the court is whether this power can be invoked to transfer a suit which is deemed as incompetent and a nullity on account of limitation of actions.
16. The general position in law is that a court can only transfer a valid suit. It cannot transfer an invalid or incompetent suit since such suit is a nullity.
17. In *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR, the Court of Appeal observed on the matter as follows:-

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign.”
18. In *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another* [2012] eKLR, the court observed on the matter as follows:-

“It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, courts can only transfer a cause whose existence is recognized by law.”
19. The suit which the Applicant seeks to transfer through the instant application was filed before the Chief Magistrate outside the set statutory timelines. As such, it is time barred. The suit is therefore a nullity for want of compliance with section 89 of the *Employment Act*.
20. The Applicant now asks this court to transfer the aforesaid suit to it for trial and determination. Going by the aforesaid decisions, this court cannot transfer the suit to itself because it (the suit) is a nullity. As such, the court has no jurisdiction to grant the orders sought in the instant application.

### **Determination**

21. After evaluating the submissions by the parties and the applicable law, the court finds that it lacks the requisite jurisdiction to transfer the suit before the Magistrate's Court, that is to say, Thika Chief Magistrate's Court Case No, 194 of 2024, to itself for trial and determination since that suit is a nullity having been instituted outside the timelines that are set under section 89 of the *Employment Act*.
22. As such, the Respondent's preliminary objection succeeds and the application is struck out.



23. Each party to bear own costs.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:-

..... for the Applicant/Respondent

..... for the Respondent/Applicant

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

