



**Dutta v Express DDB Kenya Limited (Cause E363 of 2024)
[2025] KEELRC 1559 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1559 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E363 OF 2024**

**L NDOLO, J
MAY 29, 2025**

BETWEEN

MEGHA DUTTA CLAIMANT

AND

EXPRESS DDB KENYA LIMITED RESPONDENT

RULING

1. This ruling determines the Respondent’s Notice of Motion dated 5th July 2024, seeking to strike out the Claimant’s Memorandum of Claim dated 2nd May 2024, for being statute barred.
2. The Motion is supported by an affidavit sworn by the Respondent’s Director, Mohan Singh Dhariwal and is based on the grounds that:
 - a. Pursuant to an employment agreement, the Claimant was under the employ of the Respondent from the period commencing 21st February 2017 to 29th June 2019, when the Claimant quit her employ with the Respondent;
 - b. The Claimant has since brought the instant suit seeking inter alia, a declaration that her employment was unfairly terminated by the Respondent;
 - c. The Claimant’s suit against the Respondent was filed on 15th May 2024, while she ceased her employ with the Respondent on 28th June 2019;
 - d. The instant suit by the Claimant has been brought after 4 years and 11 months since termination of her employment contract with the Respondent;
 - e. The Claimant’s suit is statute barred by virtue of Section 89 of the *Employment Act*;
 - f. The Claimant’s suit ought to be struck out for being scandalous, vexatious, frivolous and an abuse of the court process;



- g. The law on limitation is intended to protect respondents against unreasonable delay in bringing suits against them and the statute expects the Claimant to have exercised reasonable diligence and to take reasonable steps in her own interest, which the Claimant has clearly failed to do;
 - h. In the circumstances it is only prudent that the Court be pleased to strike out the instant suit against the Respondent for being statute barred, scandalous, vexatious, frivolous and an abuse of the court process.
3. The Claimant filed Grounds of Opposition dated 8th August 2024, stating that:
 - a. The relationship between the Claimant and the Respondent was a consultancy rather than an employer-employee relationship;
 - b. Consultancies in Kenya are governed by the Law of Contracts Act, rather than the [Employment Act](#);
 - c. Under Section 4(1)(a) of the [Limitation of Actions Act](#), actions founded on contract may not be brought after the end of six (6) years from the date on which the cause of action accrued;
 - d. The instant claim was filed by the Claimant on 15th May 2024, which is 4 years, 10 months and 13 days after the Claimant resigned from the Consultancy Agreement she had with the Respondent;
 - e. In the circumstances, the instant claim is not statute barred pursuant to the [Limitation of Actions Act](#) as the claim was filed before the expiry of a period of 6 years from the date on which the cause of action accrued;
 - f. The application lacks legal and factual substratum;
 - g. The application is an abuse of the court process;
 - h. The application is for dismissal.
4. This is a strange case where a Claimant has filed a claim in the Employment and Labour Relations Court and when challenged on account of limitation, changes tune and states that in fact she was not an employee. Taking the Claimant at her word, the only conclusion to make is that she is in the wrong court.
5. The jurisdiction of this Court, as far as employment disputes are concerned, flows from the existence of an employment relationship, and if the party that moved the Court challenges that relationship, they are in effect challenging the jurisdiction of this Court to entertain their claim.
6. This a classic case of a party scoring against themselves. I will therefore not go into the arguments presented by the parties in their written submissions regarding the question whether the Claimant was an employee or an independent contractor.
7. By her own grounds of opposition and the accompanying submissions, the Claimant herself does not admit the jurisdiction of this Court. That said, the only thing to do is to strike out her claim on this account.
8. Each party will bear their own costs.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY 2025



LINNET NDOLO

JUDGE

Appearance:

Ms. Anyango h/b for Mr. Kipkorir for the Claimant

Mr. Kisinga for the Respondent

