



**Murunga v Kenya Power & Lighting Co (Cause E774 of 2023)  
[2025] KEELRC 1569 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1569 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E774 OF 2023**

**S RADIDO, J  
MAY 29, 2025**

**BETWEEN**

**EDITH LUNYOLO MURUNGA ..... CLAIMANT**

**AND**

**KENYA POWER & LIGHTING CO ..... RESPONDENT**

**RULING**

1. Edith Lunyolo Murunga (the Claimant) sued Kenya Power & Lighting Co (the Respondent) on 23 September 2023, alleging unfair termination of employment on 19 September 2020.
2. When served, the Respondent filed a Notice of Preliminary Objection on 7 October 2024, contending that:

Take Notice that the Respondent shall at the earliest opportune time raise a Preliminary Objection that this Court lacks jurisdiction to hear and determine the Claimant's suit as the same is time-barred, having been filed in violation of section 89 of the *Employment Act* Cap 226 Laws of Kenya.
3. The Claimant filed a replying affidavit in opposition to the Notice of Preliminary Objection on 28 February 2025.
4. The Court gave directions on the Notice of Preliminary Objection on 19 March 2025, and the Respondent filed its submissions on 5 March 2025. The Claimant filed her submissions on 10 March 2025.
5. The Court has considered the Statement of Claim, Notice of Preliminary Objection, and submissions, even if no reference is made to the authorities cited therein.
6. The Claimant pleaded that the Respondent gave Notice of Attainment of Retirement age dated 20 August 2020, indicating that her effective retirement date would be 19 September 2020.



7. The Claimant's legal injury or legal wrong started on 20 August 2020, and accrued or crystallised on 19 September 2020.
8. By dint of section 89 of the *Employment Act*, 2007, the Claimant had 3 years within which to invoke the jurisdiction of the Court to challenge the legal injury.
9. On the outer limit, the Claimant should have moved the Court by 18 September 2023. The instant Cause was filed on 23 September 2023, a few days after the lapse of the prescribed limitation.
10. The question of limitation, and whether the Court can extend time or grant leave after lapse of limitation, has been addressed by the Court of Appeal in several decisions.
11. In *Divecon v Samani* (1995-1998) 1 EA 48, the Court held:

No one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action. A perusal of Part III shows that its provisions do not apply to actions based on contract.

12. The same Court stated in *Beatrice Kahai Adagala v Postal Corporation of Kenya* (2015) eKLR:

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* 2007 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. As this Court stated in the case of *Divecon Limited -vs- Samani* [1995-1998] 1 EA P.48, a decision relied upon by Radido, J. in *Josephat Ndirangu - vs – Henkel Chemicals (EA) Limited*, [2013] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the *Limitation of Actions Act*.

13. The Claimant sued outside the prescribed time and regrettably, the Claimant's action must be declined.

#### **Orders**

14. In light of the above, the Court upholds the Notice of Preliminary Objection, and strikes out the Cause with no order on costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Syphurine & Partners Advocates

For Respondent D. Maanzo-Advocate

Court Assistant Wangu

