



Wafula v Postal Corporation of Kenya (Employment and Labour Relations Cause E053 of 2023) [2025] KEELRC 1478 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1478 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E053 OF 2023**

**AN MWAURE, J
MAY 23, 2025**

BETWEEN

ANDREW JUMA WAFULA CLAIMANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

Introduction

1. The Respondent filed a Notice of Preliminary Objection dated 13th February 2025 in opposition to the Claimant's memorandum of claim dated 16th October 2023 on the following grounds that:
 1. The claim is time-barred pursuant to section 24(b) of the *Postal Corporation of Kenya Act*, 1998 and section 90 of the *Employment Act*, and this Honourable Court therefore lacks jurisdiction to entertain or determine the matter.
 2. Section 24(b) of the *Postal Corporation of Kenya Act*, 1998, provides that any action or legal proceedings against the Respondent must be commenced within twelve (12) months from the date of the act, neglect, or default complained of, or within six (6) months in the case of a continuing injury.
 3. Section 90 of the *Employment Act* further provides that any claim arising from an employment relationship must be filed within three (3) years from the date of accrual of cause of action.
 4. The Claimant was dismissed from employment on 22nd April, 2020, and therefore, the cause of action arose on that date. However, the Claimant filed this suit on 27th October, 2023, three (3) years, six (6) months and five (5) days after the dismissal, well beyond both the statutory twelve-month and three-year limitation periods.



5. The suit is therefore statutorily time-barred, rendering it incompetent, improperly before this Honourable Court, and an abuse of the court process.
 6. The Honourable Court has no jurisdiction to extend time in employment disputes or to entertain a time-barred suit.
 7. In the circumstances, the Respondent prays that this Honourable Court strike out and/or dismiss the Claimant’s suit with costs to the Respondent.
2. Parties canvassed the Preliminary objection by way of written submissions.

Respondent’s written submissions

3. The Respondent submitted that this Honourable Court lacks jurisdiction to handle the cause as it is time-barred in accordance with section 24(b) of the [Postal Corporation of Kenya Act](#), 1998 and section 90 of the [Employment Act](#), 2007. The Respondent cited section 24(b) of the Postal Corporation of Kenya, which provides as follows:

“Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or the Kenya Communications Act, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or the Kenya Communications Act, 1998 or of any such duty or authority, the following provisions shall have effect—

- (a)
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.”

4. The Respondent relied on the case of Timonthy M. Mukalo V Reuben Alubale Shiramba & 3 Others (2005) eKLR, where the court dismissed a suit on the grounds it was time-barred. The Respondent submitted that the Claimant was summarily dismissed via a letter dated 22nd April 2020, making that the date of accrual of the cause. He cited the cases of Hilarion Mwabolo V Kenya Commercial Bank (2013) eKLR and David Ngugi Waweru V Attorney General & Another (2017) eKLR in support of that proposition.
5. The Respondent submitted that the Claimant filed this claim on 27th October, 2023, which is 3 years 6 months and 5 days after the cause of action arose, well beyond the 12-month limitation period under the Postal Corporation Act and 3-year limit under the [Employment Act](#).
6. The Respondent cited 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.”

7. The Respondent contended that the Claimant could have pursued the claim within the three-year limitation period provided under Section 89 of the [Employment Act](#), even if Section 24(b) of the Postal



Corporation Act did not apply. The Respondent relied on the case of Rift Valley Railways V Hawkins Wagonza Musonye & Another (2016) eKLR; it was held that when a statute sets a time limit for initiating an action, courts cannot extend that period unless the statute explicitly permits extensions.

8. The Respondent submitted that Sections 27 and 28 of the Limitation of Action Act limit the extension of time for filing cases only to action based on negligence, nuisance, or breach of duty- not employment disputes. In Maina Machocho V Total Kenya Limited (2012) eKLR, the court held that sections 27 and 28 of the Limitation of Action Act do not apply to employment claims.
9. The Respondent submitted that the doctrine of limitation of action exists for the purposes of preventing prosecution of stale claim. The Respondent relied on the case of Rawal V Rawal (1990) KLR Bosire J (as he then was) stated:

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on one hand, and on the other hand to protect a defendant after they have lost evidence for their defence due to lapse of time.”
10. In Iga V Makerere University (1972) EA 65, the court stated:

“A suit that is barred by limitation is barred by law. The Limitation Act does not extinguish a suit but operates to bar the claim or remedy sought. When a suit is time-barred, the court cannot grant the remedy or relief.”
11. In Kuria & 3 Others V Attorney General (2002) 2 KLR 69 where the court held that allowing litigants to bypass procedural limitations would undermine the administration of justice and clog the courts with stale claims.
12. The Respondent urged this Honourable Court to find that the claim is time-barred and the court lacks jurisdiction to entertain it, dismissing it with costs.

Claimant’s written submissions

13. The Claimant relied on the case of Mukisa Biscuits Manufacturing Co. Ltd V West End Distribution Ltd (1969) EA 696, which deals with the principle of preliminary objection and provides as follow:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

In the same case, Sir Charles Newbold, P. stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained or if what is sought is the exercise of judicial discretion.”
14. The Claimant relied on the case of Oraro V Mbaja (2005) 1 KLR 141; the court held that a preliminary objection must not involve contested facts or rely on factual information that requires evaluation under evidentiary rules. The Claimant submitted that there is no demonstration that all the facts pleaded by the other side are correct, as required before any preliminary objection is granted.



15. The Claimant contended that he was dismissed from employment on 23rd April 2021 and not 22nd April 2020, as set out in the preliminary objection. The Claimant submitted that section 24 of the *Postal Corporation of Kenya Act* delimits the time of presenting a case against the Respondent to 12 months, does not apply to contract of employment as it was settled in the case of *Hantoosh V Postal Corporation of Kenya* [2021] KECA 191(KLR) the court observed that section 24 of The Postal Corporations of Kenya Act, applies to the Corporation’s statutory functions such as postal and related services. It does not address employment contracts or employer-employee relationships within the Corporation.
16. The Claimant submitted that section 89, not section 90, of the *Employment Act* governs time limitations. The Claimant submitted that the claim was filed on 27th October 2023, and was within the three-year limit since internal disciplinary procedures concluded on 23rd April 2021, with the deadline being 23rd April 2024. The Claimant relied on the case of *William Mogeni Momanyi V Aga Khan University Hospital* [2015] eKLR where the court stated that the appeal against the Claimant’s dismissal was concluded on 30th September 2011, marking the exhaustion of all remedies under Section 26 of the *Employment Act*. The court acknowledged that the time for filing the claim started on this date. The claim, filed on 31st October 2013, was within the 3-year limitation period under section 90 of the *Employment Act*, adhering to the prescribed timeframe.
17. The Claimant relied on the Postal Code Rule L11, which provides for appeals and states as follows:

“ Before a punishment is meted on an employee, he should be given sufficient time and notice to defend himself. Any employee who has been awarded a punishment which he considers unfair has a right of appeal to the appropriate higher authority....”
18. The Claimant submitted that he has been vigilant to prosecute the claim in a timely manner as he had firstly filed the claim in the Magistrate Court, CM ELRC No. E266 of 2021 on 22nd September 2021 though it was an inadvertent mistake on his part and his then advocates on record.
19. The Claimant submitted that he was well within the timeline as set out in the *Employment and Labour Relations Court Act*. The Claimant also submitted that the Respondent’s submissions did not raise any pure point of law as this Honourable Court would require to interrogate the disputed facts through evidence citing the case of *Republic V Eldoret Water & Sanitation Company Ltd Exparte Booker Onyango & 2 Others* [2007] eKLR in support of that proposition.
20. The Claimant urged this Honourable Court to find that the Respondent’s preliminary objection does not have merit.

Analysis and determination

21. The court has considered the preliminary objection together with the submissions by both counsels; the issue for determination is whether the preliminary objection is merited.
22. In *Mukisa Biscuits Manufacturing Co. Ltd V West End Distribution Ltd* (supra) set out the principle of preliminary objection, which should be based on pure points of law. In *Hantoosh V Postal Corporation of Kenya* (supra), the Court of Appeal held as follows:

“ 28. In order to answer the question whether section 24 of the PCK Act extends to labour disputes or not, one needs to refer to the preamble to the Act, and section 5 of the PCK Act, which provides purpose for the Act, and the functions of the corporation as “An Act of Parliament to provide for the



establishment of the Postal Corporation of Kenya, to provide for its powers and functions, and connected purposes.”

29. The legal proceedings envisaged under the Act, and for which the specific provisions in the Act apply, including section 24 of the Act, have to do with the statutory functions of the Corporation. These are the functions set out under section 5 as postal services, incidental services related thereto, postal financial services, and incidental services related thereto, and; registration for delivery of newspapers and periodicals.
30. Section 24 is very clear that the legal proceedings envisaged are those commenced against the Corporation in exercise of its statutory power under the Act, and related to its powers and functions, specifically for services provided or operated by the Postal Corporation under the Act and/or under the Kenya Communications Act, 1998. Nowhere does the section refer to matters relating to contracts of employment between the corporation and its employees, or employer/employee relationship.”
23. In the abovementioned case, Section 24 of the Postal Corporation of Kenya dealt with powers and functions of the Postal Corporation and not with contracts of employment between the corporation and its employees. Section 89 of the *Employment Act* was reiterated earlier in the preceding part of this ruling. In *Beatrice Kahai Adagala V Postal Corporation of Kenya* [2015] KECA 257 (KLR), the Court of Appeal held as follows:
- “Pursuant to this provision, the appellant having been dismissed on 11th August 2008, she should have filed her claim by 10th August 2011. However, as we have stated, she filed it on 15th August 2013, and that is obviously the reason why she sought an extension of time to deem the Cause as having been filed out of time with leave of the Court.
- It may very well be that the Appellant was let down by her erstwhile lawyers who filed her claim out of time and later failed to prosecute the appeal that sought to reverse that dismissal order.
- 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*.”
24. In this instant case, the Claimant was dismissed vide a letter dated 22nd April 2020. The Claimant appealed against the decision against the Respondent and the organisation, and he received information that his appeal was unsuccessful vide a letter dated 23rd April 2021. The question before this Honourable Court is when did the cause of action arise. The answer is that the cause of action arose when the Claimant was dismissed vide a letter dated 22nd April 2020 and not when the appeal was dismissed vide a letter dated 23rd April 2021. This Honourable Court has carefully looked at the claim and saw it was filed on 27th October 2023. In the dismissal letter of the Claimant’s appeal the Postal Master General clearly stated that the dismissal notice issued on 22nd April 2020 was upheld so the time started to run from 22nd April 2020.



25. In the court's considered view, the claim before it is time-barred as the time ran out on 22nd April, 2023 and the Claimant filed his suit on 27th October, 2023. The court will emphasize that when one is terminated, the cause of action starts immediately there, and it would be appropriate for the Claimant to have filed the claim while pursuing his appeal with the Respondent. Numerous authorities are available and state once time runs out in contract matters the Court's hands are tied and cannot expand the time.
26. Flowing from the foregoing, the court finds that the Preliminary Objection dated 13th February 2025 has merit, and the Claimant's suit dated 16th October 2023 is hereby dismissed.
27. Each party is to bear its own costs.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF MAY, 2025.

ANNA NGIBUINI MWAURE

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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

