



**Maweu v Safaricom Ltd (Appeal E128 of 2021)  
[2025] KEELRC 1441 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1441 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E128 OF 2021**

**CN BAARI, J**

**MAY 15, 2025**

**BETWEEN**

**TITUS MUTUKU MAWEU ..... CLAIMANT**

**AND**

**SAFARICOM LTD ..... RESPONDENT**

**RULING**

1. In his application dated 28<sup>th</sup> February, 2021, the Claimant seeks orders for extension of time to file an appeal, and a further extension to file his claim out of time.
2. It is his position that he has always been desirous of lodging a claim against the Respondent, and that his claim is late by 11 months while his appeal is late by 30 days, and for which he now seeks for the enlargement of this time.
3. The Claimant/Applicant states that he had lodged a similar application for the extension of time to file his claim, but which application was dismissed by the lower court, and which decision he now intends to appeal against upon the extension prayed for herein.
4. He prays that court allows his application to enable him enforce his fundamental rights under the [Constitution](#).
5. The Respondent opposed the motion vide grounds of opposition dated 23<sup>rd</sup> June, 2022. It avers that the application is an abuse of the Court process considering that it is seeking leave to sue out of time, which issue has already been determined by a different court of competent jurisdiction.
6. It states that the Applicant's claim which allegedly accrued on or about 20<sup>th</sup> November, 2017 out of an employer- employee relationship, is time barred under Section 90 of the [Employment Act](#), 2007. The Respondent avers that Section 90 limits the time lines for filing claims arising from employment contracts to three (3) years.



7. It is the Respondent's position that the Applicant's right to sue having lapsed on or about 20<sup>th</sup> November 2020, this Court has no jurisdiction to enlarge time for filing or entertain the claim, hence the same ought to be dismissed with costs to the Respondents.
8. The Respondent states that the Applicant has not demonstrated any plausible reason nor presented any material evidence for the delay in filing the claim within the time prescribed by Section 90 of [Employment Act](#), 2007 or good and sufficient cause for failing to lodge the appeal in time.
9. Parties urged the motion by way of written submissions, and which have been duly considered.

### **Determination**

10. The twin issue for determination herein, is firstly whether to extend time for the Claimant to file a claim out of time, and whether to further extend time to allow him to lodge an appeal against the decision of the lower court disallowing his first prayer.
11. The Court's decision on the first payer, will no doubt have a bearing on whether or not the Claimant's second prayer should be considered on the basis that if time is not enlarged to allow him to file his claim, then to allow him to file an appeal is an exercise in futility.
12. The Claimant has admitted that his claim was 11 months late as at the time he filed this motion on 28<sup>th</sup> February, 2021, meaning that the same is about five years late today.
13. Section 90 of the [Employment Act](#) provides thus on time limitation in employment matters:-
 

"Notwithstanding Section 4(1) of the [Limitation of Actions Act](#) (Cap. 22), no civil action or proceeding arising out of this Act or a contract of service shall be instituted unless commenced within three years after the alleged act, neglect, or default, or, in the case of ongoing injury or damage, within twelve months after cessation thereof."
14. By the foregoing provisions, it is not in doubt that the Claimant's intended claim is statute barred by so long, and the issue is whether this time cannot be enlarged.
15. In the case of *Njunge v. Muasya* (Appeal E040 of 2023) [2024] KEELRC 265 (KLR), the Court, addressing Section 90 of the [Employment Act](#), held:-
 

"A plain reading of the above section clearly shows that it is couched in mandatory terms. That is to say "no action shall lie 'which implies that once the three year period lapses, no civil action shall lie on a claim based on the Act or contract of employment. Further, it is important to note that an action arising out of a contract of employment is an action based on contract. Therefore, under the [Limitation of Actions Act](#) which previous governed contracts generally, including contracts of employment, no extension was permissible once the limitation period lapsed. "
16. The Court of Appeal in *Beatrice Kahai Adagala v. Postal Corporation of Kenya* (Civil Appeal (Application) 28 of 2014) [2015] KECA 257 (KLR) (6 November 2015) (Ruling), had this to say on an application for extension of time: -
 

"Although for different reasons, as we have said Wasilwa, J. refused to extend the limitation period in the said Cause thus prompting this appeal. Even if the appeal was heard on 19<sup>th</sup> November 2014, we have no doubt that it was going to be dismissed. It follows that even if we allow the appellant's present application and restore her appeal, it will still be dismissed



on the self-same ground that the limitation period is never extended in claims arising from contracts.”

17. It is therefore undeniable that the Court's position regarding Section 90 has become a banal principle in our jurisprudence, reinforcing its mandatory application as a jurisdictional limitation.
18. In the premise, I find and hold that time under Section 90 of the *Employment Act*, 2007, cannot be extended. The Claimant's motion therefore lacks merit and is dismissed in its entirety.
19. I make no orders on costs.
20. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Kamsau h/b for Ms. Mkala for the Appellant

Ms. Koko h/b/ for Ms. Wangongo for the Respondent

Ms. Esther S – C/A

