



**Mutango v Mediamax Network Ltd (Cause E968 of 2024)
[2025] KEELRC 1431 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1431 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E968 OF 2024**

**S RADIDO, J
MAY 15, 2025**

BETWEEN

GRACE MUTIO MUTANGO CLAIMANT

AND

MEDIAMAX NETWORK LTD RESPONDENT

RULING

1. Grace Mutio Mutango (the Claimant) sued Mediamax Network Ltd (the Respondent) on 20 November 2024, and she stated the Issue in Dispute as:

Wrongful and unprocedural dismissal of the Claimant, Grace Mutio Mutango, who, being aggrieved by such wrongful dismissal, files the claim herein.
2. When served, the Respondent filed a Notice of Preliminary Objection on 13 December 2024, contending that:
 - i. In so far as the suit relates to causes of action that allegedly occurred on or about 21st November 2020, when the Claimant’s employment was terminated this Claim is time-barred under the provisions of section 90 of the *Employment Act* of 2007.
 - ii. The Court therefore lacks jurisdiction to entertain this Claim and the same ought to be struck out with costs to the Respondent.
 - iii. The Claimant’s rights to sue having lapsed, the Claimant’s (sic) lack of capacity to agitate any cause of action against the Respondent. The Claim is therefore an abuse of the court process.
3. The Court gave directions on the Preliminary Objection on 10 March 2025 and the Respondent filed its submissions on the same day.



4. The Claimant filed her submissions on 7 May 2025 (should have been filed and served before 22 April 2025).
5. In the submissions, the Claimant asserted that the cause of action was inexorably interlinked with the non-derogable Constitutional right to fair labour practices as read with Article 24 of *the Constitution* on limitation of rights.
6. According to the Claimant, the limitation provision in section 90 of the *Employment Act*, 2007 had to yield to the constitutional supremacy imperative in Article 2 of *the Constitution*.
7. The Claimant cited several legal authorities.
8. The Court has considered the Statement of Claim, Notice of Preliminary Objection and submissions.
9. The Claimant pleaded in paragraph 5 of the Statement of Claim that the Respondent terminated her employment on account of redundancy on or around 21 November 2020.
10. The Court of Appeal has on many occasions addressed the question of limitation in contractual claims.
11. In *Divecon v Samani* [1995-1998] 1 EA 48, the Court held as follows:

“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. In *Beatrice Kahai Adagala v Postal Corporation of Kenya* [2015] eKLR, the Court of Appeal stated: Section 90 of the *Employment Act* 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.
13. The Court reached similar conclusions in *G4S Security Services (K) Ltd v Joseph Kamau & 468 Ors* [2018] eKLR and *Attorney General & Ar v Andrew Maina Githinji* [2016] eKLR.
14. The instant Cause was lodged with the Court on 20 November 2024, four years after the cause of action arose.
15. Section 90 of the *Employment Act*, 2007, restricts the time for filing claims arising out of an employment contract to 3 years from the date of accrual of a cause of action.
16. The Claimant moved the Court outside the prescribed limitation time.
17. It is instructive that the Claimant did not place before the Court any decision declaring limitation clauses as invalid or inconsistent with *the Constitution* of Kenya.
18. The Court has no option but to decline jurisdiction since the Court is not even possessed of the power to extend time or grant leave to admit the Cause out of time.

Orders

19. The Notice of Preliminary Objection dated 11 December 2024 is upheld with the consequence that the Court declines jurisdiction and strikes out the Statement of Claim filed in Court on 20 November 2024.



20. Costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 15TH DAY OF MAY 2025.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Claimant Gitobu Imanyara & Co. Advocates

For Respondent Wainaina Ireri Advocates LLP

Court Assistant Wangu

