



Abere v Wakenya Pamoja Sacco Society Limited (Miscellaneous Case E008 of 2025) [2025] KEELRC 1808 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1808 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
MISCELLANEOUS CASE E008 OF 2025
NZIOKI WA MAKAU, J
JUNE 18, 2025

BETWEEN

DOROTHY MONGINA ABERE APPLICANT

AND

WAKENYA PAMOJA SACCO SOCIETY LIMITED RESPONDENT

RULING

1. Before me is the Ex Parte Application dated 27th January 2025 which initially was filed at the High Court of Kenya at Kisii and then transferred to this Court. The motion seeks in the main that the Honourable Court be pleased to grant leave to the Applicant to file a suit out of time against the Respondent with costs being in the cause.
2. The Applicant asserts that she was employed by the Respondent in July 2010 as a teller and was terminated after 11 years of service in November 2011. She avers that at the time of her termination she was expectant and that she received the news of her termination from colleagues prompting premature labour pains. The Applicant asserts she was subsequently diagnosed with stress related issues which severely affected her. She thus seeks the Court's indulgence to permit the filing of the suit ex debito justitiae. The Court heard her Counsel in the morning and deferred Ruling to this afternoon.
3. The matter of limitation of time is captured in section 90 of the [Employment Act](#). The section provides that:

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.



4. In the case of *Beatrice Kabai Adagala v Postal Corporation of Kenya* (Civil Appeal (Application) 28 of 2014) [2015] KECA 257 (KLR) (6 November 2015) (Ruling) the Court of Appeal Maraga (JA – as he then was), Azangalala & Kantai, JJA) held as follows:-

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 v Samani* [1995-1998] 1 EA P.48, a decision relied upon by Radido, J. in *Josephat Ndirangu v 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*.

5. Similarly, no matter how sympathetic this court may be to the plight of the Applicant, even acutely being aware of the challenges she faced after her termination callously carried out by the Respondent, the hands of this Court are tied by statute. There is no wriggle room and the fact the Court is expressly barred by section 90, there is no room to extend time or otherwise salvage the situation the Applicant finds herself in. The claim is brought more than a decade later and has no life. Therefore, having regard to the matter the only available action is that the motion is dismissed, albeit with no order as to costs since limitation of time set in on some date in March 2015.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 18TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCI Arb.

JUDGE

