



Luka v Bishop in Charge AIC (K) Machakos Area & another (Appeal E001 of 2024) [2025] KEELRC 1702 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1702 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E001 OF 2024**

**B ONGAYA, J
JUNE 12, 2025**

BETWEEN

MOSES MWENDWA LUKA APPELLANT

AND

BISHOP IN CHARGE AIC (K) MACHAKOS AREA 1ST RESPONDENT

THE CHAIRMAN AIC (K) ATHI RIVER DCC 2ND RESPONDENT

(Being an appeal from the Ruling of Hon. Barbara Ojoo, Senior Principal Magistrate delivered on 14.12.2023 at Mavoko in MCELRC No. E057 of 2023)

JUDGMENT

1. The learned trial Senior Principal Magistrate delivered the Ruling in the suit before the trial Court in favour of the respondents and against the appellant and ordered as follows:
 - a. The respondents' Preliminary Objection is found with merit. The claim herein is time barred and the court is denied jurisdiction under the provisions of Section 90 of the Act. The claim is hereby struck out in its entirety.
 - b. Costs to the respondents.
2. The appellant filed the memorandum of appeal on 12.01.2024 through Jim Ojiambo Advocates. The appellant stated that the trial Court erred in law and fact and misdirected itself as follows:
 - a. By finding that the claimant/appellant's suit was time barred thereby striking it out.
 - b. By failing to appreciate the unique circumstances surrounding the claimant's employment termination and failing to find that an employment relationship between the parties herein continued post the purported respondent's letter of dismissal dated 30.10.2018 all the way to 03.02.2021, when the claimant is said to have resigned from the respondent's employment.



- c. By failing to adequately evaluate and consider the facts and evidence provided by the appellant thereby arriving at a decision unsustainable in law.
 - d. By failing to notice and appreciate the fact that the claimant's services to the respondents actually, officially and formally ended on 03.02.2021 when the claimant was formally asked to hand over any respondents' property in his custody on the ground that he had resigned from the respondents' employment.
 - e. By failing to appreciate the fact that the claimant could not be said to have resigned in February 2021, if at all he had been dismissed from service in October 2018.
 - f. By failing to accord due regard to the claimant/appellant's submissions and authorities on when the appellant's employment actually ended and the continued employer-employee relationship thereafter long after the impugned letter of termination until 03.02.2021.
 - g. Relying on one sided submissions made for the respondents.
 - h. By failing to appreciate and consider that the claimant/appellant had employed alternative dispute resolution mechanisms available to him before filing the claim in court.
 - i. By writing a ruling which is against the weight of evidence and is at variance with precedents.
3. The appellant prayed for orders:
- a. That the whole ruling of the Hon Barbara Ojoo, Senior Principal Magistrate delivered on 14.12.2023 be set aside.
 - b. That the appeal be allowed.
 - c. That the costs of the appeal be awarded to the appellant.
 - d. That such further order as the Honourable Court may deem fit to grant.
4. The submissions on the appeal were filed for the appellant. For the respondents, submissions were filed through Manthi Masika & Co Advocates.
5. The Appellant's case was as follows.
- a. That the appellant was employed by the 2nd respondent in the year 2007 as a Pastor at an agreed monthly salary of Kshs 8,500/= and a house allowance of Kshs 5,000/= per month.
 - b. As at 01.07.2008 the appellant's salary was adjusted to a monthly amount of Kshs 9,000/- plus a house allowance of Kshs 5,000/=.
 - c. On or about 05.10.2018 the 2nd respondent suspended the appellant and subsequently through a letter dated 30.10.2018 the appellant's services were terminated.
 - d. According to the appellant, his services were terminated without him being given an opportunity to defend himself.
 - e. Dissatisfied by the actions of the 2nd respondent, the appellant raised the issue with the 1st respondent's office whereupon both parties were called for a meeting, which resulted in the 1st respondent directing the 2nd respondent reinstates the appellant back to his position and pays him his salary arrears.



- f. The 2nd respondent promised to reinstate the appellant and pay his salary arrears within a period of three months from the date of the meeting. However, the 2nd respondent only paid the appellant one month salary on 07.08.2019.
 - g. The appellant went back to the 1st respondent, unfortunately, he was unwell and eventually passed on.
 - h. The appellant claims that the 2nd respondent took advantage of these events to renege on the agreement to reinstate the appellant back to his position.
 - i. The 2nd respondent continued to remit the appellant's statutory deductions but was not paying the appellant any money in the form of salary.
 - j. The 2nd respondent by a letter dated 03.02.2021 wrote to the appellant, stating that the appellant had resigned, a claim the appellant disputes.
 - k. The appellant states that he was denied leave during his years of service and only enjoyed three annual leaves in a period of eleven years of service to the respondents.
 - l. Based on the letter dated 03.02.2021 the appellant filed his claim in the trial court, to which the respondent filed their response and raised a preliminary objection dated 02.06.2023.
6. On the part of the 2nd respondent it was stated that in response to the claim filed in the trial court, it filed a Notice of Preliminary objection dated 02.06.2023 seeking the striking out of the appellant's claim on the grounds that:
 - a. The appellant's cause of action took place on 05.10.2018 and 30.10.2018 and the same is time barred.
 - b. The court has no jurisdiction to hear the matter, being allegations about breach of employer-employee relationship; and
 - c. The suit be dismissed with costs to the respondents.
 7. On 14.12.2023 the trial court delivered its ruling on the preliminary objection, finding the preliminary objection as having merit and thereby denying the court jurisdiction under the provisions of section 90 of the *employment act*.
 8. Dissatisfied by the ruling, the appellant filed the memorandum of appeal herein.
 9. This is a first appeal and the role of the Court is to reevaluate the evidence and arrive at conclusions one way or the other bearing in mind it did not by itself take the evidence. The decision of the trial Court ought not be disturbed unless shown it misdirected itself and thereby arrived at conclusions that were not just or correct.
 10. The Court has considered the parties' respective cases. The main issue in the appeal is whether the trial Court erred in finding that the suit was time barred under section 90 of the *Employment Act*, 2007 and thereby proceeding to strike it out. The appellant's pleading was that he was dismissed per letter dated 30.10.2018 and effective 05.10.2018, the date he had been suspended. After the dismissal, the appellant never resumed duty despite internal process under which a reinstatement was promised but never implemented. The Court finds that despite the internal process that yielded no favourable implementation, the appellant at all material times knew that he had been dismissed effective 05.10.2018 per dismissal letter of 30.10.2018. It appears to the Court that despite the internal processes of reinstatement which in fact never got implemented, the parties stood separated and freed from



the contract of employment as communicated on 30.10.2018. Thus, the three years of limitation of action under section 90 of the *Employment Act*, 2007 had lapsed on 30.10.2021 while the suit was filed belatedly on 16.05.2023. Confirming the cause of action as pleaded, the demand letter by Priscillar Kioko & Associates date 11.03.2022 stated in part thus “That our client was working as a Reverend in your D.C.C and was unlawfully suspended on 5th October, 2018 without lawful cause or justifiable grounds and in contravention of the Employment Acts of which are known to you.” In the statement of claim, the appellant pleaded that he had been unlawfully dismissed by the letter dated 30.10.2018.

11. The Court finds that the trial Court did not err in stating and finding that the appellant had a clear cause of action when his contract was terminated in October 2018 because he had all facts about his grievance but failed to file the suit prior to lapsing of the period of limitation of three years by filing the suit on or before 30.10.2018.
12. The preliminary objection is found to have been proper as based upon undisputed pleaded fact that the appellant was dismissed by letter dated 30.10.2018 and further raised a pure point of law, that the statutory time of limitation of three years had lapsed as at the time the appellant filed the suit. Accordingly, the ruling by the trial court allowing the preliminary objection is upheld.

In conclusion the appeal is hereby dismissed with costs and the Deputy Registrar to return the case file to the Machakos Sub-registry forthwith as the same is closed.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 12TH JUNE, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

