



**Ali v Multimedia University College of Kenya (Employment and Labour Relations
Petition E139 of 2024) [2025] KEELRC 1669 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1669 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E139 OF 2024**

HS WASILWA, J

JUNE 5, 2025

BETWEEN

SHUWEKA K. ALI PETITIONER

AND

MULTIMEDIA UNIVERSITY COLLEGE OF KENYA RESPONDENT

(Before Hon. Lady Justice Hellen Wasilwa, J)

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 16th October 2024 seeking orders that: -
 1. Spent
 2. the Court be pleased to grant leave to file suit against the Respondent out of time, the limitation of actions period having lapsed.
 3. costs be in the cause

Petitioner/Applicant's Case

2. The Petitioner avers that she was summarily dismissed by the on 31st January 2006
3. The Petitioner avers that the Respondent abandoned her in London where she was on scholarship causing her to experience severe stress and develop high pressure and she subsequently suffered a debilitating stroke due to the Respondent's neglect. The stroke resulted to a permanent disability that significantly impacted her health and ability to initiate legal proceedings or instruct counsel to act on her behalf.
4. The Petitioner avers that the stroke caused cognitive impairments that left her incapacitated and she required a lengthy recovery period before legal action could pursued.



5. The Petitioner avers that she was away in London during her illness and upon recovery she instructed an advocate to commence litigation but they lied and never filed any court process.
6. It is the Petitioner's case that the statutory time for filing the suit has since expired but the delay was not deliberate thus it is only fair that the time for filing is extended to enable the Petitioner claim damages for summary dismissal.
7. The Petitioner avers that the delay is neither inordinate nor intentional and unless the prayer for enlargement of time is granted, she will suffer prejudice and miscarriage of justice as her right to fair labour practices was infringed and she has never had her day in court.

Respondent's Case

8. In opposition to the Application, the Respondent filed a Preliminary Objection dated 6th January 2025 on grounds that:
 1. This court lacks jurisdiction under the law to entertain interrogate and determine the Petition as the same is time barred, the substratum thereof having filed outside the provided time limit.
 2. The petition herein is filled out of time allowed under Section 90 of the Employment Act, hence the court lacks the requisite jurisdiction to entertain the matter in its present form.
 3. The petition herein as filed does not meet the threshold of constitutional petition.
 4. The petition is bad in law, frivolous, vexatious and amounts to gross abuse of the court process.
9. The Respondent further filed a replying affidavit dated 4th March 2025, sworn by Wilson Kagwe, the Respondent's Legal Officer.
10. The Respondent avers that the Petitioner was justly and legally dismissed from employment on 31st January 2006 and its now more than 18 years later that she had filed the petition. Further, she did not attach any evidence challenging the Respondent's decision.
11. The Respondent avers that Section 90 of the Employment Act regulates the limitation time in Employment contracts to 3 years and Section 4 (1) of the Limitation of Actions Act is not applicable and the Petitioner cannot be heard after lapse of more than 18 years. Section 4 (1) of the Limitation of Actions Act was partially amended by Section 90 of the Employment Act which provides for a limitation of 3 years with no provision for extension of time to bring a claim out of time.
12. The Respondent avers that this Court has no jurisdiction to extend time to commence claims arising out of contract, employment contracts included once time has expired or lapsed.
13. The Respondent avers that the Employment Act has no provision for grant of leave to institute claims out of time or extend time within which to commence such action.
14. It is the Respondent's case that the Petitioner filed the petition instead of a claim in order to circumvent the limitation of time. The Employment Act regulates the right of fair administrative action and fair hearing and the petitioner therefore should not be allowed to avoid the provisions of the Employment Act by merely quoting constitutional provisions.

Petitioner/Applicant's Submissions

15. The Petitioner submitted that enlargement of time is governed by Order 50 Rule 6 of the Civil Procedure Rules which reads that: "Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall



have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

16. She further relied on Section 22(i) of the *Limitation of Actions Act* which states: “If, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of six years from the date when the person ceases to be under a disability or dies, whichever event first occurs, notwithstanding that the prescribed period of limitation has expired: Provided that this section does not affect any case where the right of action first accrues to a person who is not under a disability and through whom the person under a disability claims.”
17. The Petitioner submitted that the principles governing an ex-parte application in respect to leave to file a suit out of time were set in the Supreme Court case of *County Executive of Kisumu v County Government of Kisumu & 8 others* (Civil Application 3 of 2016) [2017] KESC 16 (KLR) (Civ) (12 April 2017) where it was held:

“the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
18. It is the Petitioner/Applicant’s submission that the delay in filing the suit was inadvertent and owing to unavoidable circumstances being that shortly after her summary dismissal, the Petitioner suffered a stroke resulting to cognitive impairments that rendered her incapable of initiating legal proceedings or instructing legal counsel to do so on her behalf. Further, upon recovery, she instructed an advocate to commence litigation but they lied and never filed any court process.
19. The Petitioner/Applicant relied in *Mtana Lewa v Kabindi Ngala Mwagandi* [2015] KECA 532 (KLR) who held:

“Further safeguards are provided in Sections 22 and 26 of the *Limitation of Actions Act*. The former prevents time from running on account of disability in which case the action can



be brought before the end of 6 years from the date when the person ceases to be under a disability.”

20. The Petitioner/Applicant submitted that she experienced a stroke which caused permanent disability and due to the lengthy recovery period, it was beyond her control to pursue legal action against the Respondent within the statutory time limit.
21. The Petitioner/Applicant submitted that the Respondent will not be prejudiced if the application is allowed and urged the court to exercise its discretion in her favour and grant her the opportunity to have her day in court.
22. It is the Petitioner’s submission that the Respondents erroneously relied on Section 89 of the Employment Act, however, the substantive claim is a constitutional claim grounded in the violation of the Petitioner’s fundamental rights and freedoms, therefore, the limitation stipulated in the Employment Act pertaining primarily to contractual employment disputes are inapplicable.
23. The Petitioner submitted that the petition articulates grave violations of her rights under Article 47 of the Constitution on fair administrative action as the circumstances surrounding her dismissal were replete with procedural irregularities denying her the fundamental right to fair administrative process.

Respondent’s Submissions

24. The Respondent submitted that the Petitioner’s case stems from her employment with the Respondent hence the primary statute in determining the constitutional petition is the Employment Act as held in Gabriel Mutava, Elizabeth Kwini & Mary Martha Masyuki v Managing Director Kenya Ports Authority & Kenya Ports Authority [2016] KECA 411 (KLR): “In employment matters, such as was the case here, the contract of employment should have been the entry point. The terms and conditions of employment in the contract, govern the employment relationship, except to the extent that the terms are contrary to the law; or have been superseded by statute. Certainly, invoking the constitutional route in the circumstances of this case was misguided. The Constitution should not be turned into a thoroughfare for resolution of every kind of common grievance.....
..... In this country, we have all along had legislation governing employment, the latest being the Employment Act, 2007. When the appellants filed their Petitions, the pre-2007 Employment Act, was in force.”
25. The Respondent submitted that Section 90 of the Employment Act now Section 89 of the Employment Act clearly shows that it is couched in mandatory terms. Section 4(1) of the Limitation of Action Act applies in respect of Section 90 of the Employment Act now Section 89, consequently, the Petitioner is time barred from filling the instant claim disguised as a constitutional petition.
26. I have examined all the averments and submissions of the parties herein. There are basically two issues to be determined by this court:-
 1. Whether this court has the jurisdiction to grant orders sought.
 2. Whether the orders so sought are capable of being granted.



Issue No 1

27. The respondents have submitted that section 90 of the Employment Act (now section 89) is couched in mandatory terms and stats 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 or in the case of continuing injury or damage within twelve months next after the cessation thereof.

28. The respondents aver that the section is clear that the court cannot enlarge time within which a claim arising out of an employment claim must be filed. The petitioner has on the other hand cited the Civil Procedure Act Order 50 Rule 6 which grants court power to enlarge such time upon such term (if any) as the justice of the case may require. The petitioner /applicant also cited section 22(1) of the Limitation of Acts Act (supra) which grants an exception in case the person to whom it accrues is under a disability.
29. The Court of Appeal in Mtana Lewa vs Kabindi Ngala Mwangandi (2015) KECA 532 (KLR) also indicated that in case of a disability time may stop running and the action can be brought before the end of 6 years from the date when the person ceases to be under disability. My reading of section 89 of Employment Act together with order 50 rule 6 of the Civil Procedure Act together with the cited Court of Appeal authority give an indication that the courts hands are not tied up and there are indeed instances when this court may enlarge time for filing a claim but this is based on a case by case scenario.

Issue No 2

30. Given that the court has a discretion to enlarge time in case of a disability, can this court then grant the orders sought? The applicant has averred that he did not file the claim against the respondent in time because he fell sick with a stroke and took time to heal.
31. The respondents have not denied this fact and the issue before court is not a purely employment claim but a petition alleging breach of constitutional rights.
32. In the circumstances of the case, I exercise my discretion and find that the orders being sought to enlarge time within which the petitioner can file his petition are allowed. The applicant has 14 days to file his suit accordingly.
33. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

