



Kamore v Kenya Power and Lighting Co. Ltd (Employment and Labour Relations Cause E617 of 2024) [2025] KEELRC 2235 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2235 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E617 OF 2024**

SC RUTTO, J

JULY 25, 2025

BETWEEN

MICHAEL GAKINYA KAMORE CLAIMANT

AND

KENYA POWER AND LIGHTING CO. LTD RESPONDENT

RULING

1. What is before this Court for determination is the Respondent's Notice of Preliminary Objection dated 27th December 2024, primarily based on the ground that this Court lacks jurisdiction to hear and determine this suit by dint of Section 90 of the *Employment Act*, 2007 and Section 3 [1] and [2] of the *Public Authorities Limitations Act*, Cap 39.

Submissions

2. The Preliminary Objection was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to their respective submissions.

Analysis and Determination

3. To my mind, the singular issue for determination is whether the suit herein is time-barred.
4. The Claimant has pleaded in paragraph 13 of the Memorandum of Claim dated 27th May 2024 that he was terminated from employment effective 9th February 2021.
5. Pursuant to Section 90 of the *Employment Act*, a suit founded on a contract of service as the one herein cannot be sustained in Court after the lapse of three years from the date the cause of action occurred. That being the case, the logical question to ask is when did the cause of action arise in this case?
6. A cause of action refers to a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. On this score, the Court will follow the decision of the



Court of Appeal in the case of *Attorney General & another v Andrew Maina Gitthinji* [2016] eKLR, where it was held as follows: -

“The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not...having found that the cause of action arose on 2nd February, 2010 and that the claim was filed on 16th June, 2014 it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was barred as at 1st February, 2013, and I so hold.”

7. Applying the finding in the aforementioned precedent to the case herein, it is apparent that the cause of action arose on 9th February 2021 when the Claimant was terminated from employment as opposed to 3rd April 2024 when the appeal against his termination was determined.
8. Indeed, as of 9th February 2021, when the Claimant was terminated from employment, he had a clear cause of action against Respondent as he had all the facts he required to institute legal proceedings against the Respondent for unfair termination from employment. In essence, the cause of action had crystallized.
9. Applying the provisions of Section 90 of the *Employment Act* to the case herein, it follows that the time for filing the instant suit started running from 9th February 2021 and lapsed on 9th February 2024 or thereabout. Thereafter, no action based on the contract of employment could be sustained.
10. In this case, the Claimant filed the Claim herein on 6th August 2024, which was clearly beyond the three year limitation period stipulated under Section 90 aforesaid. Therefore, it goes without saying that as of 6th August 2024, the Claim herein was statute-barred.
11. It must also be appreciated that Section 90, aforementioned, is couched in mandatory terms. Indeed, it may very well be said that the provision is cast in stone and the limitation period is not subject to extension.
12. The Court concurs with and is bound by the sentiments of the Court of Appeal in the case of *Beatrice Kabai Adagala v Postal Corporation of Kenya* [2015] eKLR, where it was expressed thus:

“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.”
13. As was further held in the case of *Thuranira Karauri v Agnes Ncheche* [1997] eKLR, the issue of limitation goes to the court’s jurisdiction. Therefore, this Court lacks jurisdiction to entertain the instant suit.
14. In the premises, the Respondent’s Preliminary Objection dated 27th December 2024 is sustained, with the consequence that the Claim filed on 6th August 2024 is struck out for being time-barred.
15. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

STELLA RUTTO

JUDGE



In the presence of:

Mr. Mbugua instructed by Mr. Mbiyu for the Claimant

Mr. Muchai for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159[2][d] of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* [Chapter 21 of the Laws of Kenya] which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

