



**Ogoda (Suing o Behalf of the Estate of Gordon Ogada Ochieng (Deceased)) v Kenya Railways Corporation (Cause 97 of 2013) [2025] KEELRC 2185 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2185 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 97 OF 2013**

**L NDOLO, J  
JULY 24, 2025**

**BETWEEN**

**DAMARIS AUKO OGODA ..... CLAIMANT  
SUING O BEHALF OF THE ESTATE OF GORDON OGADA OCHIENG  
(DECEASED)**

**AND**

**KENYA RAILWAYS CORPORATION ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This claim is brought by Damaris Auko Ogoda, on behalf of the Estate of Gordon Ogada Ochieng. The claim was commenced on 12<sup>th</sup> November 2012, amended on 26<sup>th</sup> May 2016 and further amended on 18<sup>th</sup> January 2022.
2. The matter proceeded to trial where Damaris Auko Ogoda, Judith Aluoch Ogada and Joseph Mwangi testified for the Claimant. The Respondent called its Senior Human Resource Assistant, Richard Koskei. Thereafter, the parties filed written submissions.

**The Claimant's Case**

3. It is pleaded that Gordon Ogada Ochieng was an employee of Kenya Railways Corporation from 5<sup>th</sup> February 1969 until his retirement on 31<sup>st</sup> December 2003, having served the Corporation for 34 years.
4. At the time of retirement, Ochieng held the position of Chief Electrical and Communication Engineer, Job Group R.C 1.



5. The Claimant's case is that at the time of his death on 27<sup>th</sup> June 2008, Ochieng had not been paid his dues in full. It is pleaded that upon his retirement, the deceased was paid gratuity in instalments of Kshs. 10,000 which stopped.
6. According to the claim, the deceased was entitled to the following:
  - a. Transport to his home;
  - b. Computation of housing factor;
  - c. Gratuity payment.
7. The claim is tabulated as follows:
  - a. Kshs. 10,000 as transport costs;
  - b. Housing factor (Kshs. 250 per month x 34 years x 12 months)=102,000;
  - c. Gratuity payment at Kshs. 383,520;
  - d. Costs plus interest.

### **The Respondent's Case**

8. In its Statement of Defence dated 3<sup>rd</sup> April 2017, the Respondent states that the deceased was not pensionable and was paid his gratuity in full, in addition to his other entitlements upon retirement.
9. Moreover, the Respondent terms the claim as incompetent on account of limitation of action.

### **Findings and Determination**

10. The first issue for determination in this case is whether the Claimant's claim is statute barred. In the Court of Appeal decision in *Maersk Kenya Limited v Murabu Chaka Tsuma* [2017] eKLR it was affirmed that with regard to employment claims arising prior to the enactment of the *Employment Act, 2007* the applicable limitation law is the *Limitation of Actions Act*.
11. The Respondent submits that the claim was brought long after the lapse of the six-year statutory period set out in Section 4(1) of the *Limitation of Actions Act*, which provides as follows:
  1. The following actions may not be brought after the end of six years from the date on which the cause of action accrued:
    - a. Actions founded on contract
    - b. ...
12. In the submissions filed on behalf of the Claimant, an attempt was made to argue that the accrual of the cause of action did not coincide with the retirement date of Gordon Ogada Ochieng. This argument is however at variance with well-established jurisprudence.
13. In its decision in *Benjamin Wachira Ndiithi v Public Service Commission & another* [2014] KEELRC 1060 (KLR) this Court stated the following:

“On the accrual date of the cause of action which has a direct bearing on running of time, the Claimant takes the view that the cause of action in his case did not accrue until 8<sup>th</sup> August 2006 when he was notified that his employment file had been closed, thus dashing any hopes of his reinstatement to the public service.



This Court has however taken a different view on this matter in the case of Hilarion Mwabolo vs Kenya Commercial Bank [2013] eKLR to the effect that accrual of the cause of action in a claim emanating from an employment contract takes effect from the date of termination as stated in the letter communicating the termination.”

14. It is my considered view that the above reasoning would apply in all forms of termination of the employment relationship, including retirement as in the case now before me.
15. That said, I find and hold that the accrual date of the cause of action in these proceedings is 31<sup>st</sup> December 2003, when Gordon Ogada Ochieng retired from the Respondent’s service. The claim filed in 2013 was therefore way out of time.
16. As to whether the Court has any leeway to extend time, I am bound by *Divecon v Samani* (1995-1998) EA 48 where the Court of Appeal declared that no court has authority to extend time within which a suit based on contract may be filed.
17. With the foregoing in view, this is the end of the road for this claim. Having been filed out of time, I have no jurisdiction to delve into its merits.
18. In the result, I proceed to strike out the claim with an order that each party will bear their own costs.
19. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Onyango for the Claimant

Mr. Kimathi for the Respondent

