



Musungu v Spreadmarketing Consulting Agency Limited (Employment and Labour Relations Cause E020 of 2025) [2025] KEELRC 2108 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2108 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E020 OF 2025**

**AN MWAURE, J
JULY 18, 2025**

BETWEEN

VENNA IJAYA MUSUNGU CLAIMANT

AND

SPREADMARKETING CONSULTING AGENCY LIMITED RESPONDENT

RULING

Introduction

1. The Claimant commenced this suit vide a Statement of Claim dated 31st March 2025, seeking the following orders:
 - a. A declaration that the termination of the Claimant's employment was unjustified, unfair and unlawful.
 - b. An award of compensation for unfair and unlawful termination, equivalent to 12 months' gross pay, being Kshs.3,127,224/= or such amount as the court may deem fair.
 - c. An order for payment in lieu of annual leave days not wilfully taken, being Kshs.138,987.00/=
 - d. An order for payment of Kshs.25,000/= unlawfully deducted from the Claimant's March salary.
 - e. An order for payment of house allowance, with interest from the months payable.
 - f. Interest on the amounts above at court rates from the date of judgment until payment in full.
 - g. Costs of the Claim, with interest from the date of Judgment; and
 - h. Any other relief the court may deem fit to grant.



Respondent's Preliminary Objection

2. The Respondent, through the firm of Munene & Company Advocates, filed a Preliminary Objection dated 13th April 2025 seeking to have the Claimant's claim struck out or dismissed on the following grounds that:
 - a. The suit as filed in the Claimant's Memorandum of Claim is time-barred by statute, offends section 90 of the *Employment Act*, and the Honourable Court lacks jurisdiction to hear and determine this suit.
 - b. The suit is incompetent, bad in law, and an abuse of the court process.
 - c. The suit ought to be dismissed with costs.

Claimant's replying affidavit to the Preliminary Objection

3. The Claimant opposed the Preliminary Objection vide a replying affidavit sworn by Anthony Leshan, the Claimant's Advocate, dated 6th July 2025.
4. The deponent avers that the Respondent raised two issues of fact which include when the Claimant's suit was filed, and whether it was filed out of time.
5. The deponent avers that the Respondent argued that the Claimant filed the suit on 1st April 2025, and according to section 90 of the *Employment Act*, the Claimant ought to have filed the claim on 31st March 2025.
6. The deponent avers that the Respondent's Preliminary Objection is being challenged by asserting that it is neither based on a pure point of law nor capable of disposing the matter at the preliminary stage, as defined in the landmark case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors (1969) EA 696 as which was cited by the Supreme Court case in Hassan Ali Joho & Another V Suleiman Said Shahbal & 2 Others, Petition No. 10 of 2013, which emphasized that a preliminary objection must raise a clear point of law and not factual questions requiring evidentiary analysis.
7. The deponent avers that the issue of when the Claimant filed her suit, alleged to be on 28th March 2025 by the Judiciary's E-Filing System, is a factual matter, not a point of law, and requires reference to external evidence such as platform logs and email communications.
8. The deponent clarified that the pleadings were lodged on 31st March 2025, supported by screenshots and correspondence with ICT Judiciary, showing that while the system accepted filing that day, it failed to generate the payment invoice until 1st April 2025. Notably, 31 March 2025 was a public holiday, meaning the final day for filing would legally shift to 1st April 2025, rendering the claim timely under the law.
9. The deponent avers that the filing timelines commenced on 1st April 2022 and concluded on 1st April 2025, consistent with the three-year limitation period. Moreover, the Claimant had previously filed a similar claim under ELRC (Nairobi) E646 of 2022, dismissed not on merit but for non-attendance.
10. The deponent avers that, given that the Respondent's objection relies on disputed facts and not purely legal grounds, it should have been raised via a Notice of Motion, not as a Preliminary Objection.
11. Consequently, the deponent argues that the objection is procedurally and substantively defective, and therefore should be dismissed with costs.
12. Parties canvassed the Preliminary Objection by way of written submissions.



Respondent's written submissions

13. The Respondent submitted that the claimant's delay in filing the suit until 1st April 2025, more than three years after the cause of action arose, renders the claim time-barred under section 90 of the *Employment Act*. This statutory limitation deprives the court of jurisdiction to hear the matter. As Nzioka wa Makau J held in *Mutuku V Multichoice Kenya Limited & Another* [2024] KEELRC 1028 (KLR), the purpose of limitation is to prevent litigation where "witnesses are gone, memories faded and documents misplaced eternally." Further, the doctrine of *ignorantia juris neminem excusat* (ignorance of the law excuses no one) applies squarely, as the claimant was expected to know and act within the legal timeframe.
14. The Respondent relied on the Court of Appeal in *Phoenix of EA Assurance Co. Ltd V SM Thiga t/ a Newspaper Service* [2019] eKLR reaffirmed that a suit filed without jurisdiction is "dead on arrival" and must be struck out. The Respondent submitted that the claimant, therefore, sat on her rights too long, and her suit amounts to an abuse of court process and ought to be dismissed.
15. For costs, the Respondent relied on section 27(1) of the *Civil Procedure Act* that costs follow the event and Judicial Hint on Civil Procedure at page 94, which provides that:

"The object of ordering the party to pay costs is to reimburse the successful party for the amount expended on the case. It must not be made merely as a penal measure..... Costs are means by which a successful litigant is recouped for expenses to which he has been put in fighting the action."
16. The Respondent submitted that the Claimant has failed to file the claim within the appropriate timeline and has wasted this Honourable Court's time, and urged that costs be awarded to it.

Claimant's written submissions

17. The Claimant relied on section 90 of the *Employment Act*, which provides for time limitation of filing a claim should be filed within 3 years. The Claimant submitted that filing the claim for her termination of her contract, which is the subject matter, was done on 31st March 2022. The Claimant argued that three years next after the termination of the Claimant's employment began on 1st April 2022, which was the day next following the day on which the impugned act was committed, and ended on 1st April 2025.
18. The Claimant submitted that her suit is not time-barred, as it was filed within the statutory three-year limitation period under section 90 of the *Employment Act*. The cause of action arose on 31st March 2022, and per section 57(a) of the *Interpretation and General Provisions Act*, computation of time excludes the day the event occurred, meaning time began on 1st April 2022 and expired on 1st April 2025. Although filing fees were paid on 1st April 2025 due to a public holiday and system outage on 31st March 2025, which was an excluded day under sections 57(b) and 57(c) of the *Interpretation and General Provisions Act*, the pleadings were lodged on 31st March 2025, confirming the timely initiation. Therefore, regardless of whether time began on 31st March or 1 April 2022, the claim was filed within the limitation period, and jurisdiction of the Employment and Labour Relations Court is properly invoked.
19. The Claimant relied on the case of *Hassan Ali Joho and Another V Suleiman Said Shahbal & 2 others*(supra) the Supreme Court cited the landmark case of *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors* (1969) EA 696 where court stated that a preliminary objection consists of a



point of law evident from the pleadings. It is intended to potentially dispose of the entire suit without delving into factual disputes or judicial discretion. Examples include objections to court jurisdiction, pleas of limitation, or arguments that parties are bound to arbitration by contract. It resembles a traditional demurrer and assumes all facts presented by the opposing party are true.

20. The Claimant argued that the Respondent's preliminary objection is deemed both incompetent and without merit because it raises questions of fact, specifically, the date the claim was filed, which requires reference to external evidence beyond pleadings and cannot be resolved as pure points of law.
21. The Claimant submitted that such issues should have been pursued via a formal motion. Furthermore, the preliminary objection relies on an inaccurate computation of time inconsistent with relevant statutory provisions, overlooking that the claim was properly lodged on 31st March 2025.
22. Consequently, the Claimant urged this Honourable Court to dismiss the said Preliminary Objection with costs.

Analysis and determination

23. The court has considered the preliminary objection, replying affidavit and rival submissions by both counsels; the issue for determination is whether the preliminary objection is meritorious.
24. As alluded to in the earlier part of the ruling landmark case of Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors (supra) as cited in the Supreme Court case of Hassan Ali Joho and another V Suleiman Said Shahbal & 2 others(supra), explaining what pertains in a preliminary objection.
25. Section 89 of the [Employment Act](#) provides as follows:

“Notwithstanding the provisions of section 4(1) of the [Limitation of Actions Act](#) (Cap. 22), no civil action or proceedings based on 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.”
26. In this instant case, the Claimant alleges that she was terminated on 31st March 2022, and the Memorandum of claim before this Honourable Court was filed on 1st April 2025. From the above provisions of section 89 of the [Employment Act](#), any person filing a claim before the Employment and Labour Relations Court should do so within the three-year period. The claim is however stamped 30th April 2025 with the court stamp.
27. The case tracking document annexed by the Claimant as exhibit 1 showed documents were lodged for filing on 28th March 2025 though Claimant clarifies they lodged them on 31st March 2025. Claimant 's Counsel says the invoice was not generated for payment that same day.
28. The Claimant Counsel took a screenshot of the platform and raised a complaint with ICT judiciary. The Claimant says on 1st April 2025 he secured a message from Judiciary E-filing system informing him he could pay the filing fees. He says he paid for the pleadings on 1st April 2025.
29. He says the judiciary system was down from 28th March to 1st April and further 31st March 2025 was a Public holiday (IDI FITR) and so he could not go to the Registry to pay the filing fees manually.
30. The court has seen evidence that indeed the E-filing system had challenges on those days. The court finds it is unfair to throw out the Claimants suit due to circumstances that were beyond her control.



The court will be guided as well by article 159(2)(d) of *the Constitution* that justice will be administered without undue regard to technicalities.

31. The court is cognisant that if a suit is time barred Section 90(now 89) of *Employment Act* has no room for any consideration but to dismiss the same. But this particular one was filed within the time albeit almost too late. It is risky to wait and file the suit the last hour as anything can go wrong.
32. In this case the court holds the case was filed within time and so holds the preliminary objection is not merited and so is dismissed.
33. Costs will be in the cause.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 18TH DAY OF JULY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

