



**Njoroge v Equity Bank Kenya Limited (Cause E408 of 2023)
[2024] KEELRC 355 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 355 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E408 OF 2023
SC RUTTO, J
FEBRUARY 23, 2024**

BETWEEN

MORRISON KANIU NJOROGE CLAIMANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

RULING

1. The Claimant instituted the instant suit through a Statement of Claim dated 16th March 2023, in which he avers that he was employed by the Respondent on full time and permanent basis in the position of Relationship Officer on 18th June 2012. He further avers that he served diligently and professionally and that his salary was subsequently reviewed and in 2018, he was promoted to the position of Assistant Relationship Manager Education Sector.
2. The Claimant further avers that on 25th February 2020, he was served with a letter that he had made high mileage claims. On 6th March 2020, he attended a disciplinary hearing but contends that he was not given adequate opportunity to defend himself as he was not provided with details of the specific incident of irregularity as was claimed by the Respondent.
3. On 31st March 2020, he received a letter terminating his employment and he was given 14 days to appeal. He appealed and his termination was confirmed on 11th June 2020.
4. It is against this background that the Claimant has sought several reliefs against the Respondent including compensatory damages, bonus earned in 2019 that was allegedly paid and reversed by the Respondent, together with unpaid promotion pay from 2014 to 2020.
5. Upon being served with the Claim, the Respondent filed a Response to the Statement of Claim and a Notice of Preliminary Objection dated 24th August 2023, premised on the following grounds:



- i. The Claimant's suit is statutorily time barred by dint of Section 90 of the *Employment Act*, No 11 of 2007 having not been commenced within three years next after the act, neglect or default complained of.
 - ii. The suit is incompetent, fatally defective and an abuse of the Court process.
6. It is that Preliminary objection that now comes for determination.

Submissions

7. On 6th November 2023, the Court directed that the Preliminary Objection be canvassed by way of written submissions. The Respondent submitted that the cause of action arose in March 2020 upon the Claimant's termination from employment hence pursuant to the provisions of Section 90 of the *Employment Act*, the Claim became time barred in March 2023. It was further contended that the Claimant filed his Claim on 23rd May 2023 and therefore had no capacity to bring any cause against the Respondent in respect of termination of his employment as he was time barred.
8. The Claimant did not file written submissions as the same were missing from the Court's physical record and the online portal.

Analysis and Determination

9. Evidently, the issue for determination at this juncture, is whether the suit is time barred by dint of Section 90 of the *Employment Act*.
10. Section 90 of the *Employment Act* which is the operative part in this case is couched as follows: -

[90] 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 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.
11. In essence, a mandatory time bar of three (3) years is placed on matters arising out of the *Employment Act* or on a contract of service, as the one herein.
12. What this means is that a matter becomes time-barred if it is not filed within three (3) years from the date the cause of action arose.
13. Turning to the instant case, the Claimant avers in his Statement of Claim that he received a letter terminating his employment on 31st March 2020. Fundamentally, this is the date the cause of action arose seeing that it is then, that the Claimant was notified of the severance of the employment relationship.
14. The Court of Appeal in *Attorney General & another v Andrew Maina Gitinji & another* [2016] eKLR, determined that a cause of action is simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person.
15. Therefore, a cause of action arises on the date when a person becomes entitled to complain against another person. In this case, that date was 31st March 2020 and from then on, the Claimant had all the right to move the Court as appropriate and seek a remedy.
16. Revisiting the record, it is clear that this matter was filed on 23rd May 2023. Applying the provisions of Section 90 of the *Employment Act* to the case herein, it is not in doubt that by then, the claim was time-



barred and the Claimant had lost the right to bring the claim against the Respondent by operation of law.

17. As was held in the case of *Thuranira Karauri v Agnes Ncheche* [1997] eKLR, the issue of limitation goes to the Court's jurisdiction. Consequently, the issue of limitation ultimately determines whether the Court has jurisdiction to deal with the matter. As I have found that the instant suit is time-barred, I am deprived of jurisdiction to determine the same.

18. Still on jurisdiction, I am bound by the finding in the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, where Nyarangi JA (as he then was) rendered himself thus:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

19. In view of the above binding authority, and having found that the matter herein is time-barred, I cannot help but down my tools as this Court lacks the jurisdiction to proceed further with the determination of this matter.

20. Accordingly, the Claim herein is struck out for being time-barred.

21. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms. Kithinzi instructed by Mr. Kinuthia

For the Respondent Ms. Waceke instructed by Mr. Odongo

Court Assistant Millicent Kibet

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

