



Wanjohi v County Government of Kiambu & another (Cause E103 of 2023) [2024] KEELRC 348 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 348 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E103 OF 2023
DKN MARETE, J
FEBRUARY 21, 2024**

BETWEEN

MAURICE JOHN WAITHAKA WANJOHI CLAIMANT

AND

COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

KIAMBU COUNTY REBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. This matter is an application by way of a Preliminary Objection dated 30th June, 2023. It comes out as follows;
 1. The Claimant's cause of action being founded on an employment contract is barred by effluxion of time by dint of Section 90 of the Employment Act, No. 11 of 2007 [Revised 2022] Laws of Kenya, thus this Honourable Court does not have the requisite jurisdiction to hear and determine this suit.
 2. The Claimant's Claim is bad in law, incurably defective and as such should be dismissed with costs appurtenant to the Respondents.
2. The Respondent's case and submissions is that by a memorandum of claim dated 9th February, 2023 it is pleaded that the claimant was an employee of the Respondent since 1st September, 2017 when he was appointed to the position of legal advisor - office of the Governor. He was later appointed County Attorney on 5th October, 2018 on a salary of Kshs.404,250.00 being the equivalent pay for a month inclusive of allowances.
3. The claimant's serviced were terminated on 15th March, 2020 pursuant to appropriate disciplinary procedure. She submits that the cause of action arose in March 2020 where else the suit was filed



in February, 2023, four years down the line. Per section 90 of the *Employment Act*, the period of instituting the claim has lapsed and this court lacks discretion to extend time in the circumstances.

4. The Respondent again seeks to rely on authority of *Peter Katithi Kitbome v Laboratory & Allied Limited* [2012] eKLR, where the court held that the provisions of section 90 of the employment Act as read with section 15 of the *Employment and Labour Relations Court Act* do not grant this Honourable Court Jurisdiction to extend time to institute an employment claim when time had lapsed. This is as follows;

“Accordingly, this Court is denied jurisdiction to extend time to file suit out of time pursuant to section 90 of the Employment and labour relations Court Act 2011. In the circumstances I do decline to accept the invitation by the applicant to grant leave to file the suit out of time and dismiss the application dated 4th March 2021...”

5. The Claimant/Respondent in rebuttal submits that the applicant’s submission on the time owing for cause 2020 to February, 2023 is a misconception of fact and or a deliberation attempt to mislead this court into dismissing the claim. Indeed, this time is approximately 2 years and 11 months well within the limitation period. He put it thus;

9. We urge this court to be guided by Section 57 of the *Interpretation and General Provisions Act* which provides as follows:

“57. Computation of time

In computing time for the purposes of a written law, unless the contrary intention appears –

- a. a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done:
- b. if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day:
- c. where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day:
- d. where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.”

10. Based on the above provision, the three years period within which the Claimant could file his claim lapsed on 16/03/2023 as illustrated below:

16/03/2020 – 16/03/2021 1st year

16/03/2021 – 16/03/2022 2nd year

16/03/2022 – 16/03/2023 3rd year

6. The Claimant/Respondent’s case takes away. It would appear that this application is based on a misapprehension of time by the Respondent/Applicant. There is serious flow on her baseline in the



computation of time leading to her reasoning and rationale in support of this application. It is clear and obvious that the periods of action squarely fell within the permissible limitation period in which the Claimant would have filed the claim.

7. This is an unfortunate application. It has put everyone into an unnecessary application of time.
8. I am therefore inclined to dismiss the application by way of preliminary objection with orders that each party bears their costs of same.

DELIVERED, DATED AND SIGNED THIS 21ST DAY OF FEBRUARY 2024.

D. K. Njagi Marete

JUDGE

Appearances:

1. Mr. Maroro hold brief for Miss Nguru instructed by County Attorney for the Objector.
2. Mr Odek instructed by S. Nganga Ndungu & Co. Advocates for the Claimant/Respondent.

