



**Makewa v Teachers Service Commission & another (Cause
8 of 2023) [2024] KEELRC 575 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 575 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE 8 OF 2023
B ONGAYA, J
MARCH 15, 2024**

BETWEEN

BONIFACE MUENDO MAKEWA CLAIMANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

DIRECTOR OF PENSION 2ND RESPONDENT

RULING

1. The 1st Respondent herein filed the Preliminary Objection dated 15.11.2023 through Sylvia Ngere, Advocate for TSC pursuant to the provisions of Section 90 of the [Employment Act](#), 2007 on grounds of law that the Claim herein dated 5th September, 2023 is statute barred.
2. The 1st Respondent argued the preliminary objection orally in court on 08.03.24. Counsel submitted that the claim is statutory barred since the claim was filed on 08.09.23 after the lapse of 3 years as provided for in section 90 of the [Employment Act](#).
3. That there was an appeal dismissed on 02.02.2018 and therefore time lapsed on 02.02.21.
4. The claimant stated that what they are seeking is a constitutional remedy and hence are not time barred and rely on their written submissions.

The Court has considered the preliminary objection and parties' respective positions. Section 90 of the [Employment Act](#) provides that for a claim based on dismissal or termination, the suit must be filed within three years from the date of such termination or dismissal. The petitioner's claim is based on the decision of dismissal with loss of pension. Obviously, the cause of action is time barred and the petition is merely calculated to avoid the time barring. It is an abuse of process. The petition is hereby dismissed with orders each party to bear own costs of the proceedings and file be returned to Machakos sub registry.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 15TH MARCH 2024.**

BYRAM ONGAYA

PRINCIPAL JUDGE

