



**Yunis v Ministry of Interior and Coordination of National Government & 2 others
(Cause 1147 of 2015) [2024] KEELRC 1116 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1116 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1147 OF 2015**

JK GAKERI, J

APRIL 29, 2024

BETWEEN

RASHID MOHAMED YUNIS CLAIMANT

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND COORDINATION
OF NATIONAL GOVERNMENT 2ND RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before the court for determination is the Respondent's Notice of Preliminary Objection dated 14th February, 2024 objecting to the Claimant's suit on the premise that;
 1. The suit is time barred contrary to Section 3(2) of the [Public Authorities Limitation Act](#), Cap 39 Laws of Kenya.
 2. The claim is in contravention of Section 90 of the [Employment Act](#), 2007.
 3. The cause of action arose on 13th February, 2013 vide the 2nd Respondent's letter of even date.
 4. Three (3) years four months and 17 days lapsed before the suit was filed.
 5. The Honourable Court lacks jurisdiction to hear and determine the matter.
 6. The Claimant's claim is a waste of court's time and an abuse of due process.
 7. The claim ought to be dismissed in its entirety with costs to the Respondent.



Response

2. In his Replying Affidavit sworn on 27th February, 2024, the Claimant avers that he reported at the Marakwet Civil Registry on 29th March, 2011 and no salary was paid for the month and on inquiry, a notice to show cause dated 28th March, 2011 was issued, allegedly for absconding duty on 16th March, 2011 and was dismissed on 12th February, 2012.
3. That the letter of dismissal accorded the affiant an option to appeal within 42 days from 13th February, 2011 and he appealed as the letters dated 23rd May, 2012 and 6th June, 2012 reveal.
4. That the appeal was successful as was the application for review.
5. The affiant deposes that he opted to pursue the claim after he had exhausted the other mechanisms as filing a suit during the pendency of proceeding before the commission would have been tantamount to wastage of judicial time.
6. That the Preliminary Objection was an attempt to delay finalization of the matter, is an afterthought and is brought in bad faith and ought to be dismissed.

Claimant's submissions

7. As to whether the Claimant's suit is statute barred, counsel relied on the history of the matter as deponed by the Claimant in the Replying Affidavit to submit that the Claimant filed the suit after exhausting all appeal channels and the fundamental question, according to counsel is when time started running.
8. Reliance was made on the provisions of Section 39(1)(b) of the *Limitation of Actions Act* on postponement of the running of time and the Claimant could not file a civil case while his matter was pending before the Public Service Commission.
9. Sentiments of the court in *BP Exploration Ltd V Chevron Shipping Co. (2003) 197* at p 214-215 on Scottish law are relied upon to reinforce the submission to urge that since the Respondents were responsible for the disciplinary mechanisms and appeals, they are estopped from relying on the limitation of actions as they were aware that the matter was still pending in mid-April 2014.
10. Counsel submitted that there was a deliberate attempt to miscalculate the time period within which the matter was filed to misdirect the court.
11. On the orders the court should grant, counsel submitted that the Preliminary Objection was intended to delay the conclusion of the case as the Memorandum of Claim was filed within time and hearing of the case should continue.

Determination

12. As to whether the Notice of Preliminary Objection dated 14th February, 2024 raises a competent Preliminary Objection, the homeport are the sentiments of the justices of Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696*, where Law JA stated;

“ . . . a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation



or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration. . .”

13. According to Sir Charles Newbold V P;

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion . . .”

14. The foregoing sentiments exemplify the foundation of the Respondent’s Notice of Preliminary Objection, namely; jurisdiction of the court to hear and determine the suit and limitation of time.

15. Needless to emphasize, a plea of limitation implicates the jurisdiction of the court to hear and determine the suit before it and it is thus a jurisdictional issue.

16. In the circumstances, the court is satisfied that the Respondent’s Notice of Preliminary Objection meets the threshold of a Preliminary Objection.

17. It is common ground that a Preliminary Objection raises a threshold issue which requires determination at the earliest instance as it has the potential to dispose of the suit at that stage.

18. In his Memorandum of Claim dated 1st July, 2015 filed on 26th August, 2015, the Claimant states that he received letter of dismissal from service dated 13th February, 2012 and avers and submits that the delay in filing in suit was occasioned by the Respondent’s appeal and review processes which he had to exhaust before filing the suit in court.

19. Strangely, the Claimant relies on the provisions of the *Limitation of Actions Act*, Cap 22, laws of Kenya to urge that the Respondents are estopped from pleading limitation of time notwithstanding the fact that the statute does not apply to employment disputes filed after 2nd June, 2008.

20. The law on limitation of actions is well settled.

21. Section 3(2) of the *Public Authorities Limitation Act* provides that;

No proceedings founded on contract shall be brought against the Government or a Local Authority after the end of three years from the date on which the cause of action accrued.

22. Similarly, Section 90 of the *Employment Act*, 2007 provides that;

“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 a continuing injury or damage within 12 months after the cessation thereof.”

23. Both provisions are couched in mandatory tone that no action lies three years from the date the cause of action accrues.

24. The foregoing provisions deny the court jurisdiction to hear and determine suits filed after three years from the date the cause of action arose owing to its centrality in law. Significantly, the issue of a court’s jurisdiction can be raised at any stage and it behooves the court to make a determination.



25. Courts have considered and determined the question when a cause of action for unfair termination or dismissal accrues or arises in an employment relationship.
26. In *George Hiram Ndirangu V Equity Bank Ltd (2015)* eKLR, the court held that a cause of action for unfair termination of employment accrues on dismissal.
27. Similarly, in *Attorney General & another V Andrew Maina Gitthinji & another (2016)* eKLR, the Court of Appeal held as follows;

“The Respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by the dismissal but they did not. Having found that the cause of action arose on 2nd October, 2010 and that the claim was filed on 16th June, 2014, it follows by simple arithmetic that the Limitation period of 3 years was surpassed by a long margin. The claim was time-barred as at 1st February, 2013 and I so hold.”
28. This position is fortified by the decision in *G4S Security Services (K) Ltd V Joseph Kamau & 486 others (2018)* eKLR where the Court of Appeal stated as follows;

“In the circumstances of this case, we find that the contracts of 464 respondents were terminated in 2008, 2009 and 2010 and the claim was filed in 2014. Pursuant to Section 90 of the *Employment Act*, the claims should have been filed within 3 years of the termination of employment. The claims in respect of the 464 Respondents were therefore time barred.”
29. The foregoing sentiments apply on all fours to the facts of the instant suit.
30. Although the Claimant avers and submitted that he could not file a suit while other processes were in progress, the submission lacks legal anchorage as thus loses its persuasive texture.
31. In *G4S Security Services (K) Ltd V Joseph Kamau & 468 others (Supra)*, the Court of Appeal held that;

“Time does not stop running on the commencement of reconciliation or other alternative dispute resolution mechanisms provided for under *the constitution* or any other law . . .”
32. See also *Rift Valley Railways (Kenya) Ltd V Hawkins Wagenza Musonye & another (2016)* eKLR and *Times Newspaper Ltd V O’Regan (1977)* I.R.L.R 101.
33. In *Gathoni V Kenya Co-operative Creameries Ltd Civil App. No. 122 of 1981*, Potter J. stated that;

“The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
34. In this case, it is evident that the Claimant did not exercise reasonable diligence.
35. Having admitted that his employment was terminated on 13th February, 2012 and the instant suit was filed on 26th August, 2015, a simple computation shows that the cause of action became statute barred on 12th February, 2015.
36. The suit herein was filed more than 6 months later.



37. As aptly captured by Nyarangi JA in Owners of Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd (1989), Jurisdiction is everything and without it, the court cannot proceed any further and must down its tools.
38. For the foregoing reasons, the court is satisfied that the Respondent’s Preliminary Objection is merited and the Claimant’s suit is accordingly struck out on the ground that it is statute barred.
39. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 29TH DAY OF APRIL 2024

DR. JACOB GAKERI

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.

DR. JACOB GAKERI

JUDGE

