



**Mutiso v Kenya Law Reform Commission (Cause E429 of 2023)
[2024] KEELRC 1063 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1063 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E429 OF 2023**

**L NDOLO, J
APRIL 25, 2024**

BETWEEN

WINFRED WAVINYA MUTISO CLAIMANT

AND

KENYA LAW REFORM COMMISSION RESPONDENT

RULING

1. By her Statement of Claim dated 17th February 2023, the Claimant challenges her retirement from the Respondent’s employment, on the ground that she is a person living with disability whose retirement age ought to be 65 years.
2. The Respondent filed a Reply dated 11th July 2023 and subsequently issued a notice of Preliminary Objection dated 24th January 2024, whose substance is that the Claimant’s claim is statute barred by dint of section 90 of the *Employment Act*.
3. The Preliminary Objection was urged by way of written submissions. In its written submissions dated 19th February 2024, the Respondent cites section 90 of the *Employment Act*, which provides as follows:
 90. Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act*, 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.
4. In her submissions dated 23rd February 2024, the Claimant states that she was prevented from bringing her claim within the prescribed time by lengthy internal processes at the work place. She therefore asserts that the Respondent is estopped from pleading limitation of action.



5. In its decision in *Hilarion Mwabolo v Kenya Commercial Bank* [2013] eKLR this Court held that in a claim of unlawful termination of employment, time begins to run from the effective date of the termination as communicated in the letter of termination.
6. In the present case, the Claimant was issued with a retirement notice dated 9th May 2017, indicating that she was due to retire from the civil service effective 1st July 2018. Reckoning the effective date of retirement as the accrual date, the Claimant's claim filed in court on 2nd June 2023 is way out of time.
7. Limitation of action is a matter of jurisdiction and the law is now firmly settled that section 90 of the *Employment Act* does not give the Court any leeway to enlarge time. This was clearly stated by the Court of Appeal in *Beatrice Kabai Adagala v Postal Corporation of Kenya* [2015] eKLR as follows:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the *Employment Act* 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years. As this Court stated in the case of *Divecon Limited v Samani* [1995-1998] 1 EA P. 48, a decision relied on by Radido J in *Josephat Ndirangu v Henkel Chemicals (EA) Limited*, [2013] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the *Limitation of Actions Act*.”

8. In the premises, the Preliminary Objection raised by the Respondent succeeds and is upheld with the result that the Claimant's claim being incompetent, is struck out.
9. Each party will bear their own costs.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY APRIL 2024.

LINNET NDOLO

JUDGE

Appearance:

appearance for the Claimant

Mr. Kariuki for the Respondent

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