



**Gatobu v Roy Transmotors Ltd (Cause E663 of 2023)  
[2024] KEELRC 745 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 745 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E663 OF 2023  
BOM MANANI, J  
APRIL 8, 2024**

**BETWEEN**

**MOSES MUTEMBEI GATOBU ..... APPLICANT**

**AND**

**ROY TRANSMOTORS LTD ..... RESPONDENT**

**RULING**

**Background**

1. Through the instant application, the Applicant seeks an order of this court allowing him leave to file suit against the Respondent to claim compensation for alleged unfair termination of his contract of service outside the stipulated time. The Applicant contends that although his contract of service was terminated on 31<sup>st</sup> March 2020, he did not file suit to challenge the decision within the timeframe that is provided under section 90 of the Employment Act because his erstwhile lawyer failed to guide him appropriately.
2. The Applicant contends that he has an arguable case which the court should permit to go to trial. He avers that the Respondent will not suffer any prejudice should the court permit the request to file the proposed action outside the timelines that the law contemplates.
3. The application is opposed. According to the Respondent, this court has no jurisdiction to entertain the request.
4. The Respondent argues that section 90 of the *Employment Act* is couched in definitive and mandatory terms. As such, it does not contemplate a scenario in which the court can permit a litigant to commence proceedings to enforce a right that arises from an employment relation outside the timelines that are set out under the Act.



## Analysis

5. Section 90 of the [Employment Act](#) provides as follows:-

“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.”

6. The section ousts the application of the provisions of the [Limitation of Actions Act](#) in determining the limitation period for instituting suits in relation to disputes emanating from an employment relation. Further, the section sets the limitation period for such suits to three years from the date of accrual of the cause of action save for continuing injury or damage claims which must be filed within one year of stoppage of the injury or damage.

7. Unlike Part III of the [Limitation of Actions Act](#) which provides for extension of the limitation period in specified cases, the [Employment Act](#) does not provide for extension of the time that is fixed by section 90 thereof for purposes of filing suits in respect of employment disputes. And hence the truism that the court has no power to extend the time that has been set under the provision.

8. In [Peter Katithi Kithome v Laboratory & Allied Limited](#) [2021] eKLR, the court observed as follows on the subject:-

“Section 90 of the [Employment Act](#), 2007 has now amended the Limitation of Actions Act to specifically provide for a limitation period of three years in actions based on breach of contract of service or arising out of the [Employment Act](#), 2007. This Court neither has the statutory jurisdiction nor discretion to grant leave or extend time in causes of action based on breach of contract of service or actions arising out of the [Employment Act](#), 2007.”

9. The jurisdiction of a court to entertain a matter stems from statute or the Constitution. Where neither of these have donated jurisdiction to a court to entertain an issue, it is impermissible for it (the court) to assume jurisdiction over the issue.

10. In respect of the Employment Act, it is clear that it makes no provision under which the court can be moved to enlarge the time that is fixed by section 90 thereof. As such, the court cannot purport to exercise jurisdiction to enlarge time to file a suit on an employment dispute outside the timelines that are specified under the provision. It has no such jurisdiction.

11. Whilst commenting on the issue the learned Judge in [John Kiiru Njiiri v University of Nairobi](#) [2021] eKLR said as follows:-

“...the claims herein are time barred and the court is denied jurisdiction under the provisions of section 90 of the [Employment Act](#), 2007.”

## Determination

12. The upshot is that the court arrives at the conclusion that it has no jurisdiction to extend time to file suit outside the timelines that are set under section 90 of the [Employment Act](#).

13. As such, the instant application to enlarge time to file suit out of time is devoid of merit.



14. Accordingly, it is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 8<sup>TH</sup> DAY OF APRIL, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Applicant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M. MANANI**

**JUDGE**

