



Mogaka v Young Women Christian Association & 2 others (Cause E541 of 2023) [2024] KEELRC 1079 (KLR) (4 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1079 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E541 OF 2023
NZIOKI WA MAKAU, J
APRIL 4, 2024**

BETWEEN

MARY MOGAKA CLAIMANT

AND

YOUNG WOMEN CHRISTIAN ASSOCIATION & 2 OTHERS ... RESPONDENT

RULING

1. The Respondents have vide their notice of motion dated 8th November 2023 sought the dismissal of the suit for being time barred. The Respondents assert the Claimant filed this claim against the them out of time in terms of section 90 of the *Employment Act* as she ceased being an employee in mid March 2020 when she resigned. The application is further grounded on the reasons stated on the face of the motion as well as upon the affidavit of Ms. Deborah Olwal in support of the application.
2. The Claimant was opposed and filed a replying affidavit on 13th December 2023. In it, she deponed that the 1st Respondent was to issue a formal discharge to the Claimant in order for time to run. She asserts that no discharge was delivered to her that in effect time never ran and that in the absence of the discharge, the contention on lapse of time or limitation cannot hold. She deponed that the case is properly before the court and within legal parameters as the Claimant was never discharged. The Claimant deponed that the 1st Respondent confirmed there were salary arrears that accrued and that time has not begun running. The Claimant further deponed that the 1st Respondent had not come to court with clean hands as the payment is pending at the 1st Respondent's office.
3. In the main, the grounds of the motion for dismissal of the suit are that the claim is time barred. The *Employment Act* per section 90 provides as follows in respect of limitation:-
 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. [emphasis supplied]

4. This provision clearly demarcates the limitation of the cause of action. The fact that the Claimant resigned in January 2020, time begun to run on the date she resigned. The discharge of the Claimant is not what initiates the time per section 90 of the Act. Time begins to run the moment the cause of action accrues. In this case it accrued on 1st January 2020. The claim before me is therefore time barred and is for striking out, but granted the Respondent owes the Claimant salary for days worked since she was not a slave, I will not order any costs against her. The Respondent must pay her salary. Sum total of the foregoing is that the suit is struck out with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL 2024

NZIOKI WA MAKAU

JUDGE

