



REPUBLIC OF KENYA



Juma v Okech (Cause E415 of 2023) [2024] KEELRC 1459 (KLR) (14 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1459 (KLR)

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

CAUSE E415 OF 2023

J RIKA, J

JUNE 14, 2024

BETWEEN

JAIRO OKELLO JUMA CLAIMANT

AND

SAMUEL ONYANGO OKECH RESPONDENT

RULING

1. The Claimant initiated this Claim against the Respondent, through a Statement of Claim, dated 3rd May 2023.
2. He states that he was employed by the Respondent as his Domestic Worker, in March 2008.
3. The Respondent terminated his contract on 12th May 2019, in circumstances the Claimant feels, amounted to unfair termination.
4. He claims compensation for unfair termination and a raft of terminal benefits from the Respondent.
5. The Respondent filed his Statement of Response and a Notice of Preliminary Objection dated 6th July 2023. It is his position that the Claimant resigned voluntarily on 12th May 2019. The Respondent accepted resignation, and paid the Claimant all his terminal dues. The Respondent states that the Claim is time-barred, under Section 90 of the *Employment Act*.
6. Parties agreed that objection is considered and determined, on the strength of their pleadings and submissions. They confirmed filing and service of submissions on 31st January 2024.

The Court Finds: -

7. The Claimant concedes that the Claim was filed on 2nd May 2023, and that the cause of action arose on 12th May 2019. This is expressed in his submissions on record.



8. He explains that parties were engaged in negotiations, and conciliation at the Ministry of Labour. He was under the impression during these processes, that the Respondent would settle his claims. He did not think it was necessary or prudent, to come to Court, before parties had exhausted alternative dispute resolution mechanisms. The Respondent however frustrated negotiation and conciliation, and it would be unjust, and result in violation of the Claimant's right to fair labour practices, to uphold the objection.
9. The Court is bound by the decision of the Court of Appeal in *Rift Valley Railways v Hawkins Wagunza Musonye & another* [2016] eKLR, which established that negotiation and conciliation processes, among other alternative dispute resolution mechanisms, do not freeze the running of time prescribed for presentation of employment claims, under Section 90 of the *Employment Act*.
10. The Appeal arose out of a decision of this Court sitting at Mombasa, which had extended time to the Employees to bring their Claim to Court, on the ground that delay had been occasioned by the parties' resort to necessary/mandatory alternative dispute resolution mechanism, prior to commencement of the intended litigation.
11. To endorse the submissions of the Claimant, the Court would be engaging in what the Court of Appeal characterized as judicial craft and innovation, in the decision cited above.
12. The Claim is time-barred under Section 90 of the *Employment Act*, and the Court does not have temporal jurisdiction.

It is ordered: -

- a. The preliminary objection is sustained and the Claim declined, for want of jurisdiction.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

