



**Wachiuri v Agricultural Finance Corporation (Cause E690 of 2023)
[2024] KEELRC 2361 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2361 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E690 OF 2023
L NDOLO, J
SEPTEMBER 30, 2024**

BETWEEN

MARY WANGUI WACHIURI CLAIMANT

AND

AGRICULTURAL FINANCE CORPORATION RESPONDENT

RULING

1. On 24th August 2023, the Claimant filed a Notice of Motion seeking leave to file suit against the Respondent out of time. The application is supported by the Claimant’s own affidavit and is based on the grounds that:
 - a. The Claimant was engaged with the Respondent for purposes of settling the claim and was advised as follows; “Your request has been reviewed and will be handled conclusively at a later date”;
 - b. In or about 2016 the Claimant was referred to the firm of Memba Muriuki & Company Advocates, which has taken up the matter and filed the present application;
 - c. The Claimant was paid her final dues on 15th September 2020;
 - d. The Claimant realised that the amount paid was less the amount claimed;
 - e. The Claimant wrote to the Respondent on 6th December 2022, expressing dissatisfaction and demanding the balance;
 - f. Since the claim became due, it was apparent that there would be a possible settlement by the Respondent at a later date;
 - g. The Respondent responded on 30th March 2023 and from the response, it was apparent that the Respondent had no intention to reach an amicable out of court settlement;



- h. It is only fair and just that the Court grants the Claimant leave to file suit out of time.
2. On its part, the Respondent filed a Notice of Preliminary Objection dated 11th October 2023 stating that:
- a. The Court lacks jurisdiction to admit, hear and determine the claim by virtue of it being time barred pursuant to the provisions of Section 4(1) of the [Limitation of Actions Act](#) as read together with Section 90 of the [Employment Act](#);
- b. The claim is incurably defective and is an abuse of the court process since the Claimant lacks the capacity to bring any cause of action against the Respondent and his claim as constituted should be struck out with costs.
3. The Claimant opposes the Respondent’s Preliminary Objection by her replying affidavit sworn on 11th January 2024.
4. The parties urged their respective positions by way of written submissions. The Respondent submits that the Claimant’s claim was filed way after the lapse of three (3) years set under Section 90 of the [Employment Act](#). On her part, the Claimant states that because there were negotiations towards an out of court settlement, time stopped running. She maintains that her cause of action did not arise until 30th March 2023, when the Respondent notified her that her claim would not be honoured.
5. Section 90 of the [Employment Act](#) 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.
6. In its decision in Attorney General & another v Andrew Maina Githinji & another [2016] eKLR the Court of Appeal debunked the notion that time stops running just because parties are engaged in some form of negotiations. In that case, the Appellate Court adopted the following definition of a cause of action drawn from the persuasive decision in Letang v Cooper [1964] All ER 929 at 934:
- “A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”
7. Regarding the question whether the Court has discretion to extend time, the answer is found in the decision in Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR where the Court of Appeal stated thus:
- “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. The long and short of it is that the Claimant's claim was filed way out of time and there is nothing this Court can do to salvage it. That said, the inescapable orders are that the Claimant's application for extension of time is declined, the Respondent's Preliminary Objection is upheld and the claim is struck out.
9. Each party will bear their own costs.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY SEPTEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Kiarie for the Claimant

Mr. Mabonga for the Respondent

