



Maganda v Kenya Methodist University (Employment and Labour Relations Cause E1342 of 2018) [2024] KEELRC 2277 (KLR) (25 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E1342 OF 2018
NJ ABUODHA, J
SEPTEMBER 25, 2024**

BETWEEN

WILLIS OTIENO MAGANDA CLAIMANT

AND

KENYA METHODIST UNIVERSITY RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary objection dated 16th January, 2023 seeking that the Claim be struck out on the grounds that the claim was time barred.
2. The Respondent submitted that the claimant filed the Statement of claim on 29th August, 2018 claiming for unpaid fees amounting to Kshs. 270,000/= for his services delivered between January - April 2016.
3. The Principles of preliminary objections were well established by the court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696 where the Court stated that;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and if which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

...A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”



4. In this particular case the Respondent has raised an objection of the claim being time barred. Section 90 of the [Employment Act](#) which 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.

5. It was not in disputed that on or about the year 2016, the Claimant was under employment of the Respondent as a lecturer. A proper reading of the above provision of Section 90 of the [Employment Act](#) leads to the conclusion that the cause of action starts running after cessation of the contract. In this case the employer-employee relationship which ended in April 2016.
6. In the case of *James Mugeria Igati v Public Service Commission* [2014] eKLR the court held that the accrual of the cause of action in a claim emanating from an employment contract takes effect from the date of termination of employment as stated in the letter communicating the same.
7. The Claimant by filing a claim in 29th August, 2018 following a cause of action which arose in April 2016 was outside the limitation period provided for under section 90 of the Act. The objection by the Respondent was therefore justified, and the claim herein is found to be time barred by virtue of section 90 [Employment Act](#), 2007.
8. In conclusion, the suit is hereby struck out with costs for being statute barred.
9. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024

DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2024

Abuodha Nelson Jorum

Presiding Judge-Appeals Division.

