



**Nabwayo v SBM Bank (Kenya) Limited & 3 others (Cause 986 of 2023)
[2024] KEELRC 2215 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2215 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 986 OF 2023
L NDOLO, J
SEPTEMBER 19, 2024
[FORMERLY HIGH COURT CIVIL CASE NO E188 OF 2023]**

BETWEEN

JOYCE AYUMA NABWAYO CLAIMANT

AND

SBM BANK (KENYA) LIMITED 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. This ruling flows from a Preliminary Objection raised by the 1st Respondent by notice dated 23rd April 2024. The Objection is premised on the grounds that:
 - a. This Court lacks jurisdiction to hear and determine the Claimant’s claim for unfair termination pursuant to Section 90 of the *Employment Act*;
 - b. The Court lacks jurisdiction to hear and determine the claim for malicious prosecution pursuant to the provisions of Article 162(2)(a) of *the Constitution* of Kenya and Section 12 of the *Employment and Labour Relations Court Act*;
 - c. The suit is an abuse of the court process and should be struck out with costs.
2. The Objection was urged by way of written submissions. The 1st Respondent challenges the jurisdiction of the Court to entertain the Claimant’s claim on two fronts; first, that the claim arising from employment is statute barred and second, that the claim arising from malicious prosecution falls outside the mandate of this Court.



3. In transferring this matter from the High Court to this Court, Meoli J stated as follows:

“Two seemingly intertwined causes of action are disclosed in the plaint dated 11th April 2023. The claim arising from alleged unfair termination of employment is the most substantive. In the circumstances, this matter is best handled by the Employment and Labour Relations Court, Nairobi.”

4. Looking at the pleadings filed by the parties, I would agree that the substantive cause of action arises from the termination of the Claimant’s employment by the 1st Respondent, with the claim for malicious prosecution being auxiliary or consequential.
5. Emerging jurisprudence is to the effect that where the dominant cause of action arises from an employment relationship, then this Court has jurisdiction to deal with all auxiliary claims (see *Banking Insurance & Finance Union (Kenya) v Consolidated Bank of Kenya Limited (Industrial Court Cause No 900 of 2012)* and *Abraham Nyambane Atsiago v Barclays Bank of Kenya* [2013] eKLR).
6. It is important to point out that in a mixed grill case such as the one before me, what clothes the Court with jurisdiction is the substantive cause of action, arising from an employment relationship. In this case, it is admitted that the substantive cause of action is statute barred by dint of Section 90 of the *Employment Act*, meaning that the Court is stripped of jurisdiction to consider the Claimant’s claim in its entirety.
7. In the result, the 1st Respondent’s Preliminary Objection is upheld and the Claimant’s claim is struck out.
8. Each party will bear their own costs.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY SEPTEMBER 2024.

LINNET NDOLO

JUDGE

Appearance:

Mr. Atonga for the Claimant

Ms. Mutisya for the 1st Respondent

Ms. Mochonge for the 2nd, 3rd and 4th Respondents

