



**Chogo v Nairobi Hospital (Cause E661 of 2020)
[2024] KEELRC 2549 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2549 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E661 OF 2020
SC RUTTO, J
OCTOBER 18, 2024**

BETWEEN

WYCLIFFE A CHOGO CLAIMANT

AND

THE NAIROBI HOSPITAL RESPONDENT

RULING

1. The Claimant brought the instant suit through a Statement of Claim which was filed on 17th October 2020. It is the Claimant’s case that he was employed by the Respondent as a Ward Attendant with effect from 3rd October 1997. According to the Claimant, he served the Respondent with loyalty and utmost diligence and in accordance with the terms of his employment contract.
2. The Claimant avers that he was summarily dismissed from employment on 16th October 2017 on grounds of involvement in the theft of patients’ food at MCF Ward Kitchenette. The Claimant has termed his termination irregular and unlawful. On account of the foregoing, the Claimant seeks one month salary in lieu of notice, compensatory damages for unlawful dismissal, an order of reinstatement, costs of suit as well as interest.
3. Upon being served with the Statement of Claim, the Respondent filed a Notice of Preliminary Objection dated 11th January 2024 on grounds that the suit was filed in breach of the provisions of Section 90 of the *Employment Act* as the cause of action arose on 16th October 2017 while the suit was filed on 19th October 2020 more than the three year statutory limitation period.
4. The Preliminary Objection was canvassed through written submissions. Only the Respondent complied and I have considered the said submissions. The Respondent has submitted that the Claimant did not seek leave to extend the period within which to file his case. That further, the Claimant has not shown why he did not move the Court for appropriate remedy within the acceptable timelines. The Respondent further submitted that the Court has no power to extend time in



employment matters. In support of this argument, the Respondent has placed reliance on the case of *Divecon v Samani* (1995-1998) 1EA 48.

5. The Respondent urged the Court to allow the Preliminary Objection and dismiss the suit with costs.

Analysis and Determination

6. It is clear to my mind that the singular issue for determination is whether the suit herein is time-barred by dint of Section 90 of the *Employment Act*.
7. The aforementioned Section 90 of the *Employment Act* is couched as follows:-

[90] 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.
8. Essentially, a mandatory time bar of three (3) years is placed on matters arising out of the *Employment Act* or on a contract of service, as the one herein.
9. What this means is that a matter becomes statute-barred if it is not filed within three (3) years from the date the cause of action arose.
10. Turning to the instant case, it is evident that the Claimant was summarily dismissed from employment with effect from 16th October 2017. Fundamentally, this is the date the cause of action arose seeing that it is then, that the Claimant was notified of the separation.
11. As was held by the Court of Appeal in *Attorney General & another v Andrew Maina Gitbinji & another* [2016] eKLR, 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.
12. Therefore, a cause of action arises on the date when a person becomes entitled to complain against another person. In this case, that date was 16th October 2017 and from then on, the Claimant had all the right to move the Court as appropriate and seek a remedy subject to the provisions of Section 90 aforesaid.
13. In determining the question of time bar and the period herein being on the borderline, I find it imperative to refer to the provisions of Section 57 (a) of the *Interpretation and General Provisions Act* which provides as follows with respect to computation of time: -

(57) In computing time for the purposes of a written law, unless the contrary intention appears—

 - (a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
14. Applying the above provision to the case herein, it becomes apparent that the Claimant moved the Court on the last date of the third year from the date the cause of action arose. As such, it is my considered view that the Claim herein is not statute-barred.
15. Accordingly, the Preliminary Objection dated 11th January 2024 is overruled with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF OCTOBER 2024.



STELLA RUTTO

JUDGE

In the presence of:-

For the Claimant No appearance

For the Respondent Mr. Onguka

Court Assistant Millicent Kibet

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

