



**Koech v Cooperative Bank of Kenya Limited (Cause E065 of 2024)
[2024] KEELRC 2429 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2429 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E065 OF 2024**

J RIKA, J

OCTOBER 4, 2024

BETWEEN

AMOS BETT KOECH CLAIMANT

AND

THE COOPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

1. The Claimant filed his Statement of Claim, on 25th January 2024.
2. He avers that he was employed by the Respondent Bank, as a Relationship Manager.
3. At paragraph 6 of the Statement of Claim, he avers that the Respondent terminated his contract, without verifiable explanation.
4. He does not plead the specific date, when his contract was terminated.
5. He pursues compensation for unfair termination, and terminal benefits.
6. The Respondent filed an Application dated 21st March 2024, asking the Court to strike out the Claim, on the ground that the Claim is time-barred, under Section 89 of the *Employment Act*, 2007.
7. The Respondent states that the Claimant was summarily dismissed on 17th December 2020. His Claim expired on 17th December 2023.
8. The Application is supported by the Affidavit of Florence Njuguna, Respondent's Legal Officer, dated 21st March 2024.
9. It was agreed by the Parties that the Application is considered on the strength of the Parties' Pleadings, Affidavits, Documents and Submissions. They confirmed filing and exchange of Submissions at the last mention before the Court, on 20th September 2024.



The Court Finds:

10. It is not clear if the law invoked by the Respondent, Section 89 of the [Employment Act](#), prescribes limitation of time, on filing of employment disputes.
11. Unless the law has been revised, limitation of 3 years, from the date the cause of action arose, is prescribed under Section 90 of the [Employment Act](#).
12. The Claimant as observed above, does not seem to have pleaded the date when his contract was terminated.
13. The date the cause of action arises, in termination of employment, is the date termination decision, is received by the Employee. It is characterized as the effective date of termination [EDT] in employment law.
14. Without the benefit of hearing the Parties on trial, the Court cannot conclusively say, as submitted by the Respondent, that the EDT, was 17th December 2020.
15. There is a letter of summary dismissal exhibited by the Parties, dated 17th December 2020.
16. The letter informed the Claimant that he had been summarily dismissed with immediate effect, which would be 17th December 2020.
17. It is not disclosed when the letter, which was addressed to the Claimant through the Respondent's Head of Diaspora Banking, was received by the Claimant, to take effect.
18. A copy of the certificate of service exhibited by the Respondent, indicates that the Claimant left employment, on 18th December 2020.
19. The letter dated 17th December 2020, also advised the Claimant that he had a right of appeal, lasting 21 days, under the Respondent's Staff Manual.
20. He exercised this right, in deference to the doctrine of exhaustion, and it was not until 27th January 2021, that the Respondent advised him that his appeal had failed.
21. It is not disclosed when he received this letter advising him about the failure of his appeal.
22. The date the cause of action arises, in employment disputes is the EDT, which is not necessary the date when the letter of summary dismissal, or termination, is drawn.
23. It is important that Parties are given an opportunity to adduce evidence, to establish before the Trial Court, what is the EDT. Other alternative EDTs must be eliminated, through evidence. When communication on termination is received, and whether such communication is final, are relevant factors, that need to be considered and determined.
24. The Application filed by the Respondent is premature, and orders sought draconian.

It Is Ordered:

- a. The issue raised preliminarily by the Respondent, on time-bar, is to be canvassed and determined upon the full trial.
- b. Costs in the cause.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 4TH DAY OF OCTOBER 2024.

JAMES RIKA

JUDGE

