



**Kenya Union of Domestic, Hotels, Educational Institutions & Hospital v BOM, Kimana Girls Secondary School (Cause 94 of 2020) [2024] KEELRC 13281 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13281 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 94 OF 2020  
DKN MARETE, J  
NOVEMBER 27, 2024**

**BETWEEN**  
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS & HOSPITAL ..... CLAIMANT**  
**AND**  
**BOM, KIMANA GIRLS SECONDARY SCHOOL ..... RESPONDENT**

**RULING**

1. This is an application by way of a Preliminary Objection dated 16th February, 2024. It comes out as follows;
  1. That the suit is time barred and offends mandatory Provisions of Section 90 of the [Employment Act](#), 2007.
  2. That the suit is an abuse of the Court Process.
  3. That the suit is incompetent and ought to be struck out with costs.
2. The Respondent/Applicant submits that this suit was filed one (1) week late. This is because in accordance with the claim the termination of employment which is the cause of action arose on or about the 10th February, 2017 where the suit was filed on 17th February, 2020. It's thus barred under Section 90 of the [Employment Act](#), 2007.
3. The Respondent seeks to rely on the locus classicus authority of Mukisa Biscuits Manufacturing Ltd (1969) EA 696 as follows;
 

“ 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 must be ascertained or if what is sought is the exercise of the judicial discretion.”

4. The Applicant/Objector in buttressing her application further seeks to rely on the authority of Banking Insurance and Finance Union (K) – V-Bank of India, Industrial Court Cause No. 1201 of 2012 where this court in dealing with the issues of limitation observed thus;

“The fact of the matter is that employment contracts like other commercial contracts were subject to the provisions of the Limitations Act Cap 22 of the Laws of Kenya at the time with regard to limitation but presently the Limitation period is governed by section 90 of the Employment matters to three (3) years.”

5. Again, this court is not imbued with the jurisdiction to extend time as was observed in the matter of Maria Machocho –v- Total (K), Industrial Cause No. 2 of 2012.

6. Lastly, the Respondent submits that the Claimant has been indolent in pursuance of her rights. She submits thus;

Equity aids the vigilant and not the indolent, the Claimant instituted the instant suit after the statutory time had lapsed and as such, he waived his right to safeguard and pursue his Employment rights.

7. The Claimant/Respondent did not file any written submission on the application and or preliminary objection. It stands and remain un defended.

8. The Objector’s case stands overwhelmingly against any other, or at all. A case of limitation of action by time bar is not remediable by court. Courts lack jurisdiction so to do. The claim therefore remains at salvable.

9. I am therefore inclined to allow the preliminary objection with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Kioko instructed by State Law Office for the Respondent/Objector.

Mr. Ezron Omwong’a for the Union/Respondent.

