



**Makhanu v Bob Morgan Security Limited (Cause E933 of 2023)
[2024] KEELRC 2788 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2788 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E933 OF 2023
L NDOLO, J
NOVEMBER 14, 2024**

BETWEEN

CHARLES SIMIYU MAKHANU CLAIMANT

AND

BOB MORGAN SECURITY LIMITED RESPONDENT

RULING

1. This ruling disposes of the Preliminary Objection taken by the Respondent by way of notice dated 2nd September 2024, on the ground that the Claimant’s claim is statute barred under the provisions of Section 90 of the *Employment Act*.
2. The Respondent therefore maintains that the Court has no jurisdiction to entertain the claim and ought to be struck out. The Claimant did not respond to the Respondent’s Objection in spite of due notice.
3. The Respondent bases its Preliminary Objection on Section 90 of the *Employment Act*, which provides as follows:

90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, 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.



4. A perusal of the Claimant's Memorandum of Claim dated 4th August 2023, reveals that his cause of action arose on 15th July 2020, when he retired from employment. His claim was therefore filed after the lapse of the time limit set by Section 90 of the *Employment Act* and as held by the Court of Appeal in *Beatrice Kahai Adagala v Postal Corporation of Kenya* [2015] eKLR, no court has any leeway to extend time under this provision.
5. In the result, I uphold the Respondent's Preliminary Objection and strike out the Claimant's claim on account of limitation of time.
6. Each party will bear their own costs.
7. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Mr. Njuguna for the Respondent

