



Wanyanga v School Equipment Production Unit (SEPU) (Miscellaneous Application E302 of 2024) [2024] KEELRC 13531 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13531 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E302 OF 2024**

**SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

RACHAEL ACHIENG WANYANGA APPLICANT

AND

SCHOOL EQUIPMENT PRODUCTION UNIT (SEPU) RESPONDENT

RULING

1. The Applicant has moved this Court vide a Notice of Motion Application dated 16th October 2024, seeking an order for grant of leave to institute proceedings out of time against the Respondent following her unlawful and constructive termination.
2. The Application is supported by the grounds appearing on its face and the Affidavit of Rachael Achieng Wanyanga, the Applicant herein. Briefly, she avers that the requisite period for filing proceedings has expired due to circumstances beyond her control. That the suit was initially filed in the Chief Magistrate Court under Case Number E1422 of 2021. The said suit was withdrawn pursuant to the Respondent's preliminary objection on pecuniary jurisdiction.
3. That since the withdrawal of the suit, her counsel on record failed to institute the suit in this court necessitating her to seek alternative legal advice and representation.
4. The Applicant deposes that her proposed claim raises triable issues and it is only fair for this court to provide her with a day in court to ventilate the said issues.
5. She further avers that the mistake of her previous counsel should not be visited on her as she has always been ready to prosecute the case.
6. In her honest estimation, the Respondent will not suffer any prejudice at all if the application is allowed.
7. The Respondent did not file a response to the Application.



Analysis and Determination

8. To my mind, the singular issue falling for determination is whether the Court should grant leave to the Applicant to institute proceedings out of time against the Respondent.
9. Section 90 of the *Employment Act*, which provides for the period within which a claim arising from a contract of service may be lodged, 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.”

10. A plain reading of the above provision reveals that it is couched in mandatory terms. Therefore, any claim based on a contract of service as the one alluded to by the Applicant, ought to be brought within three years. Indeed, it may very well be said that the provision is cast in stone and the limitation period is not subject to extension.
11. The Court concurs with and is bound by the sentiments of the Court of Appeal in the case of *Beatrice Kahai Adagala v Postal Corporation of Kenya* [2015] eKLR where it was expressed thus:

“Much as we sympathize with the appellant if that is true, we cannot help her as the law ties our hands. Section 90 of the *Employment Act* 2007 which we have quoted verbatim herein above, is in mandatory terms. A claim based on a contract of employment must be filed within 3 years. As this Court stated in the case of *Divecon Limited -vs- Samani* [1995-1998] 1 EA P.48, a decision relied upon by Radido, J. in *Josephat Ndirangu - vs – Henkel Chemicals (EA) Limited*, [2013] eKLR, the limitation period is never extended in matters based on contract. The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the *Limitation of Actions Act*.”
Underlined for emphasis

12. Accordingly, it is evident that pursuant to Section 90 of the *Employment Act*, this Court has no jurisdiction to extend time to file a suit beyond the prescribed statutory period.
13. In as much as the Applicant states that she was let down by her erstwhile Advocates hence her plea that the said mistake should not be visited upon her, this Court’s hands are tied by the aforementioned Section 90 of the *Employment Act*.
14. The upshot of my consideration is that the Application dated 16th October 2024 is hereby disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Bwari for the Applicant

No appearance for the Respondent



Millicent Court Assistant

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

