



**Musyoki v Sarova Hotels (Cause 1978 of 2015)
[2023] KEELRC 204 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 204 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1978 OF 2015
J RIKA, J
JANUARY 31, 2023**

BETWEEN

GEORGE MUSYOKI CLAIMANT

AND

SAROVA HOTELS RESPONDENT

JUDGMENT

1. The claimant filed an amended statement of claim, on September 6, 2018.
2. He states that he was employed by the respondent hotel, between September 1, 1987 and January 2004.
3. He was suspended by the respondent, on or about November 29, 2003, and dismissed on January 22, 2004, on allegations of theft.
4. He was charged for theft around 2004, tried and acquitted on November 17, 2005.
5. He claims Kshs 60,000 in legal costs of defending the criminal proceedings; notice pay at Kshs 60,888; service pay at Kshs 129,395; 92 pending off-duty days at Kshs 45,666; costs; interest; and any other suitable relief.
6. The respondent filed its statement of response on November 24, 2015. It is agreed that the claimant was employed by the respondent. the respondent lodged a complaint against the claimant with the police, who investigated and preferred charges against him. The respondent is not liable to compensate the claimant for costs incurred in defending the criminal proceedings, and the prayer for costs is outside the jurisdiction of this court. The whole claim is statute-barred, and leave granted by the court on December 5, 2014, to lodge the claim out of time, does not confer jurisdiction on the court. The respondent urges the court to dismiss the claim with costs.



7. The claimant gave evidence and rested his case on March 10, 2022. The respondent did not call evidence and hearing closed on March 10, 2022. The claim was last mentioned on October 7, 2022, when parties confirmed filing of their submissions.
8. The claimant basically adopted his statements of claim and witness and documents on record. He emphasized that he obtained leave of the court, to lodge his claim out of time.

The Court Finds:

9. The claimant obtained an order given on December 5, 2014, granting him leave to file his claim out of time. This was in Nairobi E&LRC Cause No 67 of 2013 [OS].
10. Leave was granted by another judge of this court, not the undersigned judge.
11. The claimant was dismissed on January 22, 2004. The claim is time-barred under section 4[1] of the *Limitation of Actions Act*, which gives a 6- year period from the date a cause of action accrues, in contractual disputes. At the time of filing the claim, the *Employment Act*, 2007 was already in force, and sets the limitation period of 3 years from the date the cause of action accrues, in employment contracts.
12. Even if it was to assumed that the claimant was undergoing criminal trial, occasioning delay in presentation of the claim, the criminal trial terminated on November 17, 2005.
13. The claimant sought leave 8 years later, in 2013, and filed the claim 11 years after dismissal, and 10 years after acquittal. From the date leave issued to the date the claim was filed, was another delay of almost 1 year. This claim is no complete abuse of the process of this court.
14. He is clearly time-barred. Leave obtained in another court, does not confer the trial judge with a jurisdiction he does not have. Statutory limitation is an issue of jurisdiction, and every court is entitled to determine if it has jurisdiction, under the doctrine of competence-competence, even where leave to initiate claim out of time, has been issued in different proceedings. The court cannot assume jurisdiction, by dint of orders of another judge, the court believes issued per incuriam.

It is ordered:

- a. The claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

