



**Otieno v Kenya Revenue Authority (Cause E101 of 2022)
[2023] KEELRC 412 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 412 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E101 OF 2022
BOM MANANI, J
FEBRUARY 16, 2023**

BETWEEN

HILLARY BARASA OTIENO CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

Introduction

1. Until July 16, 2014 when he was served with a letter of termination of employment, the claimant served as an employee of the respondent having been employed on February 10, 2008. It appears that around October 2013, the claimant was placed on interdiction before he was charged with criminal offenses of theft and fraud. The case went on until March 2019 when the claimant was acquitted.
2. The claimant has now instituted these proceedings to seek declaratory orders that the respondent's decision to terminate his contract of employment was unlawful. The claimant seeks for inter alia, compensatory reliefs following the aforesaid termination of employment.

Preliminary Objection

3. Immediately upon entering appearance in the cause, the respondent's Advocates filed a Notice of Preliminary Objection to the entire suit. The objection challenges the court's jurisdiction to entertain the action. According to the respondent, the claim was filed beyond the timelines allowed under section 90 of the *Employment Act*. Consequently, the court cannot assume jurisdiction over it.

Submissions

4. The parties agreed to canvass the preliminary point of law through written submissions. Both parties have since filed their respective submissions.



5. According to the respondent, the cause of action in the matter is based on the decision to terminate the claimant's employment on July 16, 2014. If the claimant intended to challenge the decision, he ought to have filed suit within three years of the termination. The fact that the current case was filed in February 2022 means that it was presented several years outside the three year window provided by section 90 of the *Employment Act*.
6. In response, the claimant asserts that the cause of action arose on March 21, 2019 when the criminal case against him came to an end. He argues that because the letter of interdiction indicated that he was to remain on interdiction until after the conclusion of the criminal case, time began running after the interdiction purportedly came to an end following the closure of the criminal case on March 21, 2019.

Analysis

7. In a decision of this court in *Vipingo Ridge Limited v Swalehe Ngonge Mpitta* [2022] eKLR, the following was said about a cause of action.

“My understanding of the phrase “cause of action” is that it refers to an incident (act or omission) which vests in an individual the right to seek legal redress. *Black’s Law Dictionary* defines the term as the “factual situation that entitles one person to obtain a remedy in court from another person.”
8. In this case the claimant avers that the respondent prematurely terminated his employment contract on July 16, 2014 whilst he was still undergoing a criminal prosecution. In the claimant's view, his employment ought not to have been terminated in the circumstance. The claimant contends that the decision to terminate his employment on July 16, 2014 was, in the circumstances, malicious. Based on these averments, the claimant prays for a declaration that his employment was unfairly terminated.
9. From the foregoing, it is patently clear to me that the claimant appreciates that the cause of action in respect of his matter arose on July 16, 2014 when his employment was terminated. It is this event that provided the basis for the claimant's action against the respondent.
10. The suggestion by counsel that the cause of action in the suit was pegged on the expiry of the claimant's interdiction is disingenuous. This suggestion is based on an obvious misreading of the decision in *David Muthui Ndegwa v Director of Public Prosecutions and another* (2020) eKLR. In that case, the Petitioner was interdicted in order to give room for investigations into a complaint against him. The Human Resource Manual (HR Manual) applicable to the petitioner's employment limited the period of interdiction for staff under investigation to three months. The Manual required any disciplinary proceedings against an interdicted employee to be completed within the three months period that the employee was on interdiction.
11. The petitioner challenged his continued interdiction outside the three months provided in the HR Manual. The court observed that for purposes of challenging the legitimacy of the extended interdiction, the cause of action was deemed to have accrued from the time the interdiction period terminated in line with the HR Manual. Outside the three months permitted for a legitimate interdiction, any extended interdiction would be in violation of the petitioner's rights and would provide a ground to institute proceedings to claim a violation of his rights. It is in this context that the learned Judge made the comments that counsel now refers to. The decision cannot be relied on to support the suggestion that counsel makes.
12. A plethora of decisions have affirmed the position that in causes of action based on unfair termination, time starts to run from the date of the decision to terminate the contract of service. The three year



window to institute proceedings for unlawful termination commences on the date of termination of the contract (see *G4S Security Services (K) Limited v Joseph Kamau & 468 others* [2018] eKLR, *Kabiri v Haco Industries Kenya Limited* (Civil Appeal 204 of 2018) [2022] KECA 666 (KLR) and *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] eKLR).

13. The fact that the disputants are engaged in out of court negotiations to settle the dispute or that there are ongoing criminal proceedings against the employee does not operate to stop time from running (see *Kabiri v Haco Industries Kenya Limited* (Civil Appeal 204 of 2018) [2022] KECA 666 (KLR) and *Attorney General & another v Andrew Maina Githinji & another* [2016] eKLR).
14. But even if we were to accept counsel's submission that the cause of action in the case accrued when the claimant's interdiction came to an end, this would still bring us to July 16, 2014. This is because it is on this date that the claimant's interdiction was replaced with the decision to terminate him, whether lawfully or otherwise.

Determination

15. In view of the foregoing, I have no doubt in my mind that the suit by the claimant is time barred. The action has been filed in contravention of section 90 of the *Employment Act*. It is accordingly struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 16TH DAY OF FEBRUARY 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on July 12, 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the *ELRC Procedure Rules* which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

