



REPUBLIC OF KENYA



**Ndegwa v Mount Kenya University (Cause E563 of 2021)  
[2023] KEELRC 391 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 391 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E563 OF 2021  
MN NDUMA, J  
FEBRUARY 9, 2023**

**BETWEEN**

**LINUS KIRIMI NDEGWA ..... PLAINTIFF**

**AND**

**MOUNT KENYA UNIVERSITY ..... DEFENDANT**

**RULING**

1. The suit was filed by the plaintiff on July 12, 2021.
2. The plaintiff states in the plaint that he was employed by the defendant in the year 2009 as a part-time lecturer in the School of Health Sciences.
3. The plaintiff states that between the year 2009 and 2011, there are some units and classes he taught, filled the claim forms for payment as required but he was never paid. The plaintiff pleads that the total unpaid salary is Kshs 719,150.
4. The plaintiff prays for an Order for payment of the amount due.
4. The respondent filed a notice of Preliminary Objection dated 17<sup>th</sup> December, 2021 to wit that this Court lacks jurisdiction to hear and determine the suit since the same is statute barred by dint of Section 90 of the *Employment Act*, 2007.
5. From the facts set out in the plaint, which facts are not in dispute, the cause of action arose between the years 2009 and 2011.
6. The suit was filed on July 12, 2021, more than 10 years from the date the cause of action arose.
7. This Court and the Court of Appeal have in a plethora of cases struck out cases based on employment contract that have been filed in this Court upon expiry of three (3) years limitation period prescribed by Section 90 aforesaid.



8. The Court of Appeal in *Attorney General and Another vs Andrew Maina Gitbinji and Another*, 2015 eKLR stated as follows:-

“...The respondents had a clear cause of action against the employer when they received their letters of dismissal on October 2, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not. Having found that the cause of action arose on February 2, 2010 and that the claim was filed on June 16, 2014, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time barred as at February 1, 2013, and I so hold.”

9. In *Maxwell Sifuna vs Teachers Service Commission* (2022) eKLR, this Court emphasized this point as follows:-

“The provision of Section 90, *Employment Act*, 2007 on limitation of time is a juridical issue and not discretionary. The Court has no choice but to down its tools in the matter. The Court has no jurisdiction to issue prayers sought under the Petition for the claim is time barred. The Petitioner was dismissed from service on the January 19, 2017 and filed the Petition on the June 4, 2021 outside the three year limitation period under Section 90 of the *Employment Act*, 2007.”

10. Accordingly, this suit is time barred by a long margin. The Court has no choice but to strike out the suit, and down its tools for it lacks jurisdiction to entertain the suit. No Order as to costs.

11. It is so ordered.

**Dated and delivered at Nairobi (virtually) this 9<sup>th</sup> day of February, 2023.**

**Mathews N. Nduma**

**Judge**

**Appearances**

**M/s Adera & Kenyatta for Respondent/Objector**

**Kioko & Gathoni Advocates, LLP for claimant**

**Mr. Ekale – Court Assistant**

