



**Mwei v National Cereals & Produce Board (Employment and Labour Relations Cause E004 of 2022) [2023] KEELRC 381 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 381 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E004 OF 2022**

**NJ ABUODHA, J  
FEBRUARY 3, 2023**

**BETWEEN**

**SUSAN CHEMUTAI MWEI ..... CLAIMANT**

**AND**

**NATIONAL CEREALS & PRODUCE BOARD ..... RESPONDENT**

**RULING**

1. The Claimant herein, Susan Chemutai Mwei filed this claim against the Respondent vide a statement of claim together with a Notice of Motion seeking for the period for the Statement of Claim to be enlarged and that the Statement of Claim dated March 16, 2022 and filed in court on March 22, 2022 be deemed as properly on record.
2. In response, the Respondent filed a replying affidavit and a preliminary objection on April 28, 2022.
3. The preliminary Objection which is the subject of this ruling was on the grounds that;
  - i. The Claimant's claim is statute barred by operation of Section 90 of the [Employment Act, 2007](#).
  - ii. That the Claimant's right to sue have lapsed and she lacks capacity to bring any cause of action against the respondent and her claim as constituted should be struck out.
  - iii. That the claimant's suit amount to an abuse of the court process and ought to be struck out with costs to the respondent.
4. On the September 19, 2022, parties took directions to have the Preliminary objection disposed of by way of written submissions



## Respondent's submissions

5. The Respondent in its submission filed in Court on November 4, 2022 submitted that the preliminary objection is sustainable as it raises a point of law as the Claimant has filed her claim out of the statutory timelines as provided by law.
6. As to whether the Claimant's claim is statute barred by operation of Section 90 of the *Employment Act*, Counsel for the Respondent submitted that the Claimant's statement of Claim dated March 16, 2022 and filed on March 22, 2022 is a claim for unlawful termination which cause of action arose on 8<sup>th</sup> February 2016 over six years ago and that the Claimant's right to approach the court was extinguished over three years ago precisely on 2<sup>nd</sup> February 2019 when the statutory three year provision for filing the suit lapsed.
7. It was thus submitted that this court has no jurisdiction to entertain a suit that is time barred and that the same should be struck out with costs.
8. To buttress this submission, Counsel cited the cases of *Peter Nyamai & 7 others v MJ Clarke Limited* [2013] eKLR, *Attorney General & another v Andrew Maina Gitthinji & another* [2016] eKLR, *Lydia Pamela Nyangala v Royal Media Services Ltd* [2016] eKLR and *Justine S Sunyai v Judicial Service Commission* [2017] eKLR.

## Claimant's submissions

9. The claimant in her submissions filed in court on November 7, 2022 submitted that the preliminary objection raised by the respondent does not meet the threshold of what a preliminary objection is all about as it brings about factual issues which can only be decided through trial.
10. As the issue of whether the claimant's case is statute barred, it was submitted that time did not start running because the claimant sought a review of the respondent's decision to terminate her.
11. Counsel for the claimant averred that the delay in filing this matter was occasioned by the fact that the applicant's advocates had not received relevant crucial documents from the applicant/client to enable it (sic) capture the relevant crucial facts and as such, the court was urged not to visit the mistake of the counsel on the litigant. The case of *Belinda Muras & 6 others v Amos Wainaina* [1978] KLR was cited to support this position.

## Determination

12. Having analysed the Preliminary objection before me, the submissions of the parties as well as the cited authorities, I find that the only issue for my determination is whether this court has jurisdiction to enlarge time.
13. Section 90 of the *Employment Act* stipulates as follows;  

“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”.
14. The claimant in her statement of claim stated that she was issued with a letter of dismissal from employment on 8<sup>th</sup> February 2016.



15. The court, in the case of *James Mugeria Igati v Public Service Commission* [2014] eKLR held that  
“The accrual of the cause of action in a claim emanating from an employment contract takes effect from the date of termination of employment as stated in the letter communicating the same.”
16. In this case, the Claimant’s employment ended on 8<sup>th</sup> February 2016 and the claim herein was filed on 22<sup>nd</sup> March 2022 which is over 6 years after the cause of action arose.
17. In *Beatrice Kahai Adagala v Postal Corporation of Kenya* [ 2015] eKLR the Court of Appeal observed as follows;  
“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* 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.”
18. In the case of *John Kiiru Njiiri v University of Nairobi* [2021] eKLR, the court observed as follows;  
“The limitation period is never extended in matters based on an employment 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* which provisions do not apply in employment and labour relations claims.”
19. It therefore follows that section 90 of the *Employment Act* does not provide for extension of time and as such the Respondent’s Preliminary objection is merited.
20. In the end, I uphold the respondent’s preliminary objection and hold that The claimant’s claim filed on March 22, 2022 is incompetent on account of limitation of time and is therefore struck out.
21. I also order each party to bear its own costs.
22. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2023**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

