



**Wekesa v Office of Director of Public Prosecutions & 2 others (Cause E342 of 2022) [2023] KEELRC 767 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 767 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E342 OF 2022  
DKN MARETE, J  
MARCH 28, 2023**

**BETWEEN**

**RODGERS JEFFERSON WEKESA ..... CLAIMANT**

**AND**

**OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS & 2  
OTHERS ..... RESPONDENT**

**RULING**

1. This is an application dated July 5, 2022 and seeks that the claim for unfair termination be struck out for being time barred and an upfront to section 90 of the *Employment Act*, 2007.
2. It is also grounded on the basis that the claim for general damages for alleged malicious prosecution be struck out for lack of jurisdiction.
3. The Claimant/Respondent employee in answer avers that indeed time started running after the determination of the malicious criminal proceedings which culminated in his acquittal on December 2, 2021. He contests that the impugned criminal proceedings comprised of a continuing injury as envisaged by section 90 of the *Employment Act*.
4. The Claimant/Respondent further buttresses his case vide his written submissions dated November 14, 2022 in which he submits that the criminal proceedings were more less the basis for his termination from employment and further that this court has jurisdiction to deal with the issues in dispute.
5. He submits as follows;

“The foregoing is a classic case of being “damned if you do and damned if you don’t”. It is our humble submission that the claimant could only be able to bring an action on unfair termination at such a time that he could be able to completely challenge the basis of his termination in the first place and hence the drafters of the section 90 of the *Employment*



Act being alive to such injury that persists beyond the termination of employment, gave an additional 12 months within which a Claimant could bring an action after the cessation of such persisting injury.”

6. Cite section 90 Employment Act
7. It is clear, and this is the applicant’s case that the suit or claim was brought out of the limitation period provided for under section 90 of the Employment Act, 2007. This is not in dispute.
8. The curious aspect of the issue is the Claimant/Respondent’s case that he is not time barred as the prosecution of the criminal case against him comprised of a continuing injury as envisaged by the penultimate clause of section 90 of the Employment Act, 2007. Is this so?
9. The criminal proceedings all the way to the clause an acquittal on December 2, 2021 were separate proceedings from any intended employment issues arising out of the termination of employment. These were criminal proceedings distinct from any claim or issues arising out of termination of employment. A marriage of these and any intended employment issues would therefore not be right.
10. There is no nexus between the criminal proceedings and the continuing injury envisaged under section 90 of the Employment Act, 2007. This is a mere hideout the Claimant/Respondent should have raised his issues within the strict time lines of the law or alternatively fail in the invent of a challenge of time bar.
11. I am therefore inclined to allow the application with orders that each party bears their cost of the same.

**DELIVERED, DATED AND SIGNED THIS 28<sup>TH</sup> DAY OF MARCH 2023.**

**D K NJAGI MARETE**

**JUDGE**

**Appearances**

- 1. Mr Kangere instructed by Muriu Mungai & Company Advocates for the 3rd Respondent/ Applicant**
- 2. Ms Mutua holding brief for Khaemba for the Claimant/Respondent**

