



**Ogaga v Maseno University (Cause 67 of 2017)
[2023] KEELRC 1364 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1364 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 67 OF 2017
S RADIDO, J
MARCH 8, 2023**

BETWEEN

JOSEPH OGAGA CLAIMANT

AND

MASENO UNIVERSITY RESPONDENT

JUDGMENT

1. Joseph Ogaga (the Claimant) sued Maseno University (the Respondent) on 24 February 2017 alleging breach of contract.
2. The Respondent filed a Response on 26 April 2017, prompting the Claimant to file a Reply on 11 July 2017.
3. On 16 August 2018, the Respondent raised a Notice of Preliminary Objection contending that the Cause was statute time-barred by virtue of section 90 of the *Employment Act*, 2007.
4. Pursuant to leave, the Claimant filed an Amended Memorandum of Claim on 14 August 2019. The Respondent filed an Amended Response on 5 September 2019.
5. The Cause was heard on 15 December 2022 and 30 January 2023. The Claimant and a Human Resource Officer with the Respondent testified.
6. The Claimant filed his submissions on 17 February 2023, and the Respondent on 28 February 2023.
7. The Court has considered the pleadings, evidence and submissions.



Time-bar

8. The Respondent raised a Preliminary Objection grounded on section 90 of the *Employment Act*, 2007 which bars actions arising from contracts of service from being lodged with the Courts after the expiry of 3 years from date of accrual of action.
9. The heads of claims advanced by the Claimant were overtime pay from 1997 to 31 July 2016, failure to provide 40 suits, 20 pairs of shoes and unpaid salaries from 23 September 1997 to 1 April 1999.
10. The Claimant's contract was terminated effective 23 September 1997 but upon appeal, he was informed of reinstatement with effect from 1 April 1999.
11. The Claimant moved the Court on 24 February 2017, more than 15 years after the accrual of cause of action.
12. These particular heads of claim are caught up by the law of limitation as set out in section 4 of the *Limitation of Actions Act*, which was the applicable law at the material time. The prescribed limitation period for contractual claims was 6 years.
13. The Claimant also prayed for overtime and he produced Overtime Sheets running from 19 December 2002 to 27 July 2013.
14. The Cause was filed on 24 February 2017. The *Employment Act*, 2007 came into operation on 2 June 2008 and therefore, the heads of claim for overtime from June 2008 to 27 July 2013 should have been made on or before 26 July 2016 at the latest. These heads of claim became legally stale before the Claimant moved the Court.
15. In respect to overtime claims prior to 2 June 2008, the Claimant should have lodged the claims within 6 years, that is by 1 June 2014 at the latest. The Claimant moved the Court outside the prescribed limitation period.

Breach of contract

16. The Claimant accused the Respondent of breach of contract for not providing him with 40 suits and 20 pairs of shoes.
17. The Claimant asserted that the Respondent should have provided the items as part of the contract, but he did not produce in Court any contractual document or policy requiring the Respondent to provide the suits and shoes.
18. The Claimant did not also demonstrate that the Respondent had a custom or policy of providing such items.
19. The Claimant did not prove breach of contract.

Conclusion and Orders

20. From the foregoing, the Court finds the heads of claims presented by the Claimant as either statute time-bared or not proved.
21. The Cause is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF MARCH 2023.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mwamu & Co. Advocates

For Respondent Olel, Onyango, Ingutiah & Co. Advocates

Court Assistant Chrispo Aura

