



**Karogo v Karen Hospital Limited t/a The Karen Hospital (Cause
1216 of 2018) [2023] KEELRC 567 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 567 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1216 OF 2018
L NDOLO, J
MARCH 2, 2023**

BETWEEN

WILSON GITHAIGA KAROGO CLAIMANT

AND

KAREN HOSPITAL LIMITED T/A THE KAREN HOSPITAL RESPONDENT

RULING

1. This ruling relates to a preliminary objection raised by the respondent in its response dated September 19, 2018 and by notice of even date. The objection is based on the single ground that the claimant's claim is statute barred by dint of section 90 of the *Employment Act*.
2. The court directed the parties to file written submissions on the preliminary objection. At the time of writing this ruling, only the Respondent had complied.
3. In its written submissions dated November 7, 2022, the respondent submits that the claimant, having resigned effective April 1, 2015, ought to have filed his claim by April 1, 2018. The respondent therefore concludes that the claimant's claim dated July 19, 2018 is time barred.
4. The respondent's objection is premised on section 90 of the *Employment Act* which provides:

90 Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act*, 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.
5. It is not in contest that the claimant's employment with the respondent came to an end on April 1, 2015, being the effective date of his resignation. This was the accrual date of his cause of action and on the every outside, any claim he had ought to have been brought within three years after April 1, 2015.



6. The law on limitation of actions arising out of contracts of employment is crafted in a way that leaves no room for discretion. This position was well stated by the Court of Appeal in its decision in *Beatrice Kabai Adagala v Postal Corporation of Kenya* [2015] eKLR in the following terms:

“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, 2007* 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. As this court stated in the case of *Divecon Limited v Samani* [1995-1998] 1 EA P 48, a decision relied on by Radido, J in *Josephat Ndirangu v Henkel Chemicals (EA) Limited*, [2013] eKLR, the limitation period is never extended in matters based on 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.*”

7. In the present case, the claimant’s claim was filed out of time by a short margin of about three months. However, even one day beyond the limitation period is way too long, as the discretion of the court is completely fettered in matters of limitation of time for claims arising out of contracts of employment. I therefore have nothing more to do other than to strike out the claimant’s claim, which I hereby do.

8. Each party will bear their own costs.

9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF MARCH 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Mwaura h/b for Mr. Otinga for the Claimant

Mr. Sigoma for Respondent

