



**Madialo v Explico Insurance Company Limited (Cause
555 of 2021) [2023] KEELRC 903 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 903 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 555 OF 2021
MN NDUMA, J
APRIL 13, 2023**

BETWEEN

JACK MADIALO CLAIMANT

AND

EXPLICO INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The respondent filed a Preliminary Objection to the suit dated July 7, 2022 to wit, that the suit filed on December 19, 2018 is statute barred the cause of action having arisen on June 16, 2015 hence the filing was done outside the 3 years limitation period mandated under Section 90 of the *Employment Act*, 2007. The Preliminary Objection was filed following an Order by this Court dated June 2, 2021 transferring Milimani Chief Magistrate Court Cause No 687 of 2018 to this Court, upon application by the Claimant on grounds that the salary earned by the claimant being Kshs 230,714 per month placed the matter beyond the jurisdiction of the Chief Magistrate Court.
2. The Court has considered the submissions by the parties and in particular the record of the Chief Magistrate Court at Nairobi, Civil Case No 687 of 2018, now placed before this Court and further the Memorandum of Claim filed on December 19, 2018 in which is pleaded at paragraph 9 thereof that on June 16, 2016, the respondent issued the claimant with a letter of termination in which the reasons for termination were given.
3. The remedies sought by the claimant include a declaration by the Court that the said termination of employment was unlawful and unfair and that the claimant be paid the equivalent of 12 months' salary in compensation in respect of the termination. The claimant further claims terminal benefits including payment in lieu of leave days not taken and in lieu of notice, interest and costs.
4. On the facts not placed in dispute, and discernable on the face of the pleadings, the suit was filed 3 years and 6 months from the date the cause of action arose.



5. On the authority of a plethora of cases by this Court and the Court of Appeal including:-
Hilano Mwasolo vs Kenya Commercial Bank – (2013) eKLR, *Nyambuto Anambe Ayesa vs Kenya Power & Lighting Company Limited* [2015] eKLR, and the Court of Appeal decision in *Attorney General & Another vs Andrew Maina Gitinji & another* [2016] eKLR, this claim is untenable having been filed out of time hence deprive the Court of jurisdiction to entertain it.
6. The suit is therefore struck out for want of jurisdiction with no order as to costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13RD DAY OF APRIL, 2023.

MATHEWS N NDUMA

JUDGE

Appearances

M/s Magu for Claimant

Mr Mugwe for respondent

Ekale – Court Assistant

