



**Nyakwama v Beta Healthcare Limited (Cause E810 of 2021)  
[2023] KEELRC 1296 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1296 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E810 OF 2021**

**J RIKA, J**

**MAY 31, 2023**

**BETWEEN**

**VINCENT NYAKWAMA ..... CLAIMANT**

**AND**

**BETA HEALTHCARE LIMITED ..... RESPONDENT**

**RULING**

1. At paragraph 4 of his Statement of claim, filed on September 29, 2021, the claimant pleads that the respondent terminated his contract of employment on or about April 20, 2017.
2. In a letter dated May 15, 2017, from the claimant to the Chairman Beta Healthcare Retirement Scheme, asking the Scheme to pay his pension dues, the claimant states that he ceased to be an Employee of the respondent, from May 23, 2017.
3. The respondent wrote back on May 30, 2017, expressing surprise that the claimant was asking for payment of pension dues, even though he had not communicated his decision to leave employment. The respondent stated it nonetheless, did not object to the claimant's decision.
4. He filed the Statement of Claim on September 29, 2021, over 4 years, from his acknowledged dates of termination.
5. The respondent filed a statement of response dated July 21, 2022. Its position is that the Claim is time-barred, under section 90 of the *Employment Act*. Accompanying the Statement of Response is a Notice of Preliminary Objection, which is based on the same provision of the *Employment Act*.
6. The claimant filed a Replying Affidavit, holding that the Claim is not time-barred. He wrote a letter to the respondent received by the respondent on October 21, 2020, requiring the respondent to make a decision on his suspension. He had been suspended pending a criminal trial where he had been accused



of stealing certain items by the respondent. He states that he did not resign, and the respondent did not make a decision on his suspension.

7. Parties agreed to have the objection considered and determined on the strength of their pleadings, documents and affidavits on record.

### **The Court Finds**

8. The claimant was suspended by the respondent on April 20, 2017, after he was charged at Makadara Law Courts, with the offence of stealing the respondent's goods.
9. Suspension was to allow for investigations and disciplinary hearing if necessary.
10. He immediately wrote to the Chairman of Beta Healthcare Retirement Scheme, stating that he ceased to be an Employee of the respondent, from May 23, 2017.
11. He also pleads in his statement of claim, that the respondent terminated his contract, on or about April 20, 2017.
12. It is clear that the claimant considered his contract to have terminated in April or May 2017. He pleads termination took place on or about April 20, 2017, while his letter to the Pension Scheme, states he ceased to be an Employee of the respondent, on May 23, 2017.
13. His protestations in his replying affidavit, that he did not resign, and that the respondent did not take a decision on his suspension, has no effect on his acknowledged termination of contract of employment. The respondent had no obligation to make any decision on the suspension, the claimant having pre-empted that decision, by his own decision. He considered his contract terminated with the suspension.
14. The respondent expressed surprise that the claimant had engaged the Pension Scheme without tendering resignation, but communicated that it did not have objection to the decision by the claimant to leave employment.
15. Parties considered their mutuality of obligations to have come to an end.
16. The Court is satisfied that the claimant's contract was terminated when the claimant expressed his wish to cease being an Employee of the respondent. The respondent respected that wish. An Employee does not go pursuing pension dues, during the currency of an employment contract.
17. The Claim is time-barred under section 90 of the [Employment Act](#).

It Is Ordered:

- a. The Preliminary Objection is upheld.
- b. The Claim is struck out.
- c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF MAY 2023.**

**JAMES RIKA**

**JUDGE**

