



**Ochieng v Sunpar Pharmaceuticals Limited (Cause 242 of 2020)
[2023] KEELRC 1382 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1382 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 242 OF 2020**

J RIKA, J

MAY 31, 2023

BETWEEN

ELIZABETH J OCHIENG CLAIMANT

AND

SUNPAR PHARMACEUTICALS LIMITED RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated February 6, 2023. It is submitted that the Claim was filed out of time, under Section 90 of the *Employment Act*.
2. It was agreed by the Parties that the Preliminary Objection is argued, considered and determined on the strength of the Parties' Pleadings, Documents and Submissions.
3. The Claimant pleads that she was employed by the Respondent as a Receptionist, on or about September 7, 2009.
4. At paragraph 5 of the Statement of Claim, she states that she worked for the Respondent, for 8 years. This would suggest that her contract terminated on or about September 6, 2017. At the same paragraph, she avers that she was verbally dismissed in May 2018.
5. Paragraph 6 states that the Claimant fell sick on or about August 2016 and was hospitalized for some time, when the Respondent unlawfully and maliciously terminated her services.
6. At paragraph 7 of her Witness Statement, she states that she was asked by the CEO to write a resignation letter, in May 2017.
7. The Respondent submits that contradiction on the date of termination pleaded by the Claimant, is an attempt to confuse the Court on the date of termination.



8. According to the Respondent, termination was at the end of August 2015, as shown in the pay slip appearing as item 1, in the Respondent's List of Documents, dated May 23, 2022. The Claim ought to have been filed within 3 years of the date of termination. It was filed on June 17, 2020, out of the period given under Section 90 of the *Employment Act*.

The Court Finds: -

9. The Preliminary Objection filed by the Respondent does not seem to satisfy the requirement that, Preliminary Objection is based on pure points of law, argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact is to be ascertained. This principle is well stated, in *Mukbisa Biscuit Company v. West End Distributors Limited* [1969] E.A. 696 page 70.
10. The date of termination of the Claimant's contract is differently pleaded. It is to be ascertained. All the dates that have been pleaded cannot be correct. The Claimant must be given a chance to adduce evidence, and ascertain the date her contract was terminated. Only after the date has been ascertained, can the Court have a clear view of its temporal jurisdiction. There are facts that need to be ascertained, and the Preliminary Objection is not therefore, a pure point of law.
11. The Claimant's Advocate told the Court on February 7, 2023, that the Claimant suffered a stroke, which perhaps explains the unclear dates given, in her Pleadings, as the date of termination. It is prudent to allow her more time to ascertain her facts.

It is ordered: -

- a. The Preliminary Objection is declined.
- b. Costs in the Cause.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTIONS NO. 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF MAY, 2023.

JAMES RIKA

JUDGE

