



**Diamond v Synresins Limited & another (Cause E472 of 2021)  
[2023] KEELRC 1579 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1579 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E472 OF 2021**

**J RIKA, J  
JUNE 30, 2023**

**BETWEEN**

**NADIR CHARANIA DIAMOND ..... CLAIMANT**

**AND**

**SYNRESINS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY-GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In its Statement of Response to the Claim, dated 5<sup>th</sup> December 2021, the 1<sup>st</sup> Respondent states that the Court does not have jurisdiction to hear and determined the claim for malicious prosecution, and the rest of the claim relating to the contract of employment executed by the Parties, is statute -barred.
2. The Objection is supported by the 2<sup>nd</sup> Respondent.
3. The Court directed Parties to address the Objection through Written Submissions, which they confirmed to have filed and served, at the last mention before the Court, on 19<sup>th</sup> April 2023.
4. The Respondents rely on section 12 of the *Employment and Labour Relations Court*, is urging the Court to find that malicious prosecution does not fall within the category of disputes, involving the employer- employee relationship. The 2<sup>nd</sup> Respondent was not in an employer-employee relationship with the Claimant. The claim for damages for malicious prosecution and refund of legal fees incurred in concluded criminal proceedings involving the Parties, are not matters that fall within the jurisdiction of the Court.
5. On the second limb, it is submitted for the Respondents that the Claim is time-barred under section 90 of the *Employment Act*. The Claimant states that he voluntarily resigned in 2008, immediately he was charged in the criminal proceedings. 3-year limitation imposed on filing of employment claims, ended sometime in 2011.



6. The Claimant submits that the Court has jurisdiction on malicious prosecution, relying on the Court of Appeal decision in *Paramount Bank Limited v Naqvi Syed Qamar* [2017] e-KLR.
7. On the second limb, the Claimant submits that the criminal proceedings took 10 years to conclude, and that typed proceedings were only availed to him in 2020, paving the way to him for filing of the Claim.

### **The Court Finds**

8. The first Ground relating to the jurisdiction of this Court to hear and determine a claim for damages for malicious prosecution, is declined, on the strength of the decision of the Court of Appeal, in *Paramount Bank Limited v Naqvi Syed Qamar* [2017] e-KLR.
9. The Court of Appeal stated, “ There can be no doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the Court.”
10. On the second limb on time-bar, the Claimant pleads at paragraph 5 of his Statement of Claim, that he occupied the position of Accounts Manager, until 25<sup>th</sup> January 2008 when he was arrested. In effect the Claimant pleads that his contract was terminated upon arrest, on 25<sup>th</sup> January 2008. At paragraph 40 of his Witness Statement, the Claimant states that he was forced to resign by hostile work environment. He states further at paragraph 41 that he was not paid his salary for days worked in January 2007.
11. His own Pleadings show that he left employment, either in January 2007 or 2008. He filed this Claim on 15<sup>th</sup> June 2021. This is way beyond the 3-year limitation under section 90 of the *Employment Act*. The time taken to conclude his criminal trial, has no bearing on his claim for unfair termination, and terminal benefits.
12. The Claim is time-barred and the Court does not have temporal jurisdiction.

### **It Is Ordered**

- a. The Claim is struck out.
- b. No order the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30<sup>TH</sup> DAY OF JUNE 2023.**

**JAMES RIKA  
JUDGE**

