



**Onyango v Doshi Group of Companies Limited & 2 others (Cause 366 of 2019) [2023] KEELRC 1617 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1617 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 366 OF 2019**  
**AN MWAURE, J**  
**JUNE 30, 2023**

**BETWEEN**

**GABRIEL WILFRED OMONDI ONYANGO ..... APPLICANT**

**AND**

**DOSHI GROUP OF COMPANIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DOSHI GROUP OF COMPANIES (ELECTRICAL) LIMITED 2<sup>ND</sup> RESPONDENT**

**DOSHI & COMPANY (HARDWARE) LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The claimant /applicant filed the application dated the June 25, 2021 brought under articles 35 (1) (b), 50 (1) and 159(2) of the Constitutions of Kenya 2010, section 74 of the Employment Act 2007, sections 3, 12 (3) (viii), 13 & 20 (1), (4) (a) (d), (5) and (7), 8 (a) and 9 of the Employment & Labour Relations Court Act (chapter 80 of the Laws of Kenya), rules 14 (7) and (17) (1) of the Employment and Labour Relations Court (Procedural) Rules, 2016 and all other enabling Laws. The application sought the following;
  - a. That the respondents be compelled to produce for inspection by the claimant and to allow the claimant to make copies of all the necessary documents listed in the Notice to Produce dated May 28, 2021, within 7 days from the date of this Order.
  - b. In default the respondents be held liable for committing an offence under section 20 (7) of the Employment and Labour Relations Act (Chapter 234B of the laws of Kenya) with appropriate penal consequences as deemed fit.
  - c. The honourable court do make such other incidental and or ancillary orders as it deems fit and just to grant in the circumstances
  - d. Costs of the application be met by the respondents.



2. The application is supported by the grounds on the face of the application and the deposition of the applicant.
3. The respondents have filed notice of preliminary objection dated the February 28, 2023 seeking that the whole suit be struck out on the basis that this honourable Court lacks jurisdiction to hear and determine this matter because all claims and or causes of action in the claimant's memorandum of claim dated 03/06/2019 are time barred by virtue of section 90 of the Employment Act, 2007, proviso under section 4 (2) of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya and section 20 of the Defamation Act, Chapter 36 of the Laws of Kenya.
4. The Preliminary objection was disposed by way of written submissions. The Respondent in his submissions urges that section 90 of the Employment Act 2007 cannot be circumvented. The Respondent relied on the case of Beatrice Kabai Adagala versus Postal Corporation of Kenya (2015) e KLR where the Court of Appeal held that 'Much as we sympathise 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 Devecon Limited versus Samani 1995-1998 a decision relied upon by Radido J in Josephat Ndirangu versus Henkel Chemicals Limited 2013 e KLR, the limitations 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.
5. On the defamation, the Respondent cited the case of Wycliffe A Swanya versus Toyota East Africa Ltd and Another 2009 e KLR where the Court of Appeal made the following finding; 'Unfortunately the Limitation of Actions Act Chapter 22 Laws of Kenya) does not say so. It says in case of Libel or slander no action may be filed 'after the end of 12 months from the date the cause of action accrued..... and we understand this to mean from the date the slanderous remarks are made. (See proviso to section 4 (2) of the Limitations of Actions Act and section 20 of the Defamation Act)
6. There are no submissions on behalf of the claimant in the file.

### **Determination**

7. Section 90 of the Act is framed in mandatory terms. A claim based on a contract of employment must be filed within 3 years. This Court is denied jurisdiction to extend time to file suits not lodged with the court within 3 years from the date the cause of action arose.
8. Section 90 of the Act requires that; Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (cap. 22), 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.
9. The cause of action in a claim emanating from an employment contract takes effect from the date of termination of employment as stated in the letter communicating the same. The fact that an employee whose employment has been terminated seeks a review or an appeal or makes demand thereof does not mean that accrual of the cause of action is held in abeyance until a final verdict on the review or appeal or a response on the demand is made. See Hilarion Mwabolo v Kenya Commercial Bank [2013 eKLR.
10. In the case before court, the claimant was suspended in the year 2008. He was from the beginning of the impression that the employer had unfairly accused him that he had stole an assorted hardware items and had all the facts that could have enabled him bring the case against the employer on the issue. I



also hold the view that the claimant must have at least appreciated that the Respondent had made the decision to exclude him from the workplace before the expiry of the 3 years required to file the claim when he was not called back to resume his duties, and should have taken steps to bring the claim to court.

11. This is a case where the employment relationship between the claimant and the respondent came to an end in May 2008. A whole eleven years later is when the suit was filed in 2019. The same cannot be justified in any way as ones the court's jurisdiction is challenged the court can only down its tools.
12. In view of the foregoing the court finds the preliminary objection by the respondent is merited and this court has no jurisdiction to hear this suit.
13. The claim is accordingly dismissed and each party will meet their respective costs of the suit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

