



Gitonga v Spire Bank Ltd (Employment and Labour Relations Cause E651 of 2021) [2023] KEELRC 1545 (KLR) (20 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1545 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E651 OF 2021
AN MWAURE, J
JUNE 20, 2023**

BETWEEN

TIMOTHY GITONGA CLAIMANT

AND

SPIRE BANK LTD RESPONDENT

RULING

1. The applicant filed an application dated 21st November 2022 praying the court be pleased to find the instant suit is competent and properly before the court under section 90 of [Employment Act, 2007](#).
2. The court be pleased to review its orders given on 15th November 2022 directing that the ruling in the suit would be delivered on 1st December 2022 and substitute the same with orders fixing the suit for further hearing on priority basis.
3. As per the supporting affidavit of the claimant who tendered his resignation on 12th June 2018 he filed a case for compensation of 3 months' salary being kshs 5,475,000/-.
4. The said suit was filed on the 5th August 2021. This has over three years since the said resignation.
5. The case commenced for hearing in court on 15th November 2022 and the court raised the issue of time bar and gave a ruling date of 1st December 2022. Before the ruling could be delivered the claimant brought this application.
6. The court has noted the claimants submissions dated 15th February 2023 and respondent's submissions dated 20th February 2023.
7. The court is confused by this application as it is merely an observation that the suit is time barred. The court did not make a ruling to justify the claimant to file this application. Now is not clear what the court is expected to do as it had not even made a ruling.



8. Yet there is no room for the court to review an order which had not been made already. The court merely wrote “ the court notes the case is time bared. Ruling on 1/12/2022”
9. It is not clear what order the court is being asked to review.
10. Nevertheless since the claimant has brought this application the court might as well rule emphatically that under section 90 of *Employment Act* this court has no room to hear a case which is beyond the three years period. In other words the court has no jurisdiction to hear a case which is filed out of the time provided in the act which is three years.
11. In the case of *Willis Onditi Odhiambo vs Gateway Insurance Company Ltd* the court held that limitation period is never extended in matters based on contract and the period can only be extended in claims founded on tort and only where applicant satisfies the requirements of section 27 and 28 of limitations of actions act.
12. Alongside that let us look at the case petition E 5629 of 2020 *Anderson Nganga Maina & 2 Others Cereals Produce Board* where the court held:

“Section 90 of the *Employment Act* provides as follows:- 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. From a plain reading of the law, the claim is, as asserted by the Respondent, quite stale, barred by limitation and worse still vexatious and an abuse of the Court process. The Claimants were required to move the Court by 4th October 2013 as the *Employment Act* places a limitation of 3 years on their claim since there is no scope for enlargement of time nor does time stop running. Whether the Criminal Case is ongoing or not the time to file suit ran out and the suit must suffer the singular fate it can only suffer – striking out as I hereby do. Suit struck out with costs to the Respondent.

13. Further in the case of *Hilton vs Sultan 5 Team Laundry* Lord Gren Mr said:

“But the statute of limitation is not concerned with merits. Once the axe falls it falls and the defendant who is fortunate enough to have acquired the benefits of the statute of limitation is entitled to insist on his strict rights”

14. The court has no way of enlarge time once it has passed be it for a day or years. The court therefore has no jurisdiction to hear this case and so has no room to declare the suit competent and properly before the court. The claimant’s application dated November 21, 2022 is therefore dismissed. Each party will bear their costs of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH 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 15th March 2020 and subsequent directions



of 21st 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

