



**Yamba v Kenya Revenue Authority (Cause E097 of 2021)  
[2023] KEELRC 1486 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1486 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E097 OF 2021  
AN MWAURE, J  
JUNE 16, 2023**

**BETWEEN**

**NICHOLAS JOHN YAMBA ..... CLAIMANT**

**AND**

**KENYA REVENUE AUTHORITY ..... RESPONDENT**

**RULING**

1. The claimant filed the claim on the 08/2/2021 alleging violation and infringement of fundamental rights as enshrined in article 47 of the Constitution. He was serving as the Assistant Revenue Officer at Isebania Customs Station. The claimant in the claim says that he was retired on accusations of exports of cigarettes following proceedings which took place in gross violation of his rights.
2. The claimant then filed a Notice of Motion dated March 6, 2023 said to be brought under the Employment and Labour Relations Court Act, the Constitution and all the applicable laws seeking that the time limited for serving summons, and filing suit under the Employment Act be enlarged.
3. In the supporting affidavit, the claimant says that he was indisposed and the issue of limitations of time came well after instructing the lawyer to conduct the case on his behalf and was subsequently sick again after this leading to him being confined to bed.
4. The respondent has filed a notice preliminary objection dated the 23<sup>rd</sup> day of March 2023 saying that the Court lacks jurisdiction over the dispute in the first instance and further that in any event, the suit is statutorily time barred pursuant to section 90 of the Employment Act and section 20A of the Kenya Revenue Authority Act, 1995.
5. The notice of preliminary objection was canvassed by way of written submissions. The respondent applicant submits that section 12 of the Employment & Labour Relations Court Act provides that ‘The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred



to it in accordance with article 162 (2) of the Constitution and the provisions of this Act or any other law which extends jurisdiction to the court relating to employment and labour.

6. The applicant relies on the case of Owners of the Motor Vessel 'Lilian 'S' Caltex Oil (Kenya) Ltd where it was held that:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means.

7. They also relied on the decision of the Court of Appeal in Willis Onditi Odhiambo versus Gateway Insurance Company Ltd, Beatrice Kabai Adagala v Postal Corporation of Kenya, Devecon v Samani Ltd and Josephat Ndirangu v Hankel Chemicals (EA) Ltd to the effect that ‘the Limitation period is never extended in matters based on the contract, the period can only be extended in claims founded on tort and only where the applicant satisfies the requirements of section 27 and 28 of the Limitations of Actions Act”
8. The Respondent says that the applicant herein has not demonstrated any law or article of the constitution upon which the Court can at least say it derives jurisdiction to enlarge. Not even sections 27 and 28 of the Limitations Act, which from the foregoing mainly relates to torts.
9. The Respondent relies on section 90 of the Employment Act which provides that ‘Notwithstanding the provisions of section 4 (1) of the Limitations Actions (cap. 22), no civil action or proceedings based or arising out of this Act or 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’.
10. That besides the foregoing, Kenya Revenue Authority Act under section 20A provides that ‘legal action against the Authority shall not be instituted unless it is commenced within three years after the act, neglect or default complained of, and in the case of continuing injury or damage within twelve months next after the cessation of the act.
11. The respondent submits that the court should find that in view of the foregoing, that notwithstanding the misfortunes which befell the claimant, the suit herein brought after 14 years is time barred, not properly before court and beyond any salvage/resuscitation.
12. The claimant submits that section 22 of the Limitations of Actions Act envisages a situation in which the person is completely disabled by sickness or disease upto sometime, and the cause of action will start running only if he dies, or recovers. In this case, the Applicant is still disabled perhaps permanently and other than that he has since been diagnosed with cancer of the prostate and continues to recuperate at Kenyatta National Hospital. Section 90 of the Employment Act overrides section 4 (1) of the Limitation of Actions Act, but saves section 22 of the Act under which the applicant comes to court. Emphasis is that the Applicant was rendered disabled and continues to hold a disability card copy attached to list of documents.
13. The claimant further argues that the claim derives from constitutional right to fair hearing and cannot be limited by an Act.

## Determination

14. There is commonality that the present suit was filed outside the time prescribed under section 90 of the Employment Act 2007. What the court is to decide is whether there is permissible basis upon which



the court can proceed to extend time for the filing of the claim before court in light of the dictates of section 90 of the [Employment Act](#) 2007.

15. In Petition E5629 of 2020 [Anderson Nganga Maina and 2 others v National Cereals and Produce Board](#) the court had the following to say:

“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.

16. In [Maxwel Sifuna v Teachers Service Commission](#) 2022 eKLR The court held that:

“The preamble title of the Petition states it is in the matter of the violation of the fundamental right and freedom in the matter of the [Employment Act](#), 2007 Laws of Kenya, in the matter of the Constitution of Kenya (protection of rights and fundamental freedom), practice and procedure rules, 2013 and in the matter of the challenge of the unlawful dismissal of the Petitioner from the employment of the Respondent. The title itself would appear to betray the Petitioner disguise of bringing a petition for a claim for dismissal from employment.

17. In Petition Number 250 of 2019 versus the [Hon Attorney General, Public Service Commission and Joseph Kinyua Ngunjiri](#) the court cited with approval the decision in [Jane Angila Obando v TSC & 2 others](#), Petition No.4 of 2020 the court held that;

“The right to apply to the High Court under ....of the [Constitution](#) for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under .... the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court or being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom. These cited cases reverberate true in this case. The petitioner cannot avoid the application of section 90 of the Act with regard to time taking into account the position held, the nature of claims made and the remedies sought. The objections with regard to the suit being time barred cannot be cured through a constitutional petition.

18. The court relying on the foreshadowed authorities returns there is no basis or discretion to enlarge time for filing the claim before court. The issues raised are commonplace employment issues with applicable



substantive and procedural rules of law provided for under the *Employment Act* 2007 and validly ought not from the subject of petition as is in this case. The provisions of section 90 of the *Employment Act* 2007 cannot be defeated by the invocation of the alleged violation of the constitutional guarantees. The claim is accordingly dismissed for lack of jurisdiction with no order as to costs.

19. In the court of appeal case *Oadi Odhiambo v Gateway Insurance Co Ltd* (23) the Court of Appeal held:

“Under section 27(1) of the Limitations Act time to file a suit can only be extended on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages accorded should be in respect of personal injury to the plaintiff as a result of a tort”

The court further in the case of *Hilton v Sultan S 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 stature of limitation is entitled to insist on his strict rights.”

20. Much as the court would sympathise with the plight and the fate of the applicant nevertheless my hands are tied and there is no way to untie them. The preliminary objection dated March 23, 2023 is merited and is granted. The court has no jurisdiction to deal with the application dated March 6, 2023 as the suit is time barred. Each party will meet their costs of the preliminary objection.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16<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**

