



**Karuma v Kenya Power & Lighting Co. Limited (Cause
E023 of 2023) [2023] KEELRC 1920 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1920 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E023 OF 2023**

**M MBARŪ, J
JULY 13, 2023**

BETWEEN

DANIEL MBURU KARUMA CLAIMANT

AND

KENYA POWER & LIGHTING CO. LIMITED RESPONDENT

RULING

1. The ruling herein relates to the respondent Notice of Preliminary Objections dated May 10, 2023 on the grounds that the court lacks jurisdiction to hear and determine this dispute and should be dismissed with costs by dint of Section 90 of the *Employment Act, 2007* and section 3(1) and (2) of the *Public Authorities Limitations Act*.
2. Both parties attended court on May 22, 2023 and agreed to file written submissions.
3. The respondent submitted that under Section 90 of the *Employment Act, 2007* (the Act) an employment claim should be filed in court within 3 years from the date the cause of action arose. Under Section 3(1) and (3) of the *Public Authorities Limitations Act*, no proceedings founded on contract shall be made against the government after the end of 3 years from the date the cause of action accrued.
4. The respondent also submitted that claimant's case is premised on the grounds that he was an employee of the respondent which was terminated by summary dismissal on February 4, 2020 and he filed suit on March 23, 2023 a period of more than 3 years after the cause of action arose and for this reason, a claim that is time barred denies the court jurisdiction and should be dismissed with costs as held in *Joel Kiprono Langat v Kenya Posts & Telecommunications Corporation* [2000] eKLR; *Nyabuto Arambe Abusa v Kenya Power & Lighting Co. Limited* [2017] eKLR; *Attorney General & another v Andrew Maina Githinji & another* [2016] eKLR. Without jurisdiction, the court must stop. A claim that is time barred cannot have time extended so as to be heard.



5. The claimant submitted that under section 3(1) and (2) of the [Public Authorities Act](#), the respondent is not a local authority so as to rely on its provisions.
6. Section 90 of the [Act](#) allow claims to be filed within 3 years but the claimant and the claim is filed within time because, following the summary dismissal on February 4, 2020 the claimant lodged an appeal as allowed to the Board of Directors on February 21, 2020 and the respondent was aware of this appeal and the decision on the appeal was only communicated on November 17, 2020 where the decision to dismiss the claimant was confirmed. Time under Section 90 of the Act only started running then, November 17, 2020.
7. The claimant cannot be stopped from seeking justice which he has done within time. The objections made are without merit and should be dismissed with costs
8. Jurisdiction of the court is everything. Without it, the court must stop as held in the case of [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR.
9. In the Memorandum of Claim filed on March 23, 2023, the facts of the claim are that the claimant was employed by the respondent from the year 1989 until February 4, 2020 when he was issued with notice of summary dismissal and is claiming that this was unfair and should be paid terminal dues.
10. The cause of action commenced with the action of summary dismissal. The end of employment was on February 4, 2020.
11. Whatever dispute resolution mechanisms were employed from the date the cause of action arose and within the 3 years contemplated under section 90 of the Act, this is immaterial if a claim is not filed in court within such time. This includes time to file an appeal after employment had ceased.
12. The respondent as a company with right to sue and be sued cannot rely on section 3 of the Public Authorities Act. The issue in dispute being employment and labour relations, the forum for litigation this court within the meaning of the [Employment and Labour Relations Court Act, 2011](#) read together with the Act which allow an employee to file a claim within 3 years from the date the cause of action arose.
13. The Court of Appeal in the case of [Kibe v Attorney General](#) (Civil Appeal No 164 of 2000) held that an employee cannot claim that he was unable to file a claim because he had criminal proceedings ongoing and until such criminal case is determined, then the employee could not file a claim with regard to employment. Whether the employee is acquitted in a criminal case or not does not automatically render an employee immune to disciplinary action by an employer because, a criminal trial and internal disciplinary proceedings initiated by an employer against an employee are two distinct processes with different procedural and standard of proof requirements.

An employee whose employment is terminated by summary dismissal ought to file suit within 3 years under the provisions of Section 90 of the Act.

14. Under the mandatory provisions of Section 90 of the [Act](#), from February 4, 2020 the claimant had until February 3, 2023 to file suit. In the case of [Beatrice Kabai Adagala v Postal Corporation of Kenya](#) [2015] eKLR that;

Much as we sympathize 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 [Divecon Limited v Samani](#) [1995-1998] 1 EA P48, ... in [Josephat Ndirangu v Henkel Chemicals \(EA\) Limited](#), [2013] eKLR, the



limitation 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*.

15. The claim filed out of time hence denies this court jurisdiction to hear and determine it. The claim is hereby dismissed with costs to the respondent.

Delivered in open court at Mombasa this 13 day of July, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

