



Yaa & another (Suing as Administrators of the Estate of Fredrick Yaa Charo) v Kilifi County Government & another (Cause 76 of 2017) [2023] KEELRC 1928 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1928 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE 76 OF 2017**

**M MBARŪ, J
JULY 13, 2023**

BETWEEN

**FIKIRI FREDRICK YAA 1ST CLAIMANT
BEATRICE JUMWA KAINGU 2ND CLAIMANT
SUING AS ADMINISTRATORS OF THE ESTATE OF FREDRICK YAA CHARO**

AND

**KILIFI COUNTY GOVERNMENT 1ST RESPONDENT
PUBLIC SERVICE BOARD 2ND RESPONDENT**

RULING

1. The respondents filed Notice of Preliminary Objections on 5 December 2022 on the grounds that the court lacks jurisdiction to admit the claim against the 2 respondent by dint of section 90 of the *Employment Act*, 2007 (the Act) and the suit is time barred having been filed after 3 years since employment terminated on 30 March 2015 and the Further Amended Memorandum of Claim was filed on 27 June 2022 a period of over 4 years after the statutory limitation period and hence the claimants lack capacity to sue the 2 respondent. The suit is incompetent and should be dismissed with costs.

Parties agreed to address the objection by way of written submissions

2. The 2nd respondent submitted that Section 90 of the Act requires a claim in employment to be filed within 3 years from the date the cause of action arose. The cause of action herein is stated to have arisen on 30 October 2015 when the late Fredrick Yaa Charo's employment was terminated but suit against the 2nd respondent was only filed upon the Further Amended Memorandum of Claim as held in *Kenya Wine Agencies v Yobeth Amoro* [2018] eKLR and equity only aids the vigilant not the indolent but the claimants failed to file suit in good time. In *Nyanamba O Steve v Teachers Service Commission* [2016]



eKLR the court held that limitation is not a technicality that can be cured through an amendment and the claim filed being contrary to the mandatory provisions of the law, the court lacks jurisdiction and should be dismissed with costs.

3. The claimants submitted that the deceased herein filed suit on 29 November 2017 seeking payment of his terminal dues from the respondents. The court allowed an amendment to the claim on 14 March 2022 which was done and in response, the respondents filed these objections. In light of section 20(1) of the *Employment and Labour Relations Court act*, 2011 the court has power to issue such directions in the interests of justice and the 2nd respondent cannot rely on section 90 to urge its objections in that regard.

Determination

4. The sole issue herein is whether the claim against the 2nd respondent is filed contrary to Section 90 of the Act and time barred.
5. A look at the Further Amended Memorandum of Claim filed on 7 December 2022 alone and which brings on board the 2nd respondent would not give a full picture to the claim herein.
6. Through notice dated 20 April 2022 the 1st respondent filed Notice of Preliminary objections which the court analysed and at paragraph (18) thereof directed and ordered as follows;

In the premises, I decline to grant the preliminary objections. Instead, I grant the Applicants' request to amend the Statement of Claim to bring on board the relevant County Public Service Board as a necessary party to this action. I direct the Applicants to serve the resultant summons as appropriate. ...

7. The amendments herein and introduction of the 2nd respondent is through a court Order.
8. The court is given wide mandate under section 20(4) of the *Employment and Labour Relations Court Act*, 2011 that;
 - (4) For the purpose of dealing with any matter before it, the Court may by order in writing signed by or on behalf of the Court require any person to—
 - (a) furnish in writing or otherwise, such particulars in relation to such matters as it may require;
 - (b) attend before it;
 - (c) give evidence on oath or otherwise; and
 - (d) produce any relevant documents.
9. Under such mandate, to ensure the effectual and full view of the matters before it, the court directed an amendment to the claim and specifically, the introduction of the County Public Service Board that is appropriate and necessary in these proceedings and relating to the claimant's case. Such directions and orders cannot be circumvented through any other means taking into account the power given under the constitutive legislation for the court. On good basis, the Orders of 21 June 2022 were not a blanket order to serve any other purpose save as specifically outlined by the court.
10. The claim herein was filed within time and the court has since issued directions for the joinder of the 2nd respondent through an amendment to the Memorandum of Claim which the claimants have obliged.



11. Accordingly, on this basis, objections dated 5 December 2022 are without merits. Hearing directions on the claim shall issue. Costs to the claimants.

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

M. MBARÚ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

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