



**Mulae v Coast Bus Mombasa Limited t/a Mail Co Ltd (Cause
438 of 2018) [2023] KEELRC 2134 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2134 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 438 OF 2018
J RIKA, J
SEPTEMBER 22, 2023**

BETWEEN

JOSEPHAT MUTIA MULAE CLAIMANT

AND

COAST BUS MOMBASA LIMITED T/A MAIL CO LTD RESPONDENT

RULING

1. The Claimant filed his Statement of Claim on March 28, 2018.
2. He states that he was employed by the Respondent as a Parcels Clerk, on August 16, 1994. In or about May 2011, the Respondent falsely and maliciously accused him of stealing a customer's parcel.
3. He was arrested by the Police on August 16, 2011 following the complaint, and arraigned before the Chief Magistrate's Court at Makadara, Nairobi. Trial, he states, spanned over 6 years. He was acquitted on December 2, 2017.
4. At paragraph 10 of the Statement of Claim, the Claimant states that following his arrest, on August 16, 2011, the Respondent terminated his employment unlawfully.
5. His Cause is founded on unlawful termination.
6. The Respondent filed Amended Notice of Preliminary Objection, dated January 18, 2023. Objection is that the Claim is statute-barred, under Section 90 of the [Employment Act](#). It was filed outside the limitation period of 3 years.
7. It was agreed by the Parties that Objection is heard and determined based on Written Submissions. Parties confirmed filing and exchange of Submissions at the last appearance before, the Court on June 27, 2023.



8. The Respondent submits that the Claim is statute-barred under Section 90 of the *Employment Act*. It was filed 7 years after termination. The Claimant submits that he has not pleaded that he ceased working for the Respondent upon arrest; he pleads that the Respondent stopped payment of his salary upon arrest. The facts are disputed.

The Court Finds: -

9. The Claimant pleads at paragraph 10 of his Statement of Claim, that the Respondent unlawfully terminated his employment, after his arrest. Arrest took place on August 16, 2011. He does not plead that the Respondent stopped paying his salary after his arrest, on August 16, 2011; he pleads that the Respondent terminated his employment. In any event, complete stoppage of salary normally goes with termination of employment. Stoppage of salary and termination of employment, are not mutually exclusive.
10. The Claimant appears to have been aware that his Claim was stale, explaining at paragraph 7 of the Statement of Claim, without prompting, that the criminal case took long to conclude. He also pleads at paragraph 12 [h], that he was not issued a written notice of termination. His Claim primarily concerns termination which took effect upon his arrest, not stoppage of salary.
11. The Court does not think that the date of termination is a fact that remains to be ascertained, having been pleaded in fairly clear language, by the Claimant himself.
12. It is not in dispute that he filed the Claim on March 28, 2018, 7 years after arrest and termination. There was nothing which barred him from pursuing notice, house allowance, annual leave, service pay and compensation for unfair termination, while the criminal case was going on. Damages for malicious prosecution and expenses incurred in defending the criminal proceedings, ideally, should have been pursued separately, in the appropriate civil jurisdiction, against the Respondent and the prosecuting authorities, and did not have to be joined to the pursuit of employment benefits.
13. The Court upholds Preliminary Objection, relying on the Court of Appeal decision in *Rift Valley Railways [K] Ltd v Hawkins Wagunza Musonye & Another* [2016] e-KLR, holding that, where a statute limits the time for bringing an action, no Court has the power to extend that time, unless the statute itself allows extension of time. The Claimant has not brought to the attention of the Court, a provision in the *Employment Act*, which allows this Court to stretch the period prescribed under Section 90 of the *Employment Act*, on filing of Claims. At the heart of the Preliminary Objection is the question of the temporal jurisdiction of this Court. The Court agrees that, the limitation period for disputes involving employment contracts, under Section 90 of the *Employment Act*, remains 3 years from the date of termination of contract, and 12 months from the date of cessation, in cases of continuing injury or damage.
14. The Preliminary Objection is sustained, and the Claim is dismissed, with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 22ND DAY OF SEPTEMBER 2023.

JAMES RIKA

JUDGE

