



**Musumba v Kenya Methodist University (Cause 111 of 2019)
[2023] KEELRC 2665 (KLR) (30 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 111 OF 2019
B ONGAYA, J
OCTOBER 30, 2023**

BETWEEN

JAIRUS MUSUMBA CLAIMANT

AND

KENYA METHODIST UNIVERSITY RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on 25.02.2019 through Weda & Company Advocates. The claimant changed its counsel to Abdul Agonga & Associates by the notice of change of advocates dated 27.01.2022. The claimant states that he was employed by the respondent from 28.02.2004 to 2016 as a part time lecturer at approximately Kshs.90,000.00 for each course unit taught. His case is that he taught 13 units but the respondent failed to pay him accrued dues amounting to Kshs.1, 170,000.00. The claimant prayed for a declaration of breach of contract, payment of the accrued dues, damages for breach of contract plus costs and interest.
2. The respondent filed the response to memorandum of claim dated 22.01.2020 and through Patricks Law Associates. The respondent denied the claimant's claims and in alternative, pleaded that the claimant was paid all the dues. The respondent prayed that the suit be dismissed with costs.
3. The respondent also filed a notice of preliminary objection dated 02.08.2022 that the suit be struck out upon the grounds that the claim is time barred.
4. The Court directed the preliminary objection be urged after taking of evidence. The claimant testified to support his case. The respondent opted to rely on the documents on record. Final submissions were filed for the parties.
5. The preliminary issue is whether the suit is time barred. The claimant testified and confirmed that he worked for the respondent until April 2016 and a year had already lapsed when he filed the suit on



25.02.2019. He further confirmed that he had worked without payment of the dues claimed and it was a continuing breach because he was not paid for quite some time.

6. It is submitted for the respondent that section 90 of the *Employment Act*, 2007 provides that the provisions of section 4(1) of the *Limitation of Actions Act* (Cap.22) do not apply and that no civil action or proceedings based or arising out of the 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. It is further submitted that the breach alleged was continuing and after cessation in April 2016, the claimant filed the suit outside the time of limitation as prescribed being more than 12 months after the cessation thereof.
7. It was submitted for the claimant that the preliminary objection failed to cite the law upon which it was based. It is also submitted for the claimant that the period of limitation under section 90 of the Act would be 3 years. There are no submissions made for the claimant about the time of limitation under the section prescribing 12 months from cessation for a cause of action based on a continuing injury.
8. The Court finds that the material on record show that the claimant alleges he was not paid for a long period of time during which the amount claimed accumulated. It appears to the Court that in absence of any other material, the injury or breach was continuing as per the claimant's own evidence so that the suit was time barred as submitted for the respondent. The suit is liable to being dismissed. The Court has considered all circumstances of the case and returns that each party to bear own costs especially that the preliminary objection was not promptly pleaded and invoked at the earliest possible time in the proceedings so as to mitigate on the costs. In conclusion the claimant's suit is hereby dismissed with orders each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 30TH OCTOBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

