



**Kiilu v Kenya Airports Authority (Petition E071 of 2023)  
[2023] KEELRC 2613 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2613 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E071 OF 2023  
MN NDUMA, J  
OCTOBER 19, 2023**

**BETWEEN**

**FREDRICK KAUNDA KIILU ..... CLAIMANT**

**AND**

**KENYA AIRPORTS AUTHORITY ..... RESPONDENT**

**RULING**

1. The petition was filed on 4/4/2023 by the petitioner who on the face of the petition was employed by the respondent in 1979 and worked for the respondent in a position of wireman to electrical inspector and was an electrical technician when his employment was terminated on August 9, 2018 on grounds of negligence of duty.
2. The respondent has raised a preliminary objection that the court lacks jurisdiction to entertain the suit by dint of section 90 of the *Employment Act*, 2007 which provides that any suit whose cause of action is based on a contract of employment must be filed within three (3) years from the date the cause of action arose, failing which the suit is statutorily barred.
3. Section 90 reads:-

“ 90 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.”
4. A careful consideration of the petition as filed leaves the court with no doubt that the suit is a mundane claim for unlawful and unfair termination disguised as a constitutional petition.



5. The cause of action is the termination of employment of the petitioner on August 9, 2018. This suit was filed on 4/4/2023 more than four (4) years from the date the cause of action arose.
6. In *Fred Mudave Gogo v G4S Security Services (K) Limited* [2014] eKLR the Court observed as follows:-

“It cannot be denied that the cause of action herein is based on a contract of employment. The claimant’s employment was terminated on August 8, 2008, a period of over 3 years from the date of filing this claim in the industrial court on the June 5, 2013 and therefore by operation of the law, the claim had already lapsed.”
7. This is the situation in the present case. It does not matter that a suit is brought by way of a memorandum of claim or by way of a *Constitution* petition provided the dispute constituting the cause of action is clear and unequivocal and is one based on a contract of employment.
8. The court lacks jurisdiction to entertain the suit as was stated in *Nicodemus Marani v Timsales Limited* – Industrial Cause No 204 of 2014. The Court also lacks jurisdiction to extend the period in which the suit founded on a contract of employment may be filed.
9. As the court’s jurisdiction flows from either the *Constitution* or legislation or both, as was stated in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited and 2 others* SC Application No 2 of 2012 [ 2012] eKLR, the court strikes out the matter for lack of jurisdiction to hear and determine the same.
10. Each party to bear their own costs of the suit.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**Mathews N. Nduma**

**Judge**

**Appearance**

Mr. Masese for Respondent/Objector

Mr. Muteti for Petitioner

Ekale: Court Assistant

