



**Ongachi v Kenya Power & Lighting Co Ltd (Cause E024 of 2023)
[2023] KEELRC 2582 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2582 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E024 OF 2023
AK NZEI, J
OCTOBER 19, 2023**

BETWEEN

RODGERS ODERA ONGACHI CLAIMANT

AND

KENYA POWER & LIGHTING CO LTD RESPONDENT

RULING

1. The claimant's suit was filed in this court on 23/3/2023 vide a statement of claim dated 3/2/2023. The claimant pleaded as follows in paragraph 7 of the statement of claim:-

- “7. The claimant avers that following the audit summons to which he adequately responded and affirmed his innocence, the respondent followed up on an apparently pre-determined and supposed disciplinary proceedings resulting in a summary dismissal of the claimant on February 4, 2020 on account of what the respondent termed as follows:-
- i. “working as an agent of Crispus Maina to receive money in both cash and mobile transfer in order for complementary rebillings of customer accounts to be effected.
 - ii. you paid a customer's bill with Ksh. 3,355 via M-pesa, immediately after it was rebilled.
 - iii. send ksh. 17,000 via mobile transfer to Crispus Maina for rebilling of customer accounts.
 - iv. received ksh. 25,000 in cash from Paul Juma which you gave to Crispus Maina to facilitate the irregular rebilling of accounts.”



2. The respondent entered appearance on 16/5/2023 and on the same date filed a statement of Response and a Notice of Preliminary Objection dated 10/5/2023. It was stated as follows in the said Notice of Preliminary Objection:-

“Take Notice that the respondent shall at the earliest opportune time raise a preliminary objection that this Honourable Court lacks jurisdiction to hear and determine this dispute and suit together with all consequential orders and should be dismissed with costs by dint of section 90 of the Employment Act 2007 and sections 3(1) and (2) of the Public Authorities Limitation Act, cap39”.

3. On 22/5/2023, I ordered that the preliminary objection be canvassed by way of written submissions, and directed both parties herein to file written submissions within specified timelines. Submissions on the Preliminary Objection have since been filed.

4. The single issue for determination is whether, by dint of section 90 of the Employment Act, 2007, this court seized of jurisdiction to hear and to determine the suit herein.

5. Before determining the foregoing issue, it is important that I point out that section 3(1) and (2) of the Public Authorities Act is not applicable to the suit herein. In the heading of the claimant’s statement of claim, the respondent is described as a limited liability company, while in paragraph 2 of the same pleading, the respondent is described as a statutory corporation. The respondent admitted the aforesaid description of itself in paragraph 2 of its Statement of Response. That said, it must be noted that the respondent cannot be referred to as a Public Authority within the meaning of the Public Authorities Act (cap 139 Laws of Kenya); the heading/preamble of which states as follows:-

“An Act of Parliament to provide for the limitation of proceedings against the Government and a local authority, and for purposes incidental to and connected with the foregoing.”

6. The respondent herein is not the Government, and has not been shown to be a local authority. The Public Authorities Limitation Act (cap 39 Laws of Kenya) does not apply to the respondent herein, and its provisions were wrongfully invoked by the respondent.

7. In the present suit, the respondent seeks to enforce employment rights arising out of an employment contract that is pleaded by the claimant to have existed between himself and the respondent from 1998 upto 4/2/2020 when the claimant was summarily dismissed by the respondent. The pleaded summary dismissal is the act that gave rise to the claimant’s cause of action. The reliefs sought by the claimant included a prayer for a declaration that the summary dismissal of the claimant was wrongful, illegal and unfair; a prayer for reinstatement of the claimant to his employment position, payment of salary arrears from the date of the wrongful dismissal, general, aggravated and exemplary damages, among other reliefs.

8. Section 90 of the Employment Act 2007 provides as follows:-

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, 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 damage within twelve months next after ceassation thereof.”

9. It was pleaded that the claimant was summarily dismissed on 4/2/2020. As already stated in this Ruling, the respondent’s act of summarily dismissing the claimant is the act complained of in the suit



herein. It is the act which gave rise to the claimant's cause of action. Three years from the date of the act (4/2/2020) lapsed on 3/2/2023. The suit herein was filed 23/3/2023; it was filed out of time. The suit is, therefore, statute barred, and this court has no jurisdiction to entertain, to hear or to determine the same. The suit can only be struck off by the Court, unless the claimant withdraws the same. There has been no indication by the claimant that he wishes to withdraw his statute-barred suit.

10. Having found that this court has no jurisdiction over the claimant's suit herein, I must down my tools. The respondent referred the court to the Court of Appeal's decision in *John Njuguna Mwaura & 2 others v Republic* [2013] eKLR where the court stated:-

“It is incumbent upon any court intending to render an opinion or determine a matter to first ascertain the entry point to the doors of justice, and that is the jurisdiction. The authority of courts is determined by the existence or the lack of jurisdiction to hear and to determine a dispute. In essence, jurisdiction is the first hurdle that a court will cross before it embarks on its decision making functions.”

11. In sum, and having considered written submissions filed by Counsel for both parties herein, I find and hold that the claimant's suit herein offends section 90 of the *Employment Act*, and is statute-barred. This court has no jurisdiction to entertain, to hear and to determine the same. The respondent's preliminary objection is upheld, and the claimant's suit herein is hereby struck off with no order as to costs.

12. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....for claimant

.....respondent

