



**Isanda v Diamond Trust Bank (K) Ltd (Cause E024 of 2023)
[2023] KEELRC 2498 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2498 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E024 OF 2023
S RADIDO, J
OCTOBER 18, 2023**

BETWEEN

MARTIN TEDKING ISANDA CLAIMANT

AND

DIAMOND TRUST BANK (K) LTD RESPONDENT

RULING

1. Martin Tedking Isanda (the Claimant) as the legal representative of Isabelah Kenana Kaberia (deceased) sued Diamond Trust Bank (K) Ltd (the Respondent) on 15 May 2023, alleging breach of contract.
2. When served, the Respondent filed on 3 August 2023, a Response and a Notice of Preliminary Objection contending:

The Claimant's employment with the Respondent having terminated on 12th June 2018, the claim herein is time-barred in terms of the provisions of section 90 of the Employment Act, No. 11 of 2007 (the Employment Act).
3. On 17 September 2023, the Claimant filed an Amended Statement of Claim to introduce a cause of action based on the right to access information on top of the initial cause for breach of contract. At the same time, the Claimant filed a Reply to the Response.
4. When the Cause came up for directions on 18 September 2023, the Court directed the parties to file and exchange submissions on the Notice of Preliminary Objection.
5. The Respondent filed its submissions on 29 September 2023 and the Claimant on 13 October 2023.
6. The Court has considered the Notice of Preliminary Objection, the Memorandum of Claim, the Amended Memorandum of Claim, the Response, Reply to Response and the submissions.



7. The Claimant has admitted that the deceased resigned from the employ of the Respondent on 23 May 2018. The Respondent accepted the resignation through a letter dated 12 June 2018.
8. In terms of section 90 of the *Employment Act*, 2007, the Claimant and/or the deceased had 3 years within which to commence legal action alleging unfair termination of employment and/or breach of the employment contract.
9. Initially, the Claimant sued for breach of contract (terminal dues and lost income). The action should have been initiated within 3 years of separation, but it was commenced on 15 May 2023, more than 3 years after the cause of action had accrued.
10. The cause of action had become stale by the time the Claimant moved the Court.
11. In the Amended Memorandum of Claim, the Claimant introduced another cause of action (right to access information).
12. In the additional cause of action, the Claimant sought an order compelling the Respondent to provide him with a copy of its Human Resources Manual.
13. The Claimant has not disclosed when and how he made a demand to the Respondent to provide him with a copy of the Human Resources Manual to assert breach of right to access information.
14. If the Manual was required to facilitate or pursue the payment of terminal benefits, then at this stage of the proceedings, it would not be of much help to the cause of action. The cause of action has become legally stale.

Conclusion and Orders

15. The Court finds the cause of action herein statute-barred by dint of section 90 of the *Employment Act*, 2007.
16. The Cause is struck out with costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 18TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Odindo & Co. Advocates

For Respondent Oraro & Co. Advocates

Court Assistant Chrispo/Everlyne

