



REPUBLIC OF KENYA



KENYA LAW
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**Union of National Research and Allied Institutes Staff of Kenya (UNRISK)
v Kenya Agricultural and Livestock Research Organisation (KALRO) (Cause
E648 of 2020) [2023] KEELRC 2459 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2459 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E648 OF 2020
MN NDUMA, J
OCTOBER 5, 2023**

BETWEEN

**UNION OF NATIONAL RESEARCH AND ALLIED INSTITUTES STAFF OF
KENYA (UNRISK) CLAIMANT**

AND

**KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANISATION
(KALRO) RESPONDENT**

RULING

1. The respondent filed a notice of preliminary objection dated 5/12/2022 to wit:-
 1. The claim for overtime being one that arises from an alleged continuing injury is statute barred under section 90 of the *Employment Act*, which requires that such claims be filed within 12 months from the cessation of employment, which in the present case is December 31, 2016.
 2. That the claim having been filed over three (3) years and nine (9) months after the alleged cause of action arose between July 1, 2013 and December 31, 2016 is statute barred under section 90 of the *Employment Act* which requires that claims arising from a contract of service to be filed within three (3) years after cessation of employment.
2. The claimant in the response dated 2/3/2023 opposes the preliminary objection stating that the claim was filed within time and the preliminary objection be dismissed.



3. The issue in dispute as set out in the statement of claim filed on 10/8/2019 is framed by the claimant as follows:-

“Failure to pay Mr. James W. Kingesi, KALRO Staff Prs/No. 2943 overtime allowance from July 1, 2013 up to December 31, 2016.”

In the final prayers, the claimant prays for payment of overtime in the sum of Kes 651,668.00.

4. The grievant is described in the Statement of Claim as a former employee of the respondent who retired from respondent’s employment on 31/12/2016.
5. It is not in dispute that this claim was filed two years and eight months from the date of retirement. The claims of overtime set out in paragraphs 4,5,6 and 7 of the Statement of Claim are in respect of periods stretching from 13/12/2013 to 31st 12/2016 for a total of 190 days. Claims which arose between 13/12/2013 to April 15, 2015, being items (a) to (f) of paragraph 4, arose more than three years before the date the suit was filed on 10/8/2019. Only claims set out under paragraph 4(g) and (h) for 21 and 31 days respectively arose within three years before the date the claim was filed.
6. The respondent/objector submits that claims of overtime are continuing injury within the meaning in the proviso to Section 90 of the Employment Act, 2007:-

90. Limitations

“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.”

and therefore the claim ought to have been filed within 12 months from the date of termination of employment which occurred on 31/12/2016 and so the claims ought to have been filed on or before 31/12/2017. That the entire claim is statute barred having been filed 2 years and 8 months later on 10/8/2019.

7. The respondent cites the decision of Maureen Onyango, J. in the ELRC, at Kisumu – Hassan Ali v Format Superstore Limited [2017] in which the judge stated:-

“It is my opinion that only overtime is a continuing wrong that may not be claimed beyond 12 months from the date of termination. Annual leave, holidays, off and rest days are rights of an employee that are specifically provided for under Employment Act that are subject to the 3 year limitation period with effect from the date of last entry into the record required to be kept under section 10 and 74 of the Employment Act.”

8. The court went ahead to award the claimant overtime claimed up to a maximum of 12 months.
9. This Court having considered the facts before Court which are not in dispute is of the finding that the claimant has not placed before Court pleadings that he sought to be paid overtime by the respondent during the period 13/12/2013 to 31/12/2016, before he retired. The claimant has in fact not pleaded that he demanded payment of overtime during this period. There is no basis for the Court to find that the claim for overtime by the claimant for the period was a continuing injury within the meaning of proviso to section 90 of the Employment Act, 2007.



10. Therefore, any claim which falls outside the three (3) years limitation period from the time it arose and the date of filing suit is time barred.
11. Accordingly, all the claims set out under paragraph 4(a) to (f) of the statement of claim are time barred having been brought after the limitation period of three years within which claims arising from employment contract may be brought.
12. The claimant may proceed with the claims set out under paragraph 4(g) and (h) of 21 and 31 days respectively (52 days) which were filed before the expiry of the Limitation period.
13. The Court so orders.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 5TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

