



REPUBLIC OF KENYA



**KENYA LAW**  
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**Public Transport Operators Union “Puton” v Dovecote Company Limited  
(Cause E384 of 2022) [2023] KEELRC 2414 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2414 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E384 OF 2022  
DKN MARETE, J  
OCTOBER 3, 2023**

**BETWEEN  
PUBLIC TRANSPORT OPERATORS UNION “PUTON” ..... CLAIMANT  
AND  
DOVECOTE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. This is an application by way of Preliminary Objection dated 9th January, 2022 and comes out as follows;
  1. The court lacks the jurisdiction to admit, hear and determine this Claim by virtue of being time barred pursuant to Section 90 of the *Employment Act*;
  2. The court lacks the jurisdiction to admit, hear and determine this claim as it has been filed by the claimant outside the mandatory statutory limitation period prescribed by Section 90 of the *Employment Act*;
  3. The grievant’s right to sue having lapsed, the Claimant lacks the capacity to bring any cause of action against the Respondent and its claim as constituted herein should be struck out with costs.
2. The Claimant/Respondent in a written submission dated 29th April, 2023 opposes the application.
3. The Respondent/Applicant upholds an objection by relying on the authority of *Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696 where the Court of Appeal then held as follows;

“...A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose



of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer to dispute to arbitration.”

4. Further;

“A preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

5. It is her further case and submission that this court lacks the jurisdiction to admit, hear and determine this claim as it has been filed by the claimant outside the mandatory statutory limitation period prescribed by Section 90 of the [Employment Act](#), 2007. This provides as follows;

### **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 aft the cessation thereof.”

6. Section 90 of the [Employment Act](#), 2007 is a cousin to Section 4(1) of the [Limitation of Actions Act](#) (Cap 22) which comes out thus;

4. Actions of contract and tort and certain other actions

The following actions may not be brought after the end of six years from the date on which the cause of action accrued.

- a. Actions founded on contract;
- b. Actions to enforce a recognizance;
- c. Actions to enforce an award
- d. Actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- e. Actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

7. These comprise of statutory provision that provide for limitation of actions in various sectors of our disputes resolution mechanisms.

8. The Respondent/Applicant submits that the Claimant/Respondent worked until August, 2018. Consequently, three years from the date of the act ought to have been in August 2021 hence the grievant ought to have filed the claim herein on or before August 2021. Instead this filing was done 8th June 2022 should have filed claim before August, 2021.



9. The Respondent/Objector further seeks to rely on authority of *Attorney-General & another v Andrew Maina Gitinji and another* [2016] eKLR where the Court of Appeal held as follows;

“...The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not. Having found that the cause of action arose on 2<sup>nd</sup> February 2010 and that the limitation period of 3 years was surpassed by a long margin. The claim was time barred as at 1<sup>st</sup> February 2013, and I so hold.”

10. Again, she submits as follows;

“While there is no doubt that section 15 of the Employment and Industrial Relations Act encourages alternative dispute resolution, it must be court-based and conducted within the law. Time does not stop running merely because parties are engaged in an out of court provisions of Section 90 of the *Employment Act* even as they engaged in the negotiations. The claim went stale three years from the date of the termination of the respondents’ contracts of service.”

11. The Claimant/Respondent coaches her opposition to the preliminary objection by relying on S.73 (1) of the *Labour Relations Act* on issuance of a conciliation recommendation dated 9th November, 2021. This is beside S. 62 of the Act both of which provides for conciliation before the Minister of Labour in the event of dispute. His case is that this is where she lost time and was unable to comply with the provision of section 90 and therefore a valid ground for sustaining the claim.

12. The Claimant/Respondent’s case and submissions have no basis or substance. Sections 62(c) and 73(1) have no bearing on limitation of actions. In any event, section 90 of *Employment Act, 2007* is a broad spectrum legal requirement that surpasses all other related provisions and crowns the law on limitation in employment and labour relations matters.

13. The up short of all this is that the preliminary objection takes sway over any opposition to it. I therefore uphold and allow the preliminary objection on the basis of its territorial texture.

14. This in turn puts the entire matter to an early closure.

**DELIVERED, DATED AND SIGNED THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances

1. Kamwendwa instructed by N.M Kamwendwa & Co. Advocates for the Respondent/Objector.
2. Mr. David Odunga for the Union/Respondent

