



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**APPEAL NUMBER 12 OF 2019**

**BETWEEN**

**DAVID CHARLES NYAMANGA ..... APPELLANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**[An Appeal from the Ruling of the Hon. S.R.M, I Orenge, dated 14<sup>th</sup> day of May 2019, in CMEL No. 201 of 2018]**

**BETWEEN**

**DAVID CHARLES NYAMANGA ..... CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

*Rika J*

*Court Assistant; Emmanuel Kiprono*

*Ndemo Mokaya & Company Advocates for the Appellant*

*Flora Manyasa, Advocate for the Respondent*

**JUDGMENT**

1. The Claim in the Trial Court was challenged under Section 90 of the Employment Act, 2007 by the Respondent, through a Notice of Preliminary Objection.
2. The Trial Court agreed with the Respondent that the Claim was time-barred under Section 90 of the Employment Act, 2007 and declined the Claim.
3. The Claimant brings this Appeal against that Ruling, citing 5 Grounds of Appeal, which are that-
  - § The Trial Court erred in dismissing the Claim on limitation of time.
  - § Appellant’s submissions and authorities were not considered.
  - § Trial Court demonstrated open bias against the Appellant.
  - § The Trial Court failed to appreciate that the Appellant’s internal Appeal with the Respondent Commission, arrested the movement of time.
  - § The Trial Court disregarded Appellant’s submissions and misapprehended Section 90 of the Employment Act, 2007 [repetitious].

4. Parties agreed to have the Appeal determined through written submissions. They confirmed filing and exchange of submissions at the last appearance in Court, on 8<sup>th</sup> December 2021.

5. Judgment was scheduled for 25<sup>th</sup> March 2022, but has been prepared earlier and is ready for delivery, on the date shown at its end.

**The Court Finds:** -

6. At page 2, paragraph 5 of his submissions, the Appellant states: -

*‘Although the Claim was filed out of time and therefore time-barred, it does not mean it cannot be resuscitated by making an ex parte application to extend the time to file the Claim out of time.’*

7. There is therefore no basis for faulting the Trial Court, in the Ruling, upholding Respondent’s Preliminary Objection, and declining the Claim under Section 90 of the Employment Act.

8. If the Appellant feels his Claim could be saved through an *ex parte* application for extension of time, why did he not file that application before the matter came up for hearing at the Trial Court?

9. Section 90 is a jurisdictional law, and the Court cannot extend the prescribed period, to create a jurisdiction it does not have. This has been established in Court of Appeal decision, **Rift Valley Railways [Kenya] Limited v. Hawkins Wagunza Musonye & Another [2016] e-KLR.**

10. There is therefore nothing the Claimant could do, to resuscitate the Claim, and nothing the Trial Court could do, but decline the Claim under Section 90 of the Employment Act.

**IT IS ORDERED:** -

***a. The Appeal is dismissed.***

***b. Costs to the Respondent.***

Dated, signed and released to the Parties electronically, at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 25<sup>th</sup> day of February 2022.

James Rika

Judge