



**Wamaitha v Lexis International Limited (Cause 458 of 2017)  
[2022] KEELRC 1480 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1480 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 458 OF 2017  
K OCHARO, J  
MAY 31, 2022**

**BETWEEN**

**FRANCIS NDUNGI WAMAITHA ..... CLAIMANT**

**AND**

**LEXIS INTERNATIONAL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant herein sued the respondent through his memorandum of claim dated March 7, 2017, seeking the following orders and reliefs:
  - (i) The sum of kshs 172,000 as particularized in paragraph 5 of the claim.
  - (ii) Costs of this suit.
  - (iii) Interest in [i] and [ii] above.
  - (iv) Certificate of service.
  - (v) Any other relief as the court may deem fit.
2. The respondent filed a memorandum of reply to the claimant's claim on March 31, 2017 denying the latter's claim and his entitlement to the reliefs sought.
3. The matter was heard on March 15, 2022 when both parties presented their respective cases.
4. The court slated this matter for judgment directing the parties to file written submissions prior to the judgment date but within specific timelines. They did not.
5. In the course of preparing the judgment an issue going to the jurisdiction of this court cropped up, whether the matter herein was filed within the statutory period. The parties did not raise the issue in their pleadings, and did not canvass the same in any manner during the hearing, however, as the same



does to the jurisdiction of this Court, it shall be an abdication of the court's duty not to address the same.

6. At paragraph 5 of the statement of claim, the claimant stated:

“The claimant commenced employment in February 2012 as aforesaid and served the respondent with loyalty and diligence until February 11, 2014 when the respondent terminated the services of the claimant claiming there was no enough work and failed to pay him, his terminal dues .....

The contents of his witness statement, and his testimony in court, were all in agreement with the pleadings, the alleged termination of employment occurred on February 11, 2014.

7. The claim herein was filed on March 8, 2017, definitely a period outside 3 years. Section 90 of the Employment Act provides:

“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 contract of service in general shall lie or be instituted unless it is commenced within the years next after the act, neglect or default complained of or in the case of continuing injury or damage within twelve months next after cessation whereof.”

8. In NBI ELRC no 1456 of 2016 *Lawrence Gachau Kibu -vs- County Government of Nairobi*, this court expressed itself on the aforestated provision thus:

“ 11. It is worth noting that the coming into effect of the Employment Act, 2007 and therefore the forestated provision, had a twin effect. First, it ousted the applicability of section 4 [1] of the Limitation of Actions Act on Civil suits or proceedings premised on or arising from the Employment Act, or a contract of service in general. Second, unlike for actions of contract, tort, and certain other actions contemplated under section 4 [1] of the Limitation of Actions Act, the provision reduced the limitation of time from 6 [six] years to 3 [three] years for the matters stipulated therein. In this view, I am fortified by the holding in the case of *Ndirangu vs Henkel Chemical E A Limited* [2013] eKLR.”

9. Having indicated that the claim herein was filed outside the statutory three years, it is a claim that was time barred at its filing and therefore a fit candidate for dismissal. It is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT**

**NAIROBI THIS 31ST DAY OF MAY, 2022.**

.....

**OCHARO KEBIRA**

**JUDGE**

**Delivered in presence of:**

**Claimant present.**

**No appearance for the respondent.**

**ORDER**



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

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OCHARO KEBIRA  
JUDGE

