



**Kenya Union of Domestic, Hotels, Educational Institutions and  
Hospital Workers v Christian Industrial Training Centre (Cause  
E083 of 2021) [2022] KEELRC 1537 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1537 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E083 OF 2021**

**AK NZEI, J**

**MAY 26, 2022**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS ..... CLAIMANT**

**AND**

**CHRISTIAN INDUSTRIAL TRAINING CENTRE ..... RESPONDENT**

**RULING**

1. The suit herein was filed by the claimant vide a Memorandum of claim dated August 25, 2021 and filed in Court on August 27, 2021.
2. The basis of the suit, according to the claimant's pleadings, is an agreement said to have been signed by both parties on August 28, 2015 pursuant to the Chief Industrial Relations Officer's recommendations on payment of the grievant's dues following termination of his employment.
3. The claimant pleaded that subsequently, the respondent started paying the grievant and continued paying until July 28, 2017 when payments stopped. The claimant prays that this court do confirm the agreement and order the respondent to pay the grievant as agreed.
4. The respondent filed a memorandum of response on October 25, 2021 and, inter-alia, denied this court's jurisdiction, pleading that the suit is statute barred.
5. On October 19, 2021, the respondent filed a Notice of preliminary objection dated October 18, 2021 and stated as follows:-
  - a) The plaintiff's suit offends section 90 of the *Employment Act* 2007 in that the suit herein is time barred."



6. On January 26, 2022, I gave directions that the respondent's preliminary objection, dated October 18, 2021, be heard first, and I directed parties to file and exchange written submissions thereon. Submissions have since been filed.
7. The agreement whose confirmation is being sought is pleaded by the claimant to have been signed on July 28, 2015, while the suit herein was filed on August 27, 2021, over six years from the date of the subject agreement.
8. Payments commenced by the respondent pursuant to the said agreement are pleaded by the claimant to have stopped on July 28, 2017. The suit herein was filed over four years from the date of cessation of the said payments.
9. Section 90 of the *Employment Act*, 2007 provides as follows:-

“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.”
10. As already stated in paragraphs 7 and 8 hereinabove, the suit herein was filed six years from the date of the agreement in issue and four years after cessation of payments that the respondent made pursuant to the said agreement. For purposes of the suit herein, time started running on July 28, 2017 upon cessation of the said payments. The suit was filed on August 27, 2021, four years from the date the cause of action arose. The suit is statute-barred, and can neither be entertained nor tried by this court. It must be struck off.
11. The claimant cited the case of *Rift Valley Railways [kenya] Limited –vs- Hawkins Wagunza Musonye and another* [2016] eKLR where the Court of Appeal held as follows:-

“for us it is clear from our reading of section 90 aforesaid that there are no exceptions to the three year limitation period, save for cases of continuing injury or damage where action or proceedings must be brought within twelve months after the cessation thereof. This was not a case of a continuing injury or damage but one of a single act of termination...”
12. The claimant's suit herein is statute-barred. The respondent's preliminary objection is upheld, and the suit is hereby struck off.
13. Each party will bear their own costs.
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26<sup>TH</sup> DAY OF MAY 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

Mr. Otieno for Claimant

No Appearance for Respondent

