



**Jason & 2 others v Board of Coast Provincial General Hospital & another  
(Cause 635 of 2014) [2022] KEELRC 49 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 49 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 635 OF 2014  
B ONGAYA, J  
MAY 13, 2022**

**BETWEEN**

**KENNEDY KARANGI JASON ..... 1<sup>ST</sup> CLAIMANT  
EDWARD RESA ..... 2<sup>ND</sup> CLAIMANT  
YUSUF SHALLY MOHAMED ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**BOARD OF COAST PROVINCIAL GENERAL HOSPITAL .... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimants filed the statement of claim on December 17, 2014 through Odhiambo S.E & Company Advocates. The claimant's case is that the 1<sup>st</sup> respondent employed them on June 30, 2011, April 4, 2010, and 26.07.2010 respectively. Further, they were arrested upon allegations of stealing and fraudulent false accounting and charged in court on September 7, 2011 in criminal case No. 2827 of 2011 and acquitted by the ruling delivered on May 9, 2014. The respondents have not given the claimants a written or oral notice on the fate of the claimants' employment with the respondent and the claimants' case is that the respondents have failed to allow them to resume duty. They each made claims for payment on the headings of salary in lieu of notice; compensation for unfair termination; terminal benefits; salary for August 2011 and days worked in September 2011 being for 1<sup>st</sup> claimant Kshs.183, 116.00; the 2<sup>nd</sup> claimant Kshs.193, 819.00; and the 3<sup>rd</sup> claimant Kshs.193, 819.00. They prayed for judgment against the respondent for:
  - a. A declaration that the claimants are still employees of the respondent and be paid salary from August 2011 to the date of the judgment.



- b. Alternatively, a declaration that the termination of the claimants' employment was unlawful/unfair.
  - c. Kshs. 570,754.00as claimed and particularised.
  - d. Costs of and incidental to the claim.
  - e. Interest at Court rates on (b) and (c) above.
2. The 2<sup>nd</sup> respondent filed defence and response to claim on 25.02.2015 through Lumatete Muchai & Company Advocates. The 2<sup>nd</sup> respondent denied employing the claimants and further stated that the 1<sup>st</sup> respondent's hospital was under the management of the National Government and not the County Government. The 2<sup>nd</sup> respondent admitted the claimants' pleadings in relation to criminal case No. 2827 of 2011 against the claimants but despite acquittal in the criminal case, the 1<sup>st</sup> respondent would be at liberty to institute disciplinary proceedings against the claimants as the employer. The 2<sup>nd</sup> respondent denied all the claims made and further denied the prayers made for the claimants. The 2<sup>nd</sup> respondent prayed that the suit be dismissed with costs.
  3. The 1<sup>st</sup> respondent did not enter appearance or file a response to the statement of claim.
  4. On February 8, 2022 counsel for the 2<sup>nd</sup> respondent Ms. Ambetsa Advocate informed the Court that the 2<sup>nd</sup> respondent would not call a witness and that the suit was time barred because dismissal or termination was on September 6, 2011 and the suit had been filed for the claimants on December 17, 2014 outside the 3 years of limitation under section 90 of the *Employment Act, 2007*. Counsel urged that the suit ought to be struck out. As at that date the 3<sup>rd</sup> claimant had already testified in support of his case. Thus the Court ordered the 2<sup>nd</sup> respondent's case closed subject to final submissions based on documents on record, claimants' evidence and parties' pleadings. The Court further directed parties to compromise the issue of time barring with a view of recording a consent and further ordered "3. If matter goes to full hearing, issue of time barring to be submitted upon in final submissions." At the hearing on March 29, 2022 it was ordered thus, "2. By consent the 2<sup>nd</sup> claimants' suit is marked withdrawn with no orders on costs." The 1<sup>st</sup> and 3<sup>rd</sup> claimants testified to support their respective cases. Final submissions were filed for parties. The Court has considered all the material on record and returns as follows.
  5. First, the claimants testified that they sued the 2<sup>nd</sup> respondent because the 2<sup>nd</sup> respondent managed the 1<sup>st</sup> respondent but the claimants failed to show by evidence that indeed that was the position. The Court returns that the claimants have failed to establish a cause of action against the 2<sup>nd</sup> respondent and the suit against the 2<sup>nd</sup> respondent is liable to dismissal as the 2<sup>nd</sup> respondent was non-suited.
  6. Second, the Court returns that the suit is indeed time barred as urged for the 2<sup>nd</sup> respondent. The claimants by their own pleadings show that the contract of service must have ended on 06.09.2011 when they were arrested. They do not plead that thereafter they attempted to resume work and the 1<sup>st</sup> respondent denied them that chance. The claim is for salary for days worked in September 2011 meaning up to September 6, 2011, the last day at work. It is pleaded that the claimants did not know their fate after the acquittal and again that they allege unfair termination. If they did not know their fate, the question would be, when did the alleged unfair termination take place? The Court finds that the claimants must consider themselves terminated effective September 6, 2011 and which is consistent with their own claims and prayers. The Court finds that the suit is time barred as urged for the 2<sup>nd</sup> respondent and bearing in mind all circumstances of the case, there will be no orders on costs.
  7. In conclusion the suit is hereby dismissed with no orders on costs.



SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS  
FRIDAY 13<sup>TH</sup> MAY, 2022.

**BYRAM ONGAYA, JUDGE**

