



**Abere v Kenya Commercial Bank Limited (Cause 103 of 2015)  
[2022] KEELRC 91 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 91 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 103 OF 2015  
CN BAARI, J  
JUNE 16, 2022**

**BETWEEN**

**SHADRACK SURE ABERE ..... CLAIMANT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... RESPONDENT**

**RULING**

**Introduction**

1. Before Court is the Respondent's notice of motion application dated 26<sup>th</sup> October, 2021, and brought pursuant to Section 3 of the *Employment and Labour Relations Court Act, 2011*, Sections 1A and 1B of the *Civil Procedure Act*, Chapter 21, Laws of Kenya and Section 90 of the *Employment Act, 2007*. The Respondent seeks orders that the instant suit as presented in the statement of Claim, be struck out for having been lodged outside the limitation period prescribed by law. The Applicant/Respondent also prays for costs of both the main suit and this application.
2. The application is supported by grounds on the face of the motion and the affidavit of Jude Ragot. The basis of the application is that the statement of claim against the Respondent arises from an employer-employee relationship, in which the Claimant has sued for a declaration of an alleged unlawful dismissal from employment, reinstatement and loss of use of Motor vehicle registration No KBH 3201 associated with his employment.
3. The Respondent avers that the facts of the case as disclosed from the statement of claim and the Respondent's response, is that the Claimant was dismissed from employment on April 3, 2012, on which basis he lodged the instant claim on April 7, 2015, after a lapse of three (3) years and five (5) days as shown by the official stamp impression of the court as acknowledgment of the receipt of the statement of claim.



4. The Respondent avers that by dint of Section 90 of the *Employment Act, 2007*, the Claimant's alleged cause of action is deemed to have lapsed. The Respondent states that the Claimant's suit is expressly prohibited, and that the law does not provide for any option of leave for extension of time or other form of indulgence for the Claimant in such circumstances.
5. The application is opposed vide a replying affidavit sworn by Gerald Omori Kimanga, the Counsel on record for the Claimant/Respondent. The Claimant states that the cause of action in the suit herein arose on 3<sup>rd</sup> April, 2012, while the suit was filed on April 7, 2015. Counsel avers that the delay is only four days, and which he states was occasioned by the Claimant's attempts at appealing the decision of the Respondents' Board and subsequent summons for negotiation.
6. The Claimant through Counsel further states that he fell ill and temporarily lost his ability to handle his affairs in the period between the years 2014 and 2015, and hence the reason he failed to file the suit earlier.
7. Parties sought to canvass the application through written submissions.
8. The Respondent/Applicant filed his submissions, the Claimant did not.

### **The Respondent/Applicant Submissions**

9. It is submitted for the Respondent/Applicant that there is neither jurisdiction nor discretion vested in this court to grant any extension of time to file a suit like this one, when the cause of action is founded in an alleged breach of contract.
10. It is further submitted that there are now several judicial pronouncements on this point by the Employment and Labour Relations Court constituted by different judges of the same court, and also several decisions of the Court of Appeal, where there has been unanimous finding that there is no provision or jurisdiction in law, for this court to extend such time or grant any indulgence by way of discretion, whether asked for or not, for filing such a suit outside that prescribed limitation of three years. The Respondent sought to rely on the holding in the case of *Denis Ksang Ripko v Kenya Commercial Bank Ltd* – Kisumu ELRC Misc Appl No 12 of 2015 [2016] eKLR to support this position.

### **Determination**

11. I have considered the application, the grounds and affidavit in support, the replying affidavit in opposition by the Claimant, and the Respondent/Applicant's submissions. The singular issue for determination herein, is whether the Claimants' statement of Claim dated 2<sup>nd</sup> April, 2015 and filed in court on the April 7, 2015, is Statute barred.
12. The instant application is a plea of limitation premised on Section 90 of the *Employment Act, 2007*. Section 90 of the *Employment Act 2007*, provides as follows in regard to filing of employment related claims;

“Notwithstanding the provisions of section 4 (1) of the *Limitation of Actions Act*, 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.”



13. The letter dismissing the Claimant from the service of the Respondent/Applicant is dated April 3, 2012. The letter at its paragraph 2, states as follows:

“We advise that it has been established that you committed acts of gross negligence, details of which are well within your knowledge. As a consequence, you have been dismissed from employment with effect from today’s date (emphasis mine).”

14. The Claimant’s Statement of Claim is dated April 2, 2015 and filed on April 7, 2015. The Respondent/Applicant seeks that the Claim is struck out for being time barred. The Claimant’s cites illness as the reason he could not file his claim within the prescribed period and further that the delay in issue is only 4 days.

15. It is not disputed that the cause of action accrued on the 3<sup>rd</sup> April, 2012, being the date on which the Claimant’s dismissal was to take effect. The court in the case of *Hilarion Mwabolo v Kenya Commercial Bank* [2013] eKLR stated thus:

“... termination kicks in from the date stated in the termination letter...”

16. It is therefore correct to say that time in this matter started running on April 3, 2012, and any claim arising from the dismissal ought to have been filed by April 2, 2015.

17. The Claimant’s contention that he was delayed by attempts to appeal the decision of the Respondents Board, does not hold. It is now settled that administrative appeal processes do not stop the running of time. In the case of *Peris Maina v Nairobi City Water & Sewerage Company Limited* [2018] eKLR Byram Ongaya J opined:

“As submitted for the Respondent, the administrative appeal proceedings did not postpone or adjourn the running of the time of limitation after the dismissal...”

18. The Claimant’s replying affidavit in opposition to the instant application, amounts in my opinion to an admission that the suit herein is indeed time barred by the mere acknowledgment that the suit was filed 4 days late. It is late nonetheless, and the delay in filing is not cured by the mere fact that the claim is dated April 2, 2015, which is a time within the statutory time line.

19. In whole, I find and hold that this court lacks jurisdiction to entertain this suit as the same is statute barred. Consequently, the Claimant’s Statement of Claim filed in court on the April 7, 2015, is hereby struck out with no orders as to costs.

20. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16<sup>TH</sup> DAY OF JUNE, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

N/A for the Claimant

Mr. Ragot Present for the Respondent

Ms. Christine Omollo-C/A

