



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Agoro v Constituencies Development Fund Board (Cause
E013 of 2020) [2022] KEELRC 1495 (KLR) (15 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1495 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E013 OF 2020**

**S RADIDO, J
JUNE 15, 2022**

BETWEEN

BONFACE OTIENO AGORO CLAIMANT

AND

CONSTITUENCIES DEVELOPMENT FUND BOARD RESPONDENT

RULING

1. The respondent moved the court on 23 March 2022 seeking an order striking out the cause on the ground that it was filed outside the 3-years prescribed by section 90 of the *Employment Act*, 2007.
2. The claimant filed grounds of opposition on 13 May 2022, and the court took arguments on 16 May 2022 and 17 May 2022.
3. The court has considered the motion, grounds of opposition, case law and arguments by the parties.
4. The claimant was informed of the termination of his employment through a letter dated 23 October 2017, and he filed the action against the respondent on 23 October 2020.
5. The respondent, relying on *Rift Valley Railways (K) Ltd v Hawkins Wagunze Musonye & Ar* [2016] eKLR, *Attorney General & Ar v Andrew Maina Githinji & Ar* [2016] eKLR and *Maersk (K) Ltd v Murabu Chaka Tsuma* [2017] eKLR argued that the claim was stale as it was filed outside the prescribed time. It was also asserted that the court had no power to extend the time even if such an application had been made.
6. Lastly, the respondent contended that there was no valid claim before the court because the notice of summons was served after 12-months (after expiry).
7. The claimant, however, took the position that the action was filed on the last day allowed by the law and that the invalidity or expiry of the notice of summons could not make the cause incompetent because the court had the power under the *Civil Procedure Rules* to extend the validity of the Summons.



8. It is not in dispute that in termination of employment disputes, the cause of action for unfair termination accrues on the date of termination of employment (or when the employee is notified of the decision).
9. The claimant herein was notified of the termination of his employment through a letter dated 23 October 2017 (but backdated to 27 February 2017).
10. The point of dispute appears to be whether the date of the accrual of the action (23 October 2017) should be excluded when computing the date times started running for purposes of limitation.
11. The court has considered the authorities cited by the respondent. They were dealing with the general question of when a cause of action accrues.
12. The motion under examination by the court raised a narrower question, how should time for purposes of limitation law be computed.
13. In *Matthew v Sedman* [2021] UKSC 19, the Supreme Court (England and Wales) underscored the long-standing principle under the common law that the date of accrual of a cause of action should be excluded for the purposes of calculating the limitation period.
14. Were the court to exclude 23 October 2017 for purposes of computation of time herein, the last date for the claimant to initiate proceedings would have ended on 23 October 2020.
15. However, were the court to include 23 October 2017, the last date for the claimant to have moved the court would have been 22 October 2020.
16. The court will apply the long-standing principle of the common law on the exclusion of the date of accrual of a cause of action to calculate the limitation period and hold that the memorandum of claim herein was filed just on time.
17. The motion filed in court on 23 March 2022 is disallowed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant K'owino & Co. Advocates

For Respondent Abidha & Co. Advocates

Court Assistant Chrispo Aura

