



**Kenya Engineering Workers Union v Kalu Works Limited (Cause
1645 of 2016) [2022] KEELRC 3859 (KLR) (15 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3859 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1645 OF 2016
NZIOKI WA MAKAU, J
JUNE 15, 2022**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
KALU WORKS LIMITED RESPONDENT**

RULING

1. The preliminary objection dated March 21, 2022 taken by the respondent is to the following effect:-
 - i. That this claim is incompetent, bad suit is statute barred pursuant to section 90 of the [Employment Act](#) and therefore unsustainable.
 - ii. That this court lacks jurisdiction to hear and determine the suit by virtue of the cause of action being barred by time and the same should be struck out with costs.
2. The claimant did not file any response to the preliminary objection despite being granted the opportunity by the court. The issue raised by the respondent goes to the root of the claim. If this court has no jurisdiction then there will be no need to retain the case before the employment courts. It is not controverted that section 90 of the [Employment Act](#) provides a limit as to when a suit can be filed for a general claim as the matter before me. Section 90 of the [Employment Act](#) 2007 states as follows:-

“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.” (Emphasis supplied)
3. The claimant seeks relief in this case regarding matters that arose in 2005 and 2006. Under the law, the limitation set in 3 years after and taking the latter year the limitation set in sometime in 2009. As such



mounting a claim as was done in 2016 was not only misplaced but pure mischief by the claimant as the grievant was moved from managerial to staff in July 2005. The mischief in indicating July 2015 in one paragraph of the pleadings was so as to mislead the Registry of this court to admit the otherwise stale claim. On that ground alone the suit stands dismissed for being time barred and because its filing was obtained through deceitful means the claimant union will pay costs of the suit to the respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JUNE 2022.

Nzioki wa Makau

JUDGE

