



**Migere v Wevarcity Savings Sacco Ltd (Cause 163 of 2017)
[2022] KEELRC 80 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 80 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 163 OF 2017
NJ ABUODHA, J
JUNE 8, 2022**

BETWEEN

GEORGE INDIRE MIGERE CLAIMANT

AND

WEVARSITY SAVINGS SACCO LTD DEFENDANT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent in 2008 in the position of an accountant at a monthly salary of Ksh.15,049/=.
2. The appointment according to the claimant was on permanent and pensionable terms. He worked for the respondent until 5TH January, 2011 when according to him, his service was terminated without notice. The termination according to the claimant was over allegation that he had stolen and forged Sacco documents.
3. According to the claimant, the termination was ill intended, unlawful and a breach of terms and conditions of employment. According to the claimant, the respondent failed to conduct any investigations into the allegations, never gave him a fair hearing and no proper notice of termination was given.
4. The claimant therefore prayed for a declaration that the termination was malicious, unsubstantiated, unlawful and unprocedural. The claimant further sought an award of Ksh.3,000,000/= being underpayment, unpaid leave and overtime, payment of salaries for the period the claimant worked but was not paid.
5. The respondent on its part pleaded that the claimant was employed from 16th April, 2008 as an accountant Job Grade II. The code of business applied at all times to the claimant's contract.



6. On or about 14th October, 2010, the claimant was issued with a letter suspension to the effect that he was suspected and charged with the offence of financial impropriety. On 5th January, 2011, the claimant was relieved of his duties through a termination letter based on the fact that the claimant was found to have committed financial impropriety while working for the respondent and was charged in Court in criminal case number 171 of 2018.
7. According to the respondent. The claimant was in breach of clause 7.1 part (a) of the terms and conditions of service and the termination was lawful and in compliance with the law and regulations.
8. The respondent further pleaded that the claimant brought the claim six years after termination hence the suit was time barred.
9. This matter though proceeded for hearing and evidence taken, the objection raised by the respondent over the issue of limitation ought to have been dealt with in limine since it was a matter that went to the jurisdiction of the Court.
10. Section 90 of the Employment Acts provides:

“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.”
11. The claimant herein was terminated from the service of the respondent on 5th January, 2011. He therefore ought to have filed the present suit within three years next following the termination which fell around January, 2014. The present suit was filed on 20th February, 2017, slightly over six years next following the accrual of the cause of action. This was obviously statute barred. Section 90 is couched in mandatory terms and does not permit the discretion to extend time once it has lapsed.
12. As was held in the famous Lilian ‘S’ case, jurisdiction is everything. Once a court has become aware that it does not have jurisdiction, it must down its tools. The issue of jurisdiction does not have to be raised by any party before the Court for it to apply. The court has power on its own motion to identify the issue of whether it has jurisdiction over a matter or not and deal with it.
13. In this particular case the Court did not have jurisdiction to entertain this matter in the first place when it was filed. It unfortunate that the issue had to be dealt with at the tail end when evidence had been received and matter pending judgment.
14. As consequence the suit here in hereby struck out for lack of jurisdiction. Considering the circumstances of the matter and stage it had reached without addressing the issue of jurisdiction, each party shall bear their own costs.
15. It is so ordered.

DATED AT ELDORET THIS 8 TH DAY OF JUNE, 2022

DELIVERED THIS 8TH DAY OF JUNE, 2022

ABUODHA J.N

JUDGE

