



**Chebon v Wells Fargo Limited (Cause 2295 of 2017)
[2022] KEELRC 3838 (KLR) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3838 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2295 OF 2017
AN MWAURE, J
AUGUST 4, 2022**

BETWEEN

CHARLES OTARUK CHEBON CLAIMANT

AND

WELLS FARGO LIMITED RESPONDENT

RULING

1. The responded has filed preliminary objection dated September 21, 2020. The preliminary objection is to the effect that the suit is statutorily barred by virtue of section 90 of the [Employment Act](#) 2007 as read with the provision of the limitations of Actions Act. He accuses claimant of failing to obtain leave to file suit out of time.

Claimant's submissions

2. The Claimant in his submissions dated..... avers he was maliciously accused of stealing cash by the respondent and was charged in Court on August 7, 2012. The claimant says on November 18, 2016 he was acquitted. He says after the acquittal the Respondent refused to reinstate the claimant to his employment.
3. He says he then filed the case in court on 27th November 2017.
4. The respondent did not file his written submissions.



Decision

5. The court has found no letter of termination of employment of the claimant. Section 90 of the [Employment Act](#) 2007 provide:-

“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.”

6. The court is at pains to determine when time began to run in order to determine the time bar for the claimant. Claimant was charged in court in 2012 and was acquitted in November 2016. There being no termination letter or communication whatsoever since claimant was arrested, I find no date to declare as the termination date and to mark time limitation.

7. The respondent furthermore never gave claimant a suspension letter or invitation to disciplinary proceedings even after he was arrested. The employee is still entitled to disciplinary proceedings even if he is incriminated in a criminal case.

Going by the provisions of article 50 of the Kenya *Constitution of Kenya* which Provides:-

- i. Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before court or, if appropriate, another independent and impartial tribunal or body.

Taking into consideration that every party is entitled to a fair hearing, I find no ground to lock out the claimant from his constitutional right to be heard.

8. I find the preliminary objection dated September 21, 2020 is not merited and I dismiss it accordingly. The claimant is free to proceed with his case accordingly. The parties are ordered to appear before the DR on 20/9/2022 to take hearing date as soon as practical and not less than 2 months from today's date.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4TH DAY OF AUGUST, 2022.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the Constitution and the provisions of section 1B of the [Civil Procedure Act](#) (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.



ANNA NGIBUINI MWAURE
JUDGE

