



**Chemirmir v New Kenya Co-operative Creameries Limited (Cause E057 of 2022) [2022] KEELRC 4864 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4864 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E057 OF 2022  
MN NDUMA, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**ROSE JEMUTAI CHEMIRMIR ..... CLAIMANT**

**AND**

**NEW KENYA CO-OPERATIVE CREAMERIES LIMITED ..... RESPONDENT**

**RULING**

1. The respondent has filed a preliminary objection to the suit by the claimant filed vide a statement of claim dated January 27, 2022 on February 1, 2022. That the suit is time barred by virtue of section 90 of the *Employment Act*, 2007. The cause of action having arose on or about April 2, 2018 as pleaded at paragraph 7 of the statement of claim.
2. In terms of section 90 of the *Employment Act*, 2007, a suit founded on an employment contract must be filed within 3 years from the date the cause of action arose.
3. The court has confirmed in terms of paragraph 7 of the statement of claim, the cause of action arose on February 22, 2018 when the claimant's employment was terminated. The claimant prays for a declaration that the said termination was unlawful and unfair and that the claimant be awarded compensation and she be paid terminal benefits set out in the suit.
4. From the said undisputed facts, the suit was filed three years and 11 months from the date the cause of action arose. No leave was sought from the court by the claimant prior to the filing of the suit.
5. In *John Kiiru Njiiri v University of Nairobi* [2021] eKLR, it was held by the court as in many other Employment and Labour Relations Court and Court of Appeal decisions that;

“The limitation period is never extended in matters based on an employment contract. The period can only be extended in claims founded on tort and only when the applicant satisfied



the requirements of sections 27 and 28 of the *Limitation of Actions Act* which provisions do not apply in Employment and Labour Relations claims.”

6. This is the position held by the Court of Appeal decision in *Devicon v Samani* 1995-1998 EA 98 that no court has authority to extend time within which a suit founded on contract may be filed.
7. Accordingly, the preliminary objection is upheld and the suit is struck out for want of jurisdiction to entertain the same.

**DATED AND DELIVERED AT NAIROBI (ONLINE) THIS 29<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

**Mathews N. Nduma**

**Judge**

**Appearances: -**

Kipkenda & Co. Advocates for the respondent

Kirwa Koskei & Co. Advocates for the claimant

Ekale - Court Assistant

