



**Osman v CS Defence & another (Cause 32 of 2014)
[2022] KEELRC 12728 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12728 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 32 OF 2014
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

HASSAN ADEN OSMAN CLAIMANT

AND

**CABINET SECRETARY FOR DEFENCE AND CHAIRPERSON OF DEFENCE
CONCIL 1ST RESPONDENT**

HON. ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Respondents filed an Application dated 30th December 2020, asking the Court to find that the Claim is time-barred, under Section 3 and 5 of the *Public Authorities Limitations Act*, Cap 39 the Laws of Kenya, and Section 90 of the *Employment Act*, 2007.
2. The Application is founded on the Affidavit of the Respondent's Special State Counsel, Alice Muringo Mate, sworn on 30th December 2020. The Affidavit does not give the relevant dates, in particular, when the cause of action arose, but instead focuses on the history of the Claim before the Court, arguing that the Claimant has delayed in prosecuting the Claim, which in the view of the Court is a departure from the subject of time-bar.
3. The Claim was due for the main hearing on 29th June 2022, when the Advocates brought it to the attention of the Court, that there was an Application dated 30th December 2020, pending hearing. They agreed to have the Application considered on the strength of their Affidavits and Submissions. They confirmed filing and service of their Submissions at the last mention, on 29th July 2022.



The Court Finds:

4. The Application dated 30th December 2020, is a regurgitation of a Notice of Preliminary Objection dated 7th September 2015. Objection was canvassed before the Court, which made a Ruling dated 19th January 2016, dismissing Objection. It was ordered that the Claim is heard on merit.
5. If the Respondents were aggrieved by that Ruling, they ought to have appealed, and not bring the Objection again, in the form of a Notice of Motion, 4 years down the line. The Application is an Appeal, brought before a different Judge of coordinate jurisdiction.
6. The Ruling is still in force, and this Court can only restate the orders made on 17th September 2015.

It Is Ordered: -

- a. The Application is declined.
- b. The Claim shall be heard on merit.
- c. Parties to obtain an early hearing date at the registry, considering that the Claim was filed in 2014.
- d. Costs in the cause.

Dated, signed and released to the Parties electronically under the Ministry of Health and Judiciary Covid-19 Guidelines, at Nairobi, this 29th day of September 2022.

JAMES RIKA

JUDGE

