



REPUBLIC OF KENYA



KENYA LAW
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**Rono v Standard Limited (Cause E729 of 2020)
[2022] KEELRC 4053 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4053 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E729 OF 2020
K OCHARO, J
SEPTEMBER 20, 2022**

BETWEEN

STEPHEN KIPROTICH RONO CLAIMANT

AND

STANDARD LIMITED RESPONDENT

RULING

1. The claimant herein filed a statement of claim against the respondent, seeking for the following reliefs and orders:
 - a. Kshs 20,000,000.
 - b. In the alternative, the respondent to reinstate the claimant unconditionally.
 - c. Interest on [a] above at court rate from the date of dismissal until payment in full.
 - d. Costs.
2. Upon being served with summons to enter appearance, the respondent did on the November 11, 2020, and subsequently filed a notice of preliminary objection to the suit. The crux of the objection being that by dint of the provisions of section 90 of the *Employment Act*, 2007, the claim was time barred.
3. On the April 4, 2022, when this matter came up before this court for hearing of the preliminary objection that the same be canvassed by way of written submissions. This court gave the parties timelines within which they were to file the submissions. The respondent obliged. The claimant didn't. This ruling shall be without the benefit of considering the claimant's submissions, therefore.
4. Counsel for the respondent submitted that this court lacked jurisdiction to determine the claim herein as it was filed over three years after the cause of action arose. It is clear from the claimant's pleadings and more specifically paragraph 4 thereof that the cause of action arose on the October 4, 2016 when



he was summarily dismissed. The statement of claim was filed on the November 11, 2016, therefore outside the three years envisaged under section 90 of the *Employment Act*, 2020.

5. To buttress the point that this court has no jurisdiction to hear and determine a matter that is time barred, reliance was placed on the Supreme Court of Kenya decision in the case of *Interim Independent Electoral Commission* SC Constitutional Application No 2 of 2011 [2011] eKLR and *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others* [2012].
6. Further reliance was placed on the *obiter* in the case of *Gathoni v Kenya Co-operative Creameries Ltd* Civil Application No 122 of 1981 where Porter, J observed;

“The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and take reasonable steps in his own interest.”

Determination

7. An adequate determination of the preliminary objection raised by the respondent turns on two issues for determination, namely:
 - a. Whether the preliminary objection is properly taken.
 - b. Whether the claimant’s claim herein is time barred by dint of the provisions of section 90 of the *Employment Act*.
8. As to what constitutes a properly taken preliminary objection Law J A in the case of *Mukisa Biscuit Manufacturing Co Limited v West End Distributor Limited* [1960] EA 696 the court expressed himself, thus:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

Sir Charles Newbold P added;

“A preliminary objection is in the nature of what used to be a demur. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is an exercise of judicial discretion.”

9. No doubt, what the respondent has raised is a pure point of law anchored on a specific provision of statute. It is neither a point premised on facts which shall require ascertainment by taking evidence, nor a mixture of law and fact. The preliminary objection is properly taken therefore.
10. Section 90 of the *Employment Act* 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 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 cessation whereof:

11. It is worth noting that the coming into effect of the *Employment Act*, 2007 and therefore the foretasted provision, had a twin effect. First it ousted the applicability of section 4 (1) of the *Limitations of Actions Act* on civil suits or proceedings premised on or arising from the *Employment Act*, or a contract of service in general. Second, unlike for actions of contract, tort, and certain other actions contemplated under section 4(1) of the *Limitation of Actions Act*, the provision reduced the limitation of time from 6 (six) years to 3 (three years) for the matters stipulated therein. In this view I am fortified by the holding in the case of *Ndirangu v Henkel Chemicals EA Limited* [2013] eKLR.”
12. This court is cognizant of the fact that the enactment of the *Employment Act*, 2007, came in with expansive rights and protection in favour of employees, rights and protection which are constitutionally and equity spirited. However, I should point out that it was not the intention of the legislature that the Act goes into resuscitating matters that collapsed by operation of the law, (limitation of time).
13. This act complained of [summary dismissal], as expressly brought out in the claimant’s statement of claim paragraph 4, took place on the October 4, 2016. The claim herein was filed on the November 11, 2020, a period of after four years. Consequently, I come to an inescapable conclusion that the claim herein was filed out of the statutory period. It is a fit candidate for dismissal. It is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2022.

OCHARO KEBIRA

JUDGE

In Presence of:

..... for the Claimant.

..... for the Respondent.

