



Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers v Kenya School of Government (Cause 1841 of 2017) [2022] KEELRC 12990 (KLR) (28 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 12990 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1841 OF 2017
SC RUTTO, J
OCTOBER 28, 2022**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

KENYA SCHOOL OF GOVERNMENT RESPONDENT

RULING

1. The claimant brought the instant suit on behalf of the grievant by the name Philip Ojal who it avers is its member. It is the claimant's case that the grievant was unfairly terminated on October 15, 2013. The claimant contends that the grievant was not subjected to a fair hearing prior to his termination. For this reason, the claimant seeks on behalf of the grievant, one month's salary in lieu of notice, 12 months' salary being compensatory damages and special damages for suffering.
2. In response to the Claim, the respondent filed a Notice of Preliminary Objection dated June 2, 2022, through the office of the Attorney General. The Preliminary Objection is premised on the following grounds:
 - i. That the instant Claim is time-barred by dint of Section 90 of the *Employment Act, 2007* as it offends the mandatory provisions of the above section.
 - ii. That the Claimant herein filed the instant Claim on the 14th day of September 2017, roughly four (4) years after the alleged cause of action which arose on October 15, 2013. It would therefore defeat any conceivable logic that he would talk of an alleged denial of the right to an expeditious hearing.
 - iii. That this Honourable Court lacks the requisite jurisdiction to hear and determine this Claim in light of the provisions of the law mentioned above.



- iv. That this Claim neither discloses any reasonable cause of action against the Respondent nor has any merit. It is thus an abuse of the due process and precious time of this Honourable court.
 - v. That the Claim is incompetent and ought to be struck out with costs.
3. The Preliminary Objection was canvassed through written submissions. Notably, the claimant did not file written submissions despite being directed to do so on June 9, 2022.
 4. The respondent filed written submissions in support of the Preliminary Objection, which I have considered.
 5. The singular issue for determination is whether the suit is time barred.
 6. From the record, it is evident that the grievant was dismissed from employment on October 15, 2013 whereas the matter was filed on September 14, 2017. By simple arithmetic, the intervening period is 3 years 11 months, hence is 1 month short of 4 years.
 7. Section 90 of the *Employment Act*, which is key in determining this issue, provides that: -

“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.”
 8. The effect of the foregoing provision, is that a time bar of 3 years is placed on matters arising out of the *Employment Act* or on a contract of service, as the one herein. This simply means that such a suit cannot be sustained after the lapse of 3 years from the date the cause of action arose.
 9. In defining what constitutes a cause of action, the Court of Appeal in the case *Attorney General & another vs Andrew Maina Gitbinji & another* [2016] eKLR, cited with approval the case of *Letang vs Cooper* [1964] 2 All ER 929 at 934 where the term was defined to mean: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”
 10. To this end, the cause of action in this case arose on October 15, 2013, which is the date the grievant admits receiving his letter of termination. Essentially, he had a cause to complain from that date and time started to run until October 14, 2016, when the window was closed. Thereafter, the matter was time barred and no action based on the employment contract could be sustained.
 11. In the same vein, I adopt and reiterate the decision of the Court of Appeal in the case of *Attorney General & another vs Andrew Maina Gitbinji & another* (*supra*), thus: -

“The respondents had a clear cause of action against the employer when they received their letters of dismissal on October 2, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not...having found that the cause of action arose on February 2, 2010 and that the claim was filed on June 16, 2014 it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was barred as at February 1, 2013, and I so hold.”



12. Against this background, I cannot help but find that the instant Claim is time barred having been brought 3 years past the date the cause of action arose.
13. Accordingly, and as per the determination in the case of *[Thuranira Karauri vs Agnes Ncheche](#)* [1997] eKLR, the Court lacks jurisdiction to determine the matter.
14. The total sum of my consideration is that the Claim dated and filed on September 14, 2017, is hereby struck out for being time barred.
15. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Gitonga

For the Respondent Ms. Oyugi

Court Assistant Abdimalik Hussein

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 15th March 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 had 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.

STELLA RUTTO

JUDGE

