



**Sauke v Kenyatta University (Cause 2023 of 2016)  
[2022] KEELRC 13100 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13100 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2023 OF 2016  
AN MWAURE, J  
OCTOBER 27, 2022**

**BETWEEN**

**KENNETH OLIWA SAUKE ..... APPLICANT**

**AND**

**KENYATTA UNIVERSITY ..... RESPONDENT**

**RULING**

1. The Claimant was employed by the Respondent on May 3, 1999 and was terminated on 3<sup>rd</sup> June 2011 on grounds of gross misconduct. He says that the Respondent then purported to avail the Claimant an opportunity to internally appeal against the dismissal from its services. The Claimant says that even though he utilized the internal mechanisms of the Respondent fully nevertheless his termination was never reviewed. He says his dismissal was upheld on March 2015.
2. The Claimant filed his claim on September 30, 2016. The case was fixed for hearing on October 25, 2021 when the issue of limitation of time was raised by the Court.
3. The parties were asked to file their respective submissions as regards the fact that the suit was filed long after three years since the Claimant was terminated. This is contrary to Section 90 of the [Employment Act](#).
4. The Claimant in his submissions avers that it was in keeping with the Respondent's code of conduct that every staff member must comply with the University's code of ethics. In particular Article 34 of the said code of ethics provided for procedures for dealing with disciplinary matters. He claims he had to exhaust The internal dispute resolution mechanism provided by the Respondent before filing the suit. He claims he filed the suit timeously and he is not affected by [limitation of Actions Act](#).
5. The Respondent on the other had submits that the Claimant should have just filed the suit before the expiry of the three years and then pursue the internal mechanisms of resolving disputes. The



Respondent submits that the client having filed his claim after expiry of three years makes this Court devoid of jurisdiction to hear the claims.

## Decision

6. The Claimant filed his claim close to six years after termination. Section 90 of the [Employment Act, 2007](#).

“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.”

7. Indeed there is no exception given to the Court to proceed with suit filed out of time. Clearly the Court lacks jurisdiction where the suit is filed out of time. It is unfortunate the claimant thought he was protected by the internal provisions of his then employer. But the law is above procedure and even internal codes of any organization.
8. Indeed the only very narrow window where Court can extend time is where action is found to relate to torts or negligence or breach of duty and damages claimed should be in respect of personal nature (see [Y.H. Wholesalers Limited vs Kenya Revenue Authority](#), Civil case E 190/2021. It is evident time limits serve the purpose of preventing endless delay in filing suits.
9. In the case of *Hilton vs Sultan S. Team Laundry*; Lord Green Mr had this to say “But the statute of limitation is not concerned with merits. Once the axe falls it falls and the defendant is the one fortunate enough to have the benefit of the statute of limitations.
10. Having observed the above the Court finds clearly it has no jurisdiction to handle this case having been filed way out of the time scope provided, that is three years since the claimant was terminated. The claim is therefore struck out for lack of jurisdiction by the Court. Each party will bear their costs since even the respondent had not applied for dismissal of the claim until the Court raised the issue.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 27TH OCTOBER, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.\*\*

**ANNA NGIBUINI MWAURE**



**JUDGE**

