



REPUBLIC OF KENYA



**Oronje v Riley Services Limited Security Company (Petition  
001 of 2022) [2022] KEELRC 13071 (KLR) (4 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13071 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
PETITION 001 OF 2022  
B ONGAYA, J  
NOVEMBER 4, 2022**

**BETWEEN**

**DICKSON OTIENO ORONJE ..... PETITIONER**

**AND**

**RILEY SERVICES LIMITED SECURITY COMPANY ..... RESPONDENT**

**RULING**

**\*\*\*ARGUMENTS**

1. The respondent (applicant) filed an application by way of the notice of motion filed and dated July 21, 2022 through Macharia Burugu & Company Advocates. The application was under article 159(2) of the *Constitution of Kenya*, rules 21, 22, 23 and 24 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* 2013, section 12(3) and (4) of the *Employment and Labour Relations Court Act*, rule 17 of the *Employment and Labour Relations Court (Procedure) Rules* 2016, the inherent jurisdiction of the court and all other enabling provisions of the law. The applicant prayed for orders:
  1. The petition be struck out.
  2. Costs of the petition be awarded to the respondent (applicant).
  3. Costs of the application be awarded to the respondent (applicant).
2. The application was based upon the annexed supporting affidavit of Nancy Machage and the following grounds:
  - a. The petition is an abuse of process because the petitioner had previously filed an ordinary suit alleging unlawful termination. The applicant objected to that suit as being time barred upon which the petitioner withdrew the suit and instituted the present petition to circumvent the earlier withdrawal. The petitioner is engaged in forum shopping.



- b. The dispute is about unlawful termination and it is time barred by reason of section 90 of the Employment Act, 2007. The petitioner has pleaded he was dismissed on July 15, 2016. The suit was belatedly filed on April 13, 2021 beyond the 3-years of limitation. It was ELRC No E002 of 2021 in the Principal Magistrate's Court at Voi. It is just that the suit is struck out.
3. The petitioner opposed the application by filing his replying affidavit on October 27, 2022 through Machora Motuka & Company Advocates. The petitioner has urged as follows. It is true that he filed ELRC No E002 of 2021 in the Principal Magistrate's Court at Voi. It was a claim for wrongful, illegal and negligent termination of his contract of service with the applicant. The suit was withdrawn prior to hearing of the applicant's notice of preliminary objection therein dated August 25, 2021. The notice to withdraw suit was dated August 30, 2021 and filed on August 31, 2021. he was entitled to withdraw the suit per order 25 rule 1 of the Civil Procedure Rules. Order 25 of the Civil Procedure Rules entitled him to file another suit subsequent to withdrawal of the earlier suit. The petition is properly before the court for determination on its merits as to whether his rights to fair labour practices have been violated by the applicant.
4. The court has considered the material on record. The petitioner does not deny that the dispute is about his alleged unlawful and unfair termination of the contract of service, and, the dismissal being on the undisputed date as urged for the applicant. The court considers that as submitted for the applicant the dispute was one properly governed by the Employment Act, 2007 and it is obviously trapped by the time of limitation under section 90 of the Act. The applicant's case and submissions are upheld. It was an abuse of court process to file the present petition. The application will succeed. In conclusion, the application dated and filed on July 27, 2022 is hereby allowed with orders:
  1. The petition is struck out with costs to the respondent (applicant).
  2. Costs of the application are awarded to the respondent (applicant).

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 4<sup>TH</sup> NOVEMBER, 2022.**

**BYRAM ONGAYA**

**JUDGE**

