



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 207 OF 2014**

**GEORGE OCHIENG ONYANGO.....CLAIMANT**

**V**

**CHEMELIL SUGAR CO. LIMITED .....RESPONDENT**

**JUDGMENT**

1. George Ochieng Onyango (the Claimant) instituted legal proceedings against Chemelil Sugar Co. Ltd (the Respondent) on 17 September 2014, alleging unfair termination of employment.
2. The Respondent filed a Statement of Response on 13 October 2014 in which one of the defences raised was that the cause of action was caught up by the law of limitation.
3. The Claimant filed an Amended Statement of Claim on 6 November 2017 after securing leave of the Court, and this prompted the Respondent to file an Amended Statement of Defence on 14 November 2017.
4. The hearing of the Cause commenced on 15 May 2018 and proceeded on 11 July 2018 and 4 December 2018.
5. When the hearing resumed on 10 December 2020, the Respondent opted to close its case without calling other witnesses it had intended to call.
6. Considering that limitation had been raised, the Court directed the parties to file and exchange submissions, specifically addressing the Issue.
7. The Respondent filed its submissions on 4 January 2021, while the Claimant's submissions were not on record by the agreed timeline of 10 February 2021.
8. The Court has considered the record and the submissions.
9. It is not disputed that the Claimant was dismissed on 8 October 2009 and that the Cause was filed on 17 September 2014.
10. By dint of section 90 of the Employment Act, 2007, the Claimant should have filed action within 3-years, that is, on or before 8 October 2012. The action was brought outside the prescribed time.
11. The cause of action advanced by the Claimant was based on contract and therefore, even assuming that he would have sought leave to file suit out of time, that would not have been successful since the Court has no power to grant leave or extend time in actions based on contract, see *Divecon v Samani* (1995 -1998) EA 48 where the Court of Appeal stated

to us, the meaning of the wording of section 4(1) .....is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action.....A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, that "the wording of section 4(1) of the Limitation of Actions Act (Chapter 22) suggests a discretion that can be invoked (my emphasis).

12. The principle that the Court has no such power extends to *contracts of service*, and the Court has no option but to down its pen.

13. The Cause is dismissed with costs.

14. Since the Court directed on 15 May 2018 that this Cause would serve as a test suit, the orders herein will apply in

- i. Kisumu Cause No. 206 of 2014, Peter Dan Oruko v Chemelil Sugar Co Ltd.
- ii. Kisumu Cause No. 208 of 2014, Maurice Othech Ochomo v Chemelil Sugar Co Ltd.
- iii. Kisumu Cause No. 209 of 2014, Aloice Otieno Arum v Chemelil Sugar Co Ltd.
- iv. Kisumu Cause No. 210 of 2014, Paul Odhiambo Orita v Chemelil Sugar Co Ltd.
- v. Kisumu Cause No. 211 of 2014, Charles Onyango Ooro v Chemelil Sugar Co Ltd.
- vi. Kisumu Cause No. 212 of 2014, Shem Onyango Ogwang v Chemelil Sugar Co Ltd.
- vii. Kisumu Cause No. 213 of 2014, Thomas Owino Omollo v Chemelil Sugar Co Ltd.
- viii. Kisumu Cause No. 214 of 2014, Jacton Odhiambo Achola v Chemelil Sugar Co Ltd and
- ix. Kisumu Cause No. 215 of 2014, Japheth Kwama Ogilo v Chemelil Sugar Co Ltd.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 24<sup>TH</sup> DAY OF MARCH 2021**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For Claimant Ken Omollo & Co. Advocates

For Respondent Amos O. Oyuko & Co. Advocates

Court Assistant Chrispo Aura