



**Ogwara v Judicial Service Commission (Cause 53 of 2016)
[2020] KEELRC 1647 (KLR) (13 February 2020) (Ruling)**

William Morara Ogwara v Judicial Service Commission [2020] eKLR

Neutral citation: [2020] KEELRC 1647 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 53 OF 2016
MN NDUMA, J
FEBRUARY 13, 2020**

BETWEEN

WILLIAM MORARA OGWARA CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

RULING

1. The suit was filed on 8th February 2016 in which the claimant sought payment of unspecified rightful dues from the respondent following termination of his employment as a watchman at Kisii law courts on 9th January 2013.
2. Amended memorandum of claim was subsequently filed on 12th July 2017 in which the claimant specified that he sought from the respondent payment of three months salary in lieu of notice in the sum of Kshs. 27,000; unpaid leave Kshs. 16,200 and terminal benefits in the sum of Kshs. 1,944,000. Furthermore, the claimant seeks damages for unlawful termination and loss of prospects in life. In the amended statement of claim, the claimant states that he earned Kshs. 9,000 per month and his employment was terminated on 9th January 2013.
3. Respondent filed a response to the claimant's amended memorandum of claim on 18th October 2017. The respondent raised a counter claim with regard to lost items under the watch of the claimant.
4. Furthermore, the respondent raised a preliminary objection to the suit that the same was time barred because the same was filed outside the three (3) years limitation period prescribed under Section 90 of the *Employment Act, 2007*.
5. The Claimant and the respondent filed written submissions on the preliminary objection.



6. From the initial and amended memorandum of claim, the termination of employment of the claimant was on 9th January 2013. The claimant filed the suit on 8th February 2016. Three (3) years limitation period expired on 9th January 2016. The suit was filed one month upon expiry of the limitation period.
7. In *Peter Myawa and 7 others v M.J. Clerke Limited*, [2003] eKLR, Radido J. stated as follows:

“The end result is that I do uphold the preliminary objection filed on 19th February 2013 that the memorandum of claim herein was filed out of the time stipulated in Section 90 of the Employment Act, 2007 and in any case this court has no jurisdiction or discretion to extend time or grant leave to file a claim out of time in respect of causes of action based on breach of employment contract. The memorandum of claim is therefore struck out”
8. From the four corners of the pleadings by the claimant, the suit and amended suit were filed outside the three (3) years limitation period.
9. The court lacks jurisdiction to entertain the suit at all. The explanation by the claimant in his written submissions that he had not exhausted the internal appeal procedure until 9th June 2015, when the results of the appeal process was communicated to him does not avail the claimant at all.
10. The claimant stands or falls on his pleadings and the court lacks jurisdiction to engage in any explanatory assertions not found in the pleadings. In any event, the date of termination in the pleadings is clear and unequivocal.
11. Accordingly, the memorandum of claim and the amended memorandum of claim are struck out for want of jurisdiction to entertain the same. The counter claim is equally time barred.
12. No order as to costs.

RULING DATED, SIGNED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2020

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Kouna for respondent/Objector

Mr. Maosa for claimant

Chrispo – Court Clerk

