



**Koskey v Kenya Power & Lighting Co. Limited (Miscellaneous Case
E016 of 2025) [2025] KEELRC 2361 (KLR) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2361 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS CASE E016 OF 2025
M MBARŪ, J
AUGUST 8, 2025**

BETWEEN

SOLOMON KIPCHUMBA KOSKEY APPLICANT

AND

KENYA POWER & LIGHTING CO. LIMITED RESPONDENT

RULING

1. The applicant applied for an Originating Summons dated 3 June 2025. The court directed the respondent to be served and has filed a Replying Affidavit of Lynn Owano.
2. The applicant is seeking orders that leave be granted to file suit out of time in respect of wrongful termination of employment by the respondent. The applicant avers in his Supporting Affidavit that through a letter dated 7 August 2006, the respondent employed him as Art Mate Assistant. There was a letter of appointment dated 7 January 2021 appointing the applicant to the position of Distribution Area Technician, Kilifi County.
3. The applicant avers that upon his appointment, in January 2021, he proceeded on his annual leave and was to resume duty in February 2021. In April 2021, during the Easter period, there were many breakdowns involving transformers in the applicant's area of work. Together with his team, they relocated 3 transformers. In the process, one transformer was alleged to have been stolen, which was false, as all were accounted for.
4. A week after the incident, the applicant was suspended from duty to allow for investigations. In June 2021, he was recalled. In a show cause notice dated 18 June 2021, the applicant was accused of facilitating the theft of a transformer at Bofa and was directed to reply within 72 hours.
5. On 24 June 2021, the applicant submitted his response, and on 9 July 2021, he was invited to the disciplinary hearing. On 9 August 2021, notice of summary dismissal was served on the basis that the applicant had facilitated the theft of a transformer at Bofa and maliciously destroyed the property of



a customer. He was allowed the right of appeal, and a hearing was conducted on 29 November 2021. However, through a letter dated 7 February 2022, the applicant's appeal was dismissed.

6. The applicant's case is that he was not able to file his claim in time due to a scarcity of resources. After being wrongfully terminated, he has been undertaking small-scale farming and taking care of his family and is barely able to sustain himself. He has an arguable case with high chances of success. For substantive justice, leave be granted to allow him to file his claim against the respondent for wrongful termination of employment.
7. In reply, the respondent filed the Replying Affidavit of Lynn Owano, advocate and legal officer of the respondent. She avers that the leave to file suit out of time is contrary to the mandatory provisions of section 90 of the Employment Act (the Act). The Act does not contemplate a scenario where time can be extended. The Limitations of Actions Act is removed from application in employment claims.
8. The employment was terminated through a notice dated 9 August 2021. The applicant did not move the court in time, and his application should be dismissed.

Determination

9. Leave to file a claim out of time in employment disputes should be looked at based on the provisions of Section 90 of the Act. It requires 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.

10. Before the coming into operation of section 90 of the Act, the statutory limitation period for causes of action based on breach of employment contract or contract of service was that provided for contracts in general, in section 4(1) of the Limitation of Actions Act, and it was 6 years. Section 90 of the Act has now amended the Limitation of Actions Act to specifically provide for a limitation period of three years in actions based on breach of contract of service or arising out of the Act, as held in *Maria Machocho V Total Kenya Limited* [2013] KEELRC 577 (KLR).
11. On the question whether the court can grant leave to file suit out of time, this matter is addressed at length by the Court in *Divecon Ltd v Samani* [1995-1998] 1 EA 48, that section 4(1) of the Limitation of Actions Act was clear beyond any doubt and that the section meant that;

... no one shall have the right or power to bring an action 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 the 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.

12. A reading of section 90 of the Act and the cited authorities, the Court neither has the statutory jurisdiction nor discretion to grant leave or extend time in causes of action based on breach of contract of service or actions arising out of the Act. See *Denis Kisang Ripko v Kenya Commercial Bank*



Limited [2016] KEELRC 1434 (KLR) and the case of Kenya Union of Domestic, Hotels, Educational Institutions & Hospital v BOM, Kimana Girls Secondary School [2024] KEELRC 13281 (KLR).

13. In this case, employment was terminated through a notice dated 9 August 2021. The period of 3 years to file suit lapsed on 7 August 2024. Despite the noted financial challenges, the application did not take any steps to urge his case or report to the labour officer, which does not require funds. Under the Employment and Labour Relations Court (Procedure) Rules, the applicant is allowed to file suit in their home county to reduce expenses. He did not invoke this option.

The application dated 3 June 2025 is without merit. It is declined.

14. These proceedings were meant to be ex parte. The court directed service upon the respondent and appreciates the attendance.

In the interests of justice, no orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8 DAY OF AUGUST 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

