



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CIVIL CASE NO. 364 OF 2011**

**DANIEL MUIRURI NDUNGU ..... PLAINTIFF/APPLICANT**  
**VERSUS**  
**HON. ATTORNEY GENERAL ..... DEFENDANT/RESPONDENT**

**RULING**

**Coram**

**Mwera J**

**Kamau for plaintiff/Applicant**

**Ex parte, Non Appearance for Defendant**

**Njoroge Court Clerk**

The applicant filed the originating summons (os) herein under sections 27, 28 of the Limitations of Actions Act for an order:

i) that leave be granted to him to file a suit against the Attorney General out of time.

The grounds advanced were that he would seek damages on account of unlawful interdiction, unlawful dismissal, malicious prosecution and false imprisonment. After dismissal the applicant successfully appealed to the Public Service Commission (PSC) for reinstatement, yet his employer, the Ministry of Medical Services, has neglected/refused to reinstate him. That, the PSC decision to the ministry was received by the applicant long after the expiry of the limitation period.

In the supporting affidavit the applicant stated that he was an employee in the said ministry since 1991. There he was harassed and intimidated by fellow staff ending with two prosecutions in 1992 and 2006. He was acquitted on 16.10.2009 of charges in CR. C. 1823/06. Instead of being reinstated, the employer dismissed the applicant for alleged gross misconduct and abuse of office on 2.11.10. The applicant successfully appealed to the PSC against that dismissal. He ought to have been reinstated into employment but no such a thing has been done. He knew of the decision to be reinstated long after the time to sue the A.G. had lapsed – hence this originating summons.

In submission, the court was again taken through what has been said above but now adding that the applicant wants to claim from the government salary arrears from the period of interdiction. It was submitted following the PSC decision that:

**“The appeal has been successful and the applicant has been reinstated back into employment.”**

The above is in contrast with the deposition in the affidavit:

**“12. That to date no reinstatement, in accordance with the order of reinstatement by the Public Service Commission, has been affected.”**

Be that as it may. There was no copy of the PSC decision to reinstate or when he got to know of that date precisely, so that computation of time to sue can be ascertained.

The applicant sought orders under the Limitation of Actions Act (Cap 22). This court is of the mind that the correct statute to apply when suing the central government or a local authority is the Public Authorities Limitation Act (Cap 39). It reads in the preamble:

**“ An Act of Parliament to provide for the limitation of proceedings against the Government and a local authority, and for purposes incidental to and connected with the foregoing.”**

The applicant wishes to sue in tort to recover damages on bases including malicious prosecution and false imprisonment. He has also an intention to recover damages for his interdiction and dismissal. This appears to fall under contract. Had the applicant invoked the correct statute (Cap 39) then he could have been obliged to seek the orders to sue under section 3 of that *Act*. That Act also has stipulations as to what to prove in the event time to sue has expired and the court has to consider whether to grant or refuse the leave to sue.

In sum the originating summons is bad in law and therefore dismissed.

Delivered on 27.10.11.

**J. W. MWERA  
JUDGE**