



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1907 of 1999

JIMNA MWANGI GICHANGA..... PLAINTIFF

VERSUS

THE ATTORNEY GENERAL..... DEFENDANT

R U L I N G

The Plaintiff has pleaded in paragraph 6 and 7 of his plaint dated 10th September, 1999 as follows:-

” 6. The plaintiff’s claim against the defendant is that on 1st July, 1996 the Teachers Service Commission effected the new scheme (which) was to be automatically become effective for graduate teachers and if effected would automatically place the plaintiff in job group R having taken into consideration his qualification and service”.

” 7. The Teachers Service Commission failed and/or refused to place the plaintiff in job group R and pay his salary accordingly, and has persisted in its refusal despite demands having been made”.

The main relief sought is:-

” (a) A declaration that between the 1st day of July, 1996 and 30th April, 1997 the plaintiff was entitled to a salary, house allowance and other benefits calculated as per Grade R of Chief Principal Teacher within the Teachers Service Commission Scheme of service and subsequently his pension dues be calculated as per the said Grade R”.

The Defendant has raised a preliminary objection to the suit by notice dated 14th September, 2007. That objection is that the suit offends the mandatory provisions of section 3(2) of the Public Authorities Limitation Act, Cap. 39. In his submissions learned counsel for the Defendant stated that the cause of action in the suit, as pleaded, arose on 1st July, 1996. The suit therefore ought to have been filed on or before 1st July, 1999. It was filed out of time on 30th September, 1999, and without leave of the court. The suit is thus incompetent by statutory limitation and not properly before the court. The court will thus have no jurisdiction to hear it, and it ought to be struck out.

In his reply, the Plaintiff, who was representing himself, submitted that the Public Authorities Limitation Act is not applicable to this suit. According to him the applicable statute is the Teachers Service Commission Act, Cap. 212. He referred to section 5(2) thereof and the regulations made by the Minister thereunder. Those provisions have nothing at all to do with limitation. The Plaintiff further submitted that the scheme of service which is the basis of his suit was brought into effect from 14th

November, 1997 by Legal Notice No. 537 of that year. His cause of action thus arose on 14th November, 1997, and that therefore his suit was not statute-bared. He did concede, however, that he has not amended his plaint; but in his view, there is no need for such amendment because he has properly pleaded his claim in the plaint.

I have considered these rival submissions. Section 3(2) of the Public Authorities Limitation Act provides as follows:-

“39. (2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued”.

Paragraph 6 of the plaint, as it now appears, is rather inelegantly crafted. It also begs the question as to when, exactly, the scheme of service upon which the plaintiff’s cause of action is based, was brought into effect. The Plaintiff stated in his submissions that it was brought into effect on 14th November, 1997 by Legal Notice No. 537 of that year. That would be the date upon which the Plaintiff’s cause of action arose. If it were so pleaded, the Plaintiff’s suit would have been brought within the three-year period decreed by section 3(2) of the Public Authorities Limitation Act.

Though the Plaintiff does not think so, he obviously needs to amend paragraph 6 of his plaint in order to clearly plead when his cause of action arose. Such an amendment would not, in my view, prejudice the Defendant in any way as no new cause of action will be pleaded.

In the result I will overrule the preliminary objection. But I hereby direct that the Plaintiff do within fourteen (14) days of today file an amended plaint in order to properly and clearly plead when his cause of action arose. In default his suit shall stand struck out with costs to the Defendant. If an amended plaint shall be filed, the Defendant may, within fourteen (14) days of service of the amended plaint upon him, file an amended defence. Costs of this preliminary objection shall go to the Defendant. It is so ordered.

DATED AND SIGNED AT NAIROBI THISDAY OF JUNE 2008.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 6TH DAY OF JUNE 2008