



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**HCC NO. 79 OF 2002**

**DAVID NJUE KABUNGO .....PLAINTIFF**

**VERSUS**

**DAVID NJUE KABUNGO .....PLAINTIFF**

**VERSUS**

**COUNTY COUNCIL OF NYANDARUA.....1ST DEFENDANT**

**THE PUBLIC SERVICE COMMISSION...2ND DEFENDANT**

**MINISTRY OF LOCAL AUTHORITY .....3RD DEFENDANT**

**THE ATTORNEY GENERAL.....4TH DEFENDANT**

**RULING ON A PRELIMINARY OBJECTION**

1. The Objection by Counsel for the 2nd Defendant to the hearing of the suit is premised on Section 3 of the Public Authorities Limitation Act, Cap.39. That sub-Section provides as follows:-

***“No proceedings founded on contract shall be brought after the end of three years from the date on which the cause of action arose.”*** It is argued that the cause of action herein arose in 1995 and the suit herein filed in 1999, a year after time had lapsed.

2. In response, Counsel for the Plaintiff argues that the cause of action arose in 1999 when the Plaintiff was dismissed from service and therefore the suit was filed well within time.

3. I have perused the Plaintiff and it is clear that the Plaintiff is challenging his dismissal from Public Service on 8.12.1999. (paragraphs 7, 8, and 9 of the Plaintiff.) However he also seeks certain payments backdated to 1995 when he was suspended

without those payments. The latter fact notwithstanding there is no reason why I should strike out the suit.

4. I think the Preliminary Objection was raised without too much thought and clarity of issues. The substance of the suit was a claim that arose in 1999 and the suit itself was filed on 9.12.2002. I think it is not filed in contravention of Section 3 (2) of the Act and it must proceed.

5. I overrule the Preliminary Objection with costs and order that parties do proceed and fix early hearing

dates in this matter. Orders accordingly.

Dated and delivered in open court on this 1st day December 2004.

**I.LENAOLA**

**AG. JUDGE**

**Mr. Okwaro for Plaintiff**

**N/A for other parties**

**I.LENAOLA**

**AG. JUDGE.**