REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CONSTITUTIONAL PETITION NO. 122 OF 2016

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF: SECTION 72,74,55,77,81,82 & 84 OF THE REPEALED CONSTITUTION ARTICLES 1,3,12,19,20,21,22,23,27,28,40, 60(D),62(H)64,67,48,156,159,165,258 & 259 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

SECTION 5,85 AND 86 OF THE REPEALED ARMED FORCES ACT CAP 199

IN THE MATTER OF: ALLEGED VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS AS ENSHRINED UNDER SECTIONS 72,74,75,77,81, 82 & 84

OF THE REPEALED CONSTITUTION AND ARTICLES 22,23,27,39,40,47,48 & 159 OF THE CURRENT CONSTITUTION

AND

IN THE MATTER OF: SUCCINCT PRINCIPLES OF NATURAL JUSTICE

AND

IN THE MATTER OF: PRINCIPLES OF PROPORTIONALITY,

REASONABLENESS AND LEGITIMATE EXPECTATION

IN

RICHARD WAMBUA MUTISYA ....PETITIONER

VERSUS

THE CHIEF OF GENERAL STAFF
KENYA DEFENCE FORCES .....1ST RESPONDENT

THE CHAIRMAN DEFENCE COUNCIL .....2ND RESPONDENT

PRINCIPAL SECRETARY,
MINISTRY OF DEFENCE.....3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL .....4TH RESPONDENT

JUDGMENT

Background

1. By his petition dated 6th September, 2016, the Petitioner sought;

    a) This Honourable Court declares that the holding of the Petitioner under close arrest for a further 3 months after the Court of Appeal had stayed the Court Martial was in breach of the repealed and current Constitution.

    b) This Honourable court declares that the Army Commander's letter recommending the dismissal of the Petitioner without benefits was in breach of the repealed and current constitution.

    c) This Honourable court declares that the Defence Council's decision to terminate the Petitioner's commission was in breach of the repealed and current constitution.

d) This Honourable court orders and directs that the Petitioner be forthwith reinstated.

e) This Honourable court orders and directs that the Petitioner be forthwith paid all salary arrears from 2001 when he was 36 years old to date, together with increments and advancement in rank until retirement age of 57.

f) This Honourable court orders and directs that the Petitioner be forthwith reinstated to the medical scheme and pension scheme and to enjoy the medical scheme and pension adjusted upwards in acknowledgement of advancement in rank.

g) The Respondents be condemned to pay costs of this Petition.

2. The Respondents opposed the Petition through the Replying Affidavits of Major Edwin Kibiru Muta and Major Jackson Kimathi Muthee, denying the Petitioners' allegations and entitlement to the reliefs sought in the Petition.

3. Following this Court’s directions, this matter proceeded by way of viva-voce evidence. At trial, the Petitioner testified in his case, while the Respondents called Major Edwin Muta to testify on their behalf.

The Petitioner’s Petition

4. The Petitioner states that he was enlisted as a Cadet Officer on 29 March 1989 and, after undergoing training at the Armed Forces Training College (AFTC) Lanet, was commissioned as a Second Lieutenant under Force No. 18931 on 3 August 1990. He served in various postings, including as Troop Commander at 10 Engineers Battalion Nanyuki, Staff Officer III (training) at the Department of Defence in Nairobi, Troop Commander at 12 Engineers Battalion Thika, and later as an Instructor at the School of Combat Engineers, Archer's Post, until 14 March 2001, when his commission was terminated.

5. The termination of his commission was executed without prior notice, hearing, or communication of the reasons behind it. Before the termination, the Petitioner had been taken through

a court-martial process in which he was charged with disobedience of standing orders contrary to section 30(1) of the Armed Forces Act. The charge against him was that on 8th July and 9th October 1996, while performing his duties as Staff Officer III [Local Courses], he had issued Local purchase orders for assorted stationery items whose combined value exceeded Kshs. 30,000, thereby contravening Treasury circular No. 13 of 24th September 1993. Further, he signed Local purchase orders whose value exceeded KShs. 10,000, thereby violating the Chief of General Staff's letter DOD/CGS/21/EST.

6. The Petitioner asserted that he challenged the validity of the court-martial proceedings as the charge sheet had been signed by an officer other than the Commanding Officer. This breached his constitutional right, as by then he had a different Commanding Officer and was serving in a different post.

7. He additionally contended that the convening of the court-martial by the Army Commander was irregular, as it did not

adhere to the proper channels. By the Army Commander's act of convening the court, any possibility of overturning the charge or terminating the proceedings was eliminated.

8. Additionally, the appointment and report of the investigation officer, Col. F.M. Murgor, infringed on his constitutional rights as the investigations had been carried out by the police, who were not informed of this second investigation or asked for their input.

9. The Court Martial was not constitutionally convened, as he was not recommended for trial by the Court Martial by his Commanding officer or appropriate superior authority, as at the material time, he was in the School of Combat Engineers, Archers Post.

10. He further contended that the investigation was selective and discriminatory, as it failed to account for the involvement of other officers in the training department.

11. He further argued that the charge sheet was flawed because it referenced a date (29th August 1997) when he had already been transferred from the post in question.

12. By reason of the foregoing matters, he filed a Nairobi High Court Judicial Review Miscellaneous Application No. 318 of 2000 against the Chief of the General Staff, the Commander of the Kenya Army, and others. The Court eventually disallowed the Judicial Review application. Upon the outcome, he challenged the decision by way of an appeal to the Court of Appeal, Vide Appeal No. 84 of 2000. On 7th July 2000, the Court of Appeal, in its Judgment, granted him leave which had been denied by the High Court in the Judicial Review application. It further ordered that the leave do operate as a stay of the court-martial proceedings.

13. Despite the stay, the Petitioner was placed under close arrest in 2000 for 85 days, an act which was unjustified since considering that he had duly cooperated during police investigations in 1997 and never required such confinement. Further, it violated his constitutional rights.

14. Subsequently, he was dismissed by letter of 19th February 2001, by the Army Commander. The dismissal was without benefits. In the letter, the Commander asserted that the petitioner's act of resorting to the courts had undermined discipline, authority, and morale within the armed forces. The termination of his employment was retaliatory, and it infringed his right to pursue recourse in courts of law, to seek the protection of the law.

15. The Petitioner further avers that the Defence Council, which recommended the termination of his commission, was improperly constituted as there was no Minister for Defence, who is required by law to chair the Council. He also stresses that police investigations had earlier cleared him of theft allegations, rendering the later Court Martial proceedings and dismissal malicious, vindictive, and unconstitutional.

16. Moreover, the Petitioner had already sat and completed examinations for promotion to the rank of Major by March 2001. His dismissal, therefore, not only deprived him of advancement but also violated his legitimate expectation of

promotion, salary increments, pensions, medical benefits, and other entitlements.

17. The Petitioner asserts that the actions of the Respondents were unlawful, opaque, arbitrary, and carried out in bad faith. He maintains that no disciplinary action could lawfully proceed while court orders and the judicial review proceedings were pending. The Respondents' actions, he argues, amounted to an abuse of constitutional safeguards and a breach of his rights to secure protection of the law, personal liberty, freedom of movement, non-discrimination, and protection of property.

18. **He** concludes that the actions of the Respondents violated principles of natural justice, proportionality, reasonableness, and legitimate expectation. They also infringed upon his constitutional and human rights under both the repealed and current Constitutions.

19. Cross examined by Counsel for the Respondents, the Petitioner stated that he approached the High Court in two ways. First, he appealed against the court-martial's decision.

The appeal was declined. Second, he moved the Court by way of a Judicial review application, which was also rejected.

20. He subsequently appealed the decision of the High Court in the Judicial review application to the Court of Appeal. The Court of Appeal granted him leave to initiate judicial review proceedings against the Respondents and ordered that this leave function as a stay of the proceedings in the Court Martial. Before he could follow up on the matter, he was dismissed. The termination of his commission was without benefits. This crippled him financially. He would not push the matter any further.

21. The proceedings at the Court Martial were not concluded, as the Court of Appeal stayed them. Even after the stay order, the Respondents continued to have him under close arrest for 85 days.

22. He was charged alongside two others. They were all dismissed equally. One of them has since received his terminal

dues. Some senior officers who were dismissed also received their terminal dues.

Respondents' case

23. The Respondent's witness denied the descriptive averments of the Petition concerning the Petitioner's background, enlistment, training, and postings. In response to the allegations concerning the Petitioner's dismissal, the witness stated that the Petitioner was lawfully tried and convicted by a duly constituted Court Martial under section 84 of the Armed Forces Act, Cap. 199. The Petitioner was found guilty of disobedience of Standing Orders contrary to section 30(1) of the Act. The Petitioner never appealed the decision.

24. It was further argued that investigations into the Petitioner's conduct were lawfully carried out under section 80 of the Armed Forces Act, which explicitly permits investigations on

charges prior to trial. The matter of investigations was discussed and considered by the Court Martial convened in Langata on 12th April 1999.

25. Moreover, after the investigations, the Petitioner appeared before his Commanding Officer, who properly reprimanded him for trial by the Court Martial. Thus, the Court Martial was lawfully convened in accordance with sections 84 and 85 of the Act.

26. The witness denied the allegation of bias, discrimination, or selective investigation. He contended that investigations were conducted into all service personnel involved in the transactions in question, regardless of their level of involvement.

27. Furthermore, the charges against the Petitioner specifically concern offences committed between 8th July 1996 and 9th October 1996, when the Petitioner was serving as Staff Officer III (Local Courses). These charges involve knowingly contravening Treasury Circular No. 13 of 24th September 1993 by issuing Local Purchase Orders above KShs. 30,000/=, as well

as breaching the Chief of General Staff Letter DOD/CGS/21/EST of 11th July 1995 by issuing orders above KShs. 10,000/=.

28. The Defence Council was legally constituted under section 5 of the Armed Forces Act, Cap. 199. Therefore, the Petitioner's termination was lawful, justified, and carried out in accordance with statutory provisions.

29. It was argued that the Petitioner has not demonstrated any breach of his constitutional rights, whether under the repealed Constitution or the current one. The termination was conducted in accordance with due process, was fair, lawful, and necessary to uphold discipline and good order in the Defence Forces.

30. Regarding pensions and gratuities, the witness stated that under Regulation 6 of the Armed Forces (Pensions and Gratuities) (Officers and Servicemen) Regulations, 1980, no service personnel has an absolute right to pension or gratuities. The Defence Council retains discretion to withhold or suspend benefits. Similarly, section 244(2) of the Kenya Defence Forces Act, 2012 provides that benefits may be withheld or reduced

upon dismissal. The Petitioner was not a contributing member to any pension or medical scheme, and is therefore not entitled to such claims.

31. The witness asserted that the Petition herein is procedurally defective. The doctrine of exhaustion of remedies militates against it. The Petitioner failed to pursue statutory mechanisms available under the Armed Forces Regulations. The Petition suffers from laches, having been filed fifteen years after the cause of action arose, rendering it an abuse of court process.

32. Finally, the Petition is legally unsound, frivolous, and lacking merit. The Petitioner’s dismissal was constitutional, lawful, and procedurally correct. Consequently, the Petitioner is not entitled to any of the reliefs sought, and the petition ought to be dismissed with costs.

33. During cross-examination by the Petitioner's counsel, the witness stated that a legal provision exists under which the documents were destroyed. He further observed that, although he handles cases involving retired and deceased members,

records for those who retired or passed away more than 10 years ago are not maintained.

34. The deprivation of an officer’s benefits is a decision that the Defence Council must make. Additionally, the decision must be documented appropriately in the affected officer's record. However, in the Petitioner’s case, the record was destroyed.

35. According to the documents submitted by the Petitioner, the Court Martial was convened by Rt. General A. Abdullah on 18th February 2000. The Court of Appeal referred the convening in its decision.

Petitioner’s submissions

36. The Petitioner’s Counsel submitted that on the 14th of March, 2001, the Petitioner’s commission was terminated, purportedly under sections 169, 171, and 172 of the Armed Forces Act (AFA), by the Defence Council. At the time of this termination, there was no substantive Minister for Defence, thereby rendering the Council’s constitution defective. The

Respondent did not dispute the fact that, at that time, there was no substantive Minister.

37. It was further submitted that no Court Martial convicted him based on any case; therefore, there was no justification for his dismissal or deprivation of his pension and terminal dues. Deprivation of pension and/or terminal dues is not among the sanctions outlined in Section 102 of the AFA.

38. The Respondents' assertion that his commission was terminated consequent to a finding of guilt was unsupported, as no such records were submitted. The Court was urged to note that they relied on an unsubstantiated reason for the failure—that the records of the Court-martial and his dismissal had been destroyed—yet, paradoxically, they objected to the production of the documents by the petitioner on the grounds that they had been obtained irregularly.

39. Furthermore, it was argued that the process contravened the principles of natural justice, as the Petitioner was not provided with notice, a formal hearing, or written reasons for the

termination of his commission. He challenged the Court Martial proceedings, noting that the charge sheet was signed by an officer other than his commanding officer and that the prescribed procedures prior to convening a Court Martial were disregarded.

40. He submitted that his close arrest was unconstitutional, violating sections 72, 74, 76, and 80 of the repealed Constitution, which guaranteed protection against arbitrary detention, inhuman treatment, restrictions on movement, and violation of association rights. The Petitioner argued that his detention conditions amounted to inhuman and degrading treatment, contrary to both the Universal Declaration of Human Rights and the Convention Against Torture.

41. The Petitioner referenced the case of **Samwel Rukenya Mburu v Castle Breweries (HCC 1119 of 2003)** to illustrate that acts of torture, cruel, inhuman, or degrading treatment denote actions that are barbarous, brutal, or cruel. In contrast, a degrading punishment brings dishonour or contempt.

42. This Court should conclude that the close arrest constituted mental torture and inhuman treatment.

43. It was further submitted that the termination was based on his challenge against the Court Martial proceedings and obtaining a stay of those proceedings in the Court of Appeal, a clear violation of his right to protection under the law, guaranteed by section 77 of the old Constitution.

44. Counsel submitted that this Court's jurisdiction has been invoked pursuant to the provisions of section 84 of the repealed Constitution, which empowered courts to grant relief where constitutional rights were violated.

45. It was emphasised that the 2010 Constitution safeguards the rights the Petitioner seeks to enforce here under Articles 22, 23, 28, 29, 36, 37, 40, 47, 49, 50, and 51.

46. Section 75 of the repealed Constitution prohibited the arbitrary deprivation of property. A pension is an employment benefit. The Defence Council or the Court Martial could not arbitrarily deny it.

47. To support his submissions, Counsel relied on the case of **Major Manzi Luu Musyona v AG (Petition No. 51 of 2012),** where the Court held that the Respondent erred by ignoring stay orders of the Court of Appeal and considering it an interference with the Court Martial.

48. The Petitioner also cited the case of **Musa Mbwagwa Mwanasi & 9 others v Chief of the Kenya Defence Forces & another [2021] eKLR,** where the Court held;

"……. I have deliberately reproduced the whole Section verbatim because in previous decisions, such as Prof. Mania wa Kinyati v The Attorney General, Petition No. 595 of 2012, this Court has expressed the view that this Section speaks for itself and once I have accepted the Petitioner's evidence that he was unlawfully incarcerated for 86 days, and that the defence offered by Section 72[3] [b] has not been invoked by the Respondents, it follows that the Petitioner's incarceration, whatever the offence that he was suspected of having committed, was

unconstitutional and by dint of Section 72[6] above, he is entitled to remedy of compensation. There is little more to say on this straightforward matter."

49. In **Gitobu Imanyara & 2 others v AG, C. A No. 98 of 2014 [2016] eKLR**, the Court of Appeal held that the purpose of constitutional remedies is to vindicate violated rights and prevent future breaches, with remedies being proportionate.

Respondents' submissions

50. The Respondents' Counsel identified six issues for determination, thus;

I. Whether the Petitioner is guilty of inordinate delay.

II. Whether the documents attached by the Petitioner in support of the Petition are admissible.

III. Whether the cause of action is Employment or Constitutional in nature.

IV. Whether the Petitioner exhausted the process of internal grievance mechanisms before filing the instant petition.

V. *Whether the Petitioner has discharged the burden of proof for a constitutional petition on violation of rights.*

VI. *Whether the Petitioner is entitled to the prayers sought.*

51. The Petitioner submitted that the Petition is incompetent, an abuse of court process, and fatally defective. The Petition was filed in 2016, over 15 years after the conviction and dismissal, without any explanation. This inordinate delay prejudiced the Respondents as witnesses had retired, some had passed away, and crucial records were no longer available. Reliance was placed on the case of **Edward Akong'o Oyugi & 2 others v Attorney General [2019] eKLR and Peter M. Kariuki v Attorney General.**

52. The Respondents argued that the Petitioner was properly convicted by a Court Martial for two offences of disobedience to standing orders under section 30(1) of the Armed Forces Act, and his termination from service in 2001 was lawful and in accordance with the Act.

53. The Respondents contended that the documents relied upon by the Petitioner were inadmissible, some having been expunged, and others obtained in violation of Article 50(4) of the Constitution. Without admissible evidence, the Petition lacked any evidentiary foundation.

54. It was also submitted that the Petition raised employment issues disguised as a constitutional claim. Citing the principle of constitutional avoidance in **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others [2014] eKLR,** the Respondent maintained that the matter ought to have been pursued as an employment dispute, which was already time-barred under section 90 of the Employment Act.

55. The Respondents argued that the Petitioner failed to exhaust the internal grievance mechanisms available, including challenging the Court Martial decision by judicial review or appeal within statutory timelines. Reliance was placed on Speaker of the case of **National Assembly v James Njenga Karume [1992] eKLR**.

56. The Respondents maintained that the Petitioner failed to discharge the burden of proof under sections 107–109 of the Evidence Act. The Petition lacked specificity and precision as required in **Anarita Karimi Njeru v Republic (1979) 1 KLR 154** and was unsupported by credible oral or documentary evidence.

57. The Respondents submitted that the Petitioner's trial and dismissal were lawful, having been conducted before a properly convened Court Martial. The Defence Council lawfully ratified the termination under section 171 of the Armed Forces Act (repealed).

58. The Respondents argue that the Petitioner was not entitled to any of the prayers sought as the claim was an afterthought, unsupported by evidence, and filed out of time.

Analysis and determination

59. I have thoroughly reviewed the parties' pleadings, the oral and documentary evidence adduced before the court, and the written submissions by counsel. In my assessment, this petition turns on four key issues:

I. Whether the petition meets the threshold of a properly drawn and presented constitutional petition,

II. Whether the Petition herein was filed with inordinate delay, and if so, what would be its fate.

III. Whether the doctrine of constitutional avoidance militates against the instant petition.

IV. Whether the petitioner is entitled to the reliefs sought in the petition.

60. The first three issues relate to the competence of this petition. Citing the case of **Anarita Karimi Njeru v Republic [1979] KLR 154,** where the Court stated,

"We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important [if only to ensure that justice is done to his

case] that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."

The Respondents argued that the petition herein, as presented, doesn't meet the threshold brought forth in the cited decision.

61. In my view, the Court in the above-mentioned matter had in mind the purpose for, and importance of, pleadings in an adversarial system like the Kenyan system, for the parties and the Court.

62. However, it is important to note that the reasonable precision alluded to in the decision doesn't equate to scientific precision. While reiterating that the **Anarita Karimi Njeru** case remains good law, the Court of Appeal in the case of Mumo **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**, explained;

"The principle in Anarita Karimi Njeru [supra] is not a technical requirement of form. It is a substantive

requirement intended to ensure that parties understand the case they have to meet, and the court is properly guided. What is required is reasonable precision in framing complaints, not perfect particularity. A petition should disclose the specific constitutional provisions alleged to be infringed, the manner of infringement, and the nature of the redress sought. The test is one of substance, not formula……. We cannot look at Article 22 in isolation. We agree with the High Court that the precision is not coterminous with exactitude. It is not a ritualistic requirement. The principle in Anarita Karimi Njeru that requires reasonable precision in framing issues is to ensure that the Respondent has adequate notice and that the court is able to fashion an appropriate remedy. The standard is one of reasonable specificity, not mechanical nicety."

63. While recognising that the standard outlined in the **Anarita Karimi Njeru** case has been recalibrated under the 2010

Constitution, as emphasised in the **Mumo Matemu** case [supra], and recently reiterated by the Court of Appeal in **Nairobi Civil Appeal No. 473 of 2019- Anti-Corruption Authority v Francis John Wanyange and 4 others**, I am compelled to emphasise that such recalibration did not, in any manner, introduce a period of casualness, laziness, or laxity in the drafting of petitions, to the extent that significance and purpose of pleadings as understood, is diminished.

64. Having said as I have hereinabove [para. 63], it becomes easy for me to state that a petition that doesn't bring out with clarity the rights allegedly violated, the facts supporting the violation of the specific rights, and reliefs sought that flow from and are linked to the contended violation, cannot be said to have met the legal threshold for a properly drawn and presented constitutional petition. It will not be available for a Petitioner to give a narration of facts without linking them to the alleged violated right, and, in an adversarial system, hope that the Court will undertake the task of combing through the facts and linking them to some constitutional rights. Further,

seek generalised prayers like, *“a declaration that the Army Commander’s letter recommending the dismissal of the Petitioner without benefits was in breach of the repealed and current constitution',* and hope the Court to fashion an appropriate remedy.

65. I have carefully considered the petition herein and must state that it does not meet the legal threshold for a properly drafted and presented constitutional petition. In the body thereof, no constitutional provision from the old Constitution is cited, nor is the manner of its violation clearly articulated. The petitioner merely provides a detailed narration without explicitly linking the facts to the rights violated and the specific provisions of the Constitution that underpin those rights. All the reliefs sought, which are constitutional in nature, are expressed in a highly generalised manner, in my view.

66. The Respondent contended that the Petition herein was filed with inordinate delay. Undoubtedly, the Petition was filed on 6th September 2026, and the matters that form the basis thereof arose in 2001. Thus, there was a whole 15 years from the date

of accrual of the cause of action to that of filing the instant petition. The Respondent asserted that the doctrine of laches militates against the Petition. Addressing the doctrine, the Court in **Edward Akongo Oyugi v Attorney General [2019eKLR** stated;

> ***"80. The next question is whether the delay of 5 years after the 2010 Constitution is unreasonable and whether it has been explained. In my view, the common law delay rule involves a two-stage inquiry: first, whether the proceedings were instituted after a reasonable time has passed, and, second, if so, whether the court should exercise its judicial discretion to overlook the unreasonable delay, taking the relevant circumstances into consideration.***
>
> ***The Respondent's counsel's contention is that this suit is time barred by the doctrine of laches. The doctrine of laches is a legal defence that may be claimed in a civil matter, which asserts that there has been an unreasonable delay in pursuing the claim (filing the law suit), which has prejudiced the***

defendant, or prevents him from putting on a defense. The doctrine of laches is an equitable defense that seeks to prevent a party from ambushing someone else by failing to make a legal claim in a timely manner. Because it is an equitable remedy, laches is a form of estoppel."

67. It is trite now that the doctrine of limitation of time does not apply to constitutional litigations. However, that does not mean that every constitutional matter filed with a delay must be condoned. Where there is an inordinate delay, like there was in the filing of this Petition, it is incumbent upon the Petitioner to place forth sufficient material from which it can be discerned that the delay has been sufficiently explained. The Petitioner in the instant matter didn't bother to demonstrate that he had a sufficient reason explaining the delay of 15 years.

68. In the case of **Ochieng Kenneth K'Ogutu vs Kenyatta University & 2 others, High Court Petition No. 306 of 2012,** the Court aptly captured it thus;

"There is a danger that parties are abusing the constitutional protection of rights to bring claims before the court whose sole aim is enrichment rather than vindication of rights. A delay of 10 years or more before one comes to court to allege a violation of rights is clearly not justifiable. As Nyamu J observed in ***Abraham Kaisha Kanzikaand v Central Bank of Kenya [supra]: "Even where there is no specified period of limitation it is proper for court to consider the period of delay since the accrual of the claim and the reasons for the delay. An Applicant must satisfactorily explain the delay. In this case, a delay of 17 years is inordinate, and it has not been explained. The prosecution of the Claimant took 6 years, and although he gives this as the reason for the delay, he has not explained the balance of 11 years."***

69. The philosophy underpinning the limitation of causes of action is founded upon principles of fairness, legal certainty, and public policy. It signifies the legal system's endeavour to

balance the rights of claimants to seek redress with the necessity to shield defendants from perpetual exposure to outdated claims. Drawn from judicial precedent, the key underpinnings are fairness to the defendants, encouragement of diligence, public policy and judicial efficiency, certainty and finality, and the moral philosophy – equity helps the vigilant, not the indolent.

70. In G**athoni** v **Kenya Co-operative Creameries Ltd [1982] KLR 104,** Chesoni J[as he then was] was stated;

"The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing suits against them. The statute expects the plaintiff to exercise reasonable diligence and take reasonable steps in his own interest.''

71. In **Mehta v Shah [1965] EA 321**, alluding to the public policy as one of the foundations for the limitation laws, the Court stated;

"The object of any limitation enactment is to prevent a plaintiff from prosecuting stale demands, and protect a defendant after he has lost the evidence of his rights through lapse of time."

72. This Court has not lost sight of the Respondents' assertion that they were unable to present documents before the Court in this matter, as after ten years of the termination of the Petitioner's commission, the documents relevant to this matter were destroyed.

73. Having found that the Petition herein doesn't meet the requisite threshold for a properly drafted and presented Petition, and that the Petition was filed with unreasonable delay, a delay which wasn't sufficiently explained to attract condonation, I am left with no option other than to strike out the Petition at this point, without moving to consider the other issues.

74. The petition is hereby struck out. Orders accordingly.

Read Signed and Delivered this 23rd Day of October 2025.

OCHARO KEBIRA

JUDGE