



Kyaa v Inspector General National Police Service & another (Employment and Labour Relations Cause E414 of 2020) [2025] KEELRC 3344 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3344 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E414 OF 2020
MN NDUMA, J
NOVEMBER 27, 2025

BETWEEN

ROBERT MAIKO KYAA CLAIMANT

AND

INSPECTOR GENERAL NATIONAL POLICE SERVICE 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

- 1 This suit was filed on 21/8/2020 by the Claimant against the Respondent seeking the following prayers: -
 - a. A total sum of Kshs. 5,775,840.00 being compensation for the salary lost for five (5) years and 1 year compensation for unfair retirement as tabulated at paragraph 12 above.
 - b. Costs of this claim
 - c. The honourable court to consider and grant any other remedy that it may deem fit to grant in the circumstances.
- 2 The Claimant in his written statement dated 20/8/2020 adopted as his evidence in chief and supported by exhibits '1' to '18' dated 20/8/2020 produced by the Claimant as exhibit in this matter adduced evidence to the effect that the Claimant was employed into police service, as a Police Constable in 1975. That the Claimant rose through the ranks to the position of Chief Inspector of Police and served until he was retired by the 1st Respondent on 1st July 2015 at the age of 60 years. That the Claimant was involved in a road traffic accident which was communicated to the 1st Respondent before the retirement of the Claimant. That at the time the Claimant was attached to the office of the Director of Public Prosecution at Milimani Law Courts where he had served diligently as a prosecutor.



- 3 That the accident rendered the Claimant a person with disability and was duly registered with the National Council for Persons Living with Disability in line with section 7(i)(c) of the Act.
- 4 That the Claimant received a notice of retirement dated 12/2/2015 and in response the Claimant made an application to be allowed to retire at the age of 65 years being a person with disability.
- 5 That the 1st Respondent failed to follow the request and retired the Claimant in disregard of the law and in a manner that was degrading and discriminatory.
- 6 That the Claimant wrote to the 1st Respondent to reconsider the matter and follow the circular dated 29/5/2012. That the 1st Respondent wrote to the Claimant requesting him to proceed to retirement while his issue was being looked into.
- 7 The Claimant in its submissions dated 12th September 2025 submits that the retirement age of the Claimant being a person with disability has not been disputed vide the testimony of the Claimant (CW1) and that of the witness for the Respondent (RW1).
- 8 The Claimant submits that section 21(6) of Persons with Disability Act and Government Circular No. MSPS/HRM/2/21/1/Vol. 11(21) of 29th May, 2012 makes it apparently clear that the retirement age for persons living with disability is 5 years above the statutory retirement age.
- 9 The Claimant prays to be awarded as prayed.

Response

- 10 The Respondents filed a reply to the memorandum of claim dated 11/5/2021 and called RW1 Abdallah Komesha to testify in support of the Respondents' case. RW1 adopted a witness statement dated 11/2/2021 as his evidence in chief and produced exhibits '1' to '8' dated 11/5/2021.
- 11 RW1 testified that he was a commissioner of police currently being the officer in-charge, Banking Fraud, Investigation Department under the Directorate of Criminal Investigation (DCI).
- 12 RW1 confirmed that the Claimant suffered leg injury in the course of duty on 21/9/09 and used crutches after several operations to rectify his leg which included a procedure in India.
- 13 That in 2013 the Claimant was declared a person with disability by the Ministry of Medical Services vide Ref: MoH/SH/11/171 and was registered by the National Council for Persons with Disability vide Ref: No. NCPWD/P/ 119309.
- 14 That the officer was issued with notice to retire from service with effect from 1st July 2015 vide letter 215718/1975003942 C143 dated 12th February 2015.
- 15 That in April 2015, the Claimant applied to the Deputy Inspector General through DCI and CCIO Nairobi for a five (5) years extension of service due to disability by a letter dated 20th April 2015.
- 16 That the Claimant was advised to proceed to retirement while his request was being considered taking into account he was to be out of service by 1st July 2015.
- 17 That by a letter dated 14th July 2015, the CCIO Nairobi Area recommended that the Claimant's service be extended to 65 years as a person with disability.
- 18 RW1 stated that the matter was discussed by the National Police Service Commission (NPSC) together with similar cases and it was recommended that it was not in the interest of the police service to retain uniformed officers of the disciplined service beyond the stipulated 60 years of age due to the nature of their duties. That the officer was retired lawfully and was not discriminated.



- 19 The Respondents filed a notice of preliminary objection that the suit is time barred having been filed more than 3 years from the date the cause of action arose by dint of section 3(2) of the Public Authority Limitation Act, Cap 39 laws of Kenya.
- 20 The court deferred the determination of the preliminary objection upon hearing of the petition on merit so as to ascertain all the relevant facts in the matter.

Determination

- 21 The court has considered the evidence adduced by CW1 and RW1 and the submissions filed by the parties. The issues for determination are: -
- a. Whether the suit is time barred
 - b. Whether the Claimant is entitled to the reliefs sought.
- 22 The facts of the suit are not in dispute that the Claimant was a person with disability and had been registered as such with the council of persons with disability timeously and the 1st Respondent was notified accordingly.
- 23 It is not in dispute that the 1st Respondent did not implement the provisions of section 21(6) of persons with disability Act and Government Circular dated 29/5/2012 directing that person with disability be retired 5 years beyond the mandatory statutory retirement age in public service of 60 years.
- 24 The court has noted from the pay slip filed by the Claimant dated January 2014, that the Claimant was exempted from payment of income tax (PAYE) being a person with disability. There is no doubt that the 1st Respondent was aware of the personal circumstances of the Claimant as at 12/2/2015, when the 1st Respondent sent a notice of retirement to the Claimant with effect from 1st July 2015 at the age of 60 years. RW1 indeed confirmed that this was a matter which was still being resolved by the NPSC in respect of the Claimant and other police officers serving as persons with disability.
- 25 The suit was filed on 21/8/2020, and the Claimant retired from service on 1st July 2015. The suit was therefore filed more than five (5) years from the date the cause of action arose.
- 26 The suit was filed without the Claimant first filing an application for extension of time to file the suit in view of the provision of section 3(2) of the Public Authority Limitation Act, Cap 39 laws of Kenya which provides: -
- No proceedings, founded on contract shall be brought against the government or a local authority after the end of three years from the date of which the cause of action occurred.”
- 27 As was stated by Justice Makau J. in the case of Paul K. Lagat versus Defence Forces 9th Battalion and another [2021] eKLR, regarding Limitation of time under Section 3(2) of the Public Authority Limitation Act, this court lack jurisdiction to entertain this suit the same having been filed more than five (5) years from the date the cause of action arose.
- 28 The Learned Judge stated: -
15. There is no dispute that the suit herein is founded on contract of service between the parties herein. It is also a fact that the cause of action herein occurred on 23/1/2013 according to the Respondent or on 5/2/2013 according to paragraph 7 of the claim. Further, it is not disputed that the suit was filed after the lapse of 3 years from the date when the cause of action arose.”



29 This court reiterates as was stated in the case of Lindsay Petroleum Company versus Hud (1874) L. R. 5 P. C. that inordinate delay may defeat the cause of justice. The court held that”

The doctrine of laches in courts of equity is not an arbitrary or a technical doctrine and that where there has been a delay in seeking a remedy, there are two circumstances that are always important; the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to remedy.”

30 The Claimant in this matter waited for too long to file this matter. No circumstances have been brought forth in an application for extension of time to explain that inordinate delay. The court cannot presuppose whatever reasons caused the delay in filing this matter. In any event the courts have consistently held that there will be no extension of time to file suits founded on contract beyond the three years limitation period which not only appertains under section 3(2) of the Public Authority Limitation Act, but also applies under section 90 of the *Employment Act*, 2007.

31 Accordingly, the suit is time barred and the court lacks jurisdiction to entertain it.

32 For completion, this court has held that the provision of section 21(6) of persons with disability Act and the circular made there under apply to all public officers including members of police service and defence forces. Any contrary practice violates the provisions of section 21(6) of the said Act, and section 5 of the *Employment Act*, 2007 as it amounts to discrimination on grounds of disability and negation of the right to equality before the law and the right to equal protection and equal benefit of the law. The dispute would be resolved without any resort to *the constitution* in terms of the statutory provisions under the Persons with Disability Act, and section 5 of the *Employment Act*, 2007.

33 The Claimant ought to have filed the suit as he awaited resolution of the matter by the internal organs of the police service. The Claimant failed to do so and allowed the law of limitation to catch up with his legitimate claim.

34 Accordingly, the suit is struck out since the court lacks jurisdiction to hear and determine the same beyond the statutory limitation period.

35 There will be no order as to costs.

DATED AT NAIROBI THIS 27TH DAY OF NOVEMBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Were for Claimant

Ms. Kirima for Respondents

Mr. Kemboi – Court Assistant

