

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E133 OF 2024

(Before Hon. Lady Justice Hellen Wasilwa, J)

OBED INGALULA WANDETA.....1ST
PETITIONER

FESTO ANJELE NAMOLO.....2ND
PETITIONER

VS

NATIONAL POLICE SERVICE COMMISSION.....1ST
RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF
INTERIOR & COORDINATION OF**

NATIONAL GOVERNMENT.....2ND
RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD
RESPONDENT

AND

PUBLIC SERVICE COMMISSION.....INTERESTED
PARTY

JUDGMENT

Petitioner's Case

- 1 By a Petition dated 27th August 2024, the Petitioner sought for the following orders; -
- a. *A declaration that the Respondents have violated Articles 10, 20, 27, 40, 41, 43 (1)(e), 47, 232 and 236 of the Constitution.*

- b. A declaration that the Respondents have violated the Petitioners' rights under Articles 27, 40, 41, 43 (1)(e), 47, 232 and 236 of the Constitution.*
- c. A declaration that the Respondents have contravened Chapter six of the Constitution and abused office by failing to settle the Petitioners' terminal accrued benefits.*
- d. An order for compensation for reputational damage, mental and emotional anguish/suffering caused to the Petitioners.*
- e. A judicial review order of mandamus directed at the 1st and 2nd Respondents to settle the Petitioners' terminal accrued benefits immediately or as may be directed by the Honourable Court.*
- f. A judicial review order of prohibition directed at the Respondents, their agents and/or servants prohibiting them from harassing and/or frustrating the Petitioners in the pursuit of their terminal accrued benefits/dues.*
- g. Costs of the petition.*

Petitioners' Case

- 2 The Petitioners avers that the 1st Petitioner served in the Police Service from 26th September 1984 until 23rd May 2002. On the other hand, the 2nd Petitioner served in the Police Service from 4th April 1988 until 7th November 2008. They were both under the Ministry of Interior & Coordination of National Government where they served diligently until their dismissal from service.

- 3 The Petitioners aver that they diligently and faithfully served in the then force for a number of years before attaining the ranks of Inspector and Sergeant respectively.
- 4 On diverse dates, the Petitioners were charged through orderly room proceedings which were conducted contrary to the principles of natural justice and the applicable Force Standing Orders at that time.
- 5 The Petitioners aver that they were denied an opportunity to have senior officers or an advocate represent them during the proceedings, and were hindered from pursuing their appeal as provided for under the law, which act was unprocedural, illegal and unlawful.
- 6 They aver that the said illegal process resulted to the Petitioners' summary dismissal from the force. However, they were not paid terminal/accrued benefits for the years served and which remain outstanding to date. Vide several letters, the Petitioners sought settlement of the terminal accrued benefits but all in vain.
- 7 Additionally, the Respondents have never given any reasons or explanations whatsoever for the infringement of the Petitioners' rights to date.
- 8 In response, the 1st Respondent pointed out that only members who exited the force as from 6th April 2018 are

entitled to their terminal benefits; it is the Petitioner's case that this is discriminative and derogative of the Constitution

- 9 The Petitioners aver that the Respondents' inaction and or omission is in contravention of their right to equal protection and benefit of the law; not to be discriminated upon as guaranteed under Article 27; fair labour practices under Article 41; a fair administrative action under Article 47; property under Article 40; and social security under Article 43 (1)(e) of the Constitution
- 10 The Petitioners further aver that they have suffered and continue to suffer pecuniary embarrassment and damage to reputation owing to the Respondents' actions of non-remittance of their terminal accrued benefits.

1st Respondent's Case

- 11 In opposition to the petition, the 1st Respondent filed Grounds of Opposition dated 9th October 2025 on the following grounds:

1. THAT the National Police Service Commission is a Constitutional Commission established under Article 246 of the Constitution of Kenya, 2010 whose mandate includes exercising disciplinary control over and removing persons holding or acting in offices within the Service;

2. *THAT the National Police Service Commission also exercises its powers and functions as stipulated under the National Police Service Commission Act;*
3. *THAT the National Police Service Commission begun its operations on 5th October 2012 following the appointment of the first commissioners vide Gazette Notice No. 95 dated 3 October 2012;*
4. *THAT prior to the promulgation of the Constitution of Kenya 2010, Article 107 of the Repealed Constitution of Kenya mandated the Public Service Commission, the Interested Party, with the power to appoint persons to hold or act in offices in the public service and in the service of local authorities (including the power to confirm appointments), the power to exercised disciplinary control over persons holding or acting in those offices and the power to remove those persons from office;*
5. *THAT Article 108 (2) of the Repealed Constitution of Kenya mandated both the Public Service Commission and the Commissioner of Police to perform the human resource functions within the Kenya Police Force (as it then was);*
6. *THAT Article 108 (2) (a) of the Repealed Constitution provided that the power to appoint persons to hold or act in offices in the Kenya Police Force including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office was vested in the Public*

Service Commission in the case of offices of or above the rank of Assistant Inspector, or such rank other than the rank of Assistant Inspector as may be specified for the purposes of this section by or under an Act of Parliament;

7. *THAT Article 108 2 (b) of the Repealed Constitution stipulated that the power to appoint persons to hold or act in offices in the Kenya Police Force including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office was vested in the Commissioner of Police in the in the case of offices below the rank of Assistant Inspector;*
8. *THAT it is the 1st Petitioner's case that he served in the Police Force from 26th September 1984 until 23rd May 2002 and the 2nd Petitioner's case that he served in the Police Force from 4th April 1988 until 7th November 2008 following their dismissal from the Police Force. Both the Petitioners have admitted through their Petition that they were dismissed from the National Police Service prior to 2010;*
9. *THAT the Petitioners by virtue of their own admissions were therefore employed and dismissed from the National Police Service prior to the promulgation of the Constitution of Kenya and under a starkly different legal dispensation from the one established after the promulgation of the Constitution*

of Kenya 2010 that provided for the establishment of the National Police Service Commission;

10. *THAT resultantly, the Petitioners have never been employees of the Commission at any point in time and therefore no cause of action arises in this case against the 1st Respondent;*

11. *THAT the Petition does not disclose any discernible violations by the 1st Respondent. Thus, the Petition is unmerited and brought before this Court in bad faith and ought to be dismissed with costs.*

2nd and 3rd Respondents' Case

12 In opposition, the Respondent filed a replying affidavit dated 14th November 2025, sworn by Silas Andiemba, a Commissioner of Police in the Kenya Police Service.

13 The Respondents aver that the 1st Petitioner was enlisted in the Service with effect from 16th June 1984 and the 2nd Petitioner was enlisted in the Service with effect 13th September 1988.

14 The Respondents aver that on diverse dates between July 2001 and 4th February, 2002 while stationed as a court prosecutor at Winam Law Courts in Kisumu, the 1st Petitioner was suspected of sabotaging police cases through lack of production of police files in court, mass

withdrawals and dismissal of cases under section 87(a) and 210 of the Criminal Procedure Code.

- 15 The Senior Resident Magistrate, Winam Law Courts lodged a complaint against the 1st Petitioner to the then Provincial Police Officer, Nyanza on 25th April, 2002 on lack of production of Police file in court, mass withdrawals and dismissal of cases.
- 16 The Respondents aver that investigations were conducted which revealed that the 1st Petitioner was withholding case files without a reasonable excuse. He was charged in orderly room proceedings with 10 (ten) counts of 'being idle and negligent in performance of duty' contrary to Regulation 3(24) of the Service Standing Orders. He pleaded not guilty on all charges and upon conclusion of the trial, he was convicted of all counts.
- 17 The Respondents avers that due to the seriousness of the offences, the proceedings were forwarded to the Commissioner of Police for award of sentence. The 1st Petitioner was sentenced to reprimand for Count i - ix and dismissal on count x. Thus, he was dismissed from the Service with effect from 22nd May 2002.
- 18 Aggrieved, the 1st Petitioner lodged an appeal to the Interested Party vide a letter dated 31st May 2002. Upon consideration of the same, the Public Service Commission disallowed it and the decision was communicated to the 1st Petitioner vide a letter dated 17th February 2003.

- 19 The Respondents aver that the 1st Petitioner applied for a review to the Public Service Commission (PSC) through a letter dated 28th January 2004. The Commission considered the matter and disallowed the application through a letter dated 29th March 2006.
- 20 It is the Respondents' case that at the time of his dismissal, the 1st Petitioner was not entitled to any terminal benefits. He was however entitled to a refund of the Widows and Children Pension Scheme as per Paragraph D25 the Public Service Commission Human Resource Policies and Procedures Manual for the Public Service 2016.
- 21 The Respondents aver that the 1st Petitioner's claim in regard to the widows' and children's pension scheme was forwarded to the Director Pensions for refund and he was informed of the submission of the claim to Pensions Department for payments through a letter dated 28th July 2009.
- 22 It is the Respondents' case that the 1st Petitioner was paid the widows' and children's pension scheme and is not owed any terminal dues as the same was calculated and paid to him.
- 23 The Respondents aver that 1st Petitioner's matter was conclusively determined by the Public Service Commission

which was the then final appellate authority and the matter marked as closed as per the set down procedure.

- 24 The Respondents aver that the 2nd Petitioner was enlisted in the Service with effect 13th September 1988 and was dismissed from service following a disciplinary action taken against him in 2008.
- 25 The Respondents aver that the 2nd Petitioner appealed against the dismissal and the same was disallowed vide letter dated 18th October 2011 by the then Commissioner of Police who was the final appellate authority then.
- 26 The Respondents contend that the 2nd Petitioner is only eligible to the widows' and Children's pension Scheme, having been dismissed from the Service pursuant to paragraph D25 of the Public Service Commission Human Resource Policies and Procedures Manual for the Public Service, 2016.
- 27 It is the Respondents' case that the Petitioners' reliance on the Public Service Circular of 2018 is void as the law cannot apply retrospectively given that they were dismissed from service in 2002 and 2008 respectively.

Interested Party's Case

- 28 In opposition to the petition, the Interested Party filed a replying affidavit dated 23rd October 2025, sworn by its Secretary/CEO, Paul Famba, MBS.

- 29 The Interested Party avers that it is an independent commission established under Article 233(1) of the Constitution. Pursuant to Article 234(2)(j) as read with Article 252(1)(d) of the Constitution, Parliament gave effect to the Commission's constitutional mandate by enacting the Public Service Commission Act, Cap.185 of the laws of Kenya.
- 30 The Interested Party avers that under Section 89 of the Employment Act, employment and labour relations claims should be filed in the ELRC within a period of three (3) years from the date of the occurrence of the cause of action.
- 31 It is the Interested Party's case that the instant suit was instituted by the Petitioners in the year 2024, about 16 and 22 years respectively after the cause of action had arisen in the years 2002 and 2008 respectively. Therefore, it falls outside the limitation period prescribed under Section 89 of the Employment Act.
- 32 The Interested Party avers that by dint of Article 234(3)(c) (iv) of the Constitution, the jurisdiction of the Public Service Commission does not extend or apply to the National Police Service Commission. It therefore follows that the Public Service Commission Circular Ref: PSC/ADM/13/(28) dated 21st October 2022 and the addendum thereto dated 16th December 2022 Ref. No. PSC/ADM/13/(37) does not apply to the Petitioners.

- 33 The Interested Party contends that the Petitioners fall squarely under the mandate and jurisdiction of the National Police Service Commission, whose circulars would apply to them.
- 34 It is the Interested Party's case that there is absolutely no cause of action against the Public Service Commission and the petition should be struck out and/or dismissed as against the Public Service Commission.

Petitioner's Submissions

- 35 The Petitioner submitted on four issues: whether the dismissal of the Petitioners from the Kenya Police Service was unlawful, unconstitutional and in violation of the principles of natural justice; whether the disciplinary proceedings (Orderly Room Proceedings) conducted against the Petitioners were irregular, procedurally unfair and in breach of Articles 41, 47 and 50 of the Constitution, the Police Act (repealed) and the Forces Standing Orders; whether the Respondents' continued failure and/or refusal to pay the Petitioners' pension and terminal dues contravenes Articles 40, 41 and 43 of the Constitution and the Pensions Act (Cap 189); and whether the Petitioners are entitled to the remedies sought including payment of all withheld pension and terminal dues, general damages for violation of constitutional rights, interest and costs of this Petition.

- 36 On the first issue, the Petitioner submitted that their dismissal from the Kenya Police Service was unlawful and unconstitutional, as the disciplinary actions taken against them were conducted in blatant disregard of the Constitution, the Police Act (repealed), the Forces Standing Orders and the rules of natural justice.
- 37 The Petitioner submitted that the Respondents subjected them to irregular, un-procedural and flawed orderly room proceedings, where they were not supplied with the specific allegations prior to the hearing, were denied access to the evidence to be relied upon, and were unreasonably denied legal representation despite the seriousness of the accusations and the severe consequences that followed, including loss of career and pension benefits. Such conduct amounted to a violation of their right to fair administrative action guaranteed under Article 47 of the Constitution, which requires that all administrative actions be lawful, reasonable and procedurally fair.
- 38 The Petitioners submitted that right to a fair hearing under Article 50 of the Constitution was grossly violated. The orderly room proceedings carried criminal-like consequences, therefore, required full adherence to fair trial guarantees, including the right to representation, to challenge the evidence, and to call witnesses. The Respondents failed to provide any of these safeguards.

- 39 The Petitioners submitted that the Respondents failed to adhere to the mandatory provisions of Section 5 of the Police Act (repealed) and the corresponding Force Standing Orders, which outline the required procedures for lawful disciplinary action within the Police Service. They therefore assert that their dismissal was tainted with illegality, as any administrative decision reached in breach of natural justice is null and void as held in ***Republic v Kenya Power & Lighting Company Ltd & another [2013] KEHC 6677 (KLR)***
- 40 It is the Petitioners' submission that by stripping them of their careers without due process and withholding their hard-earned benefits, the Respondents contravened Article 41 of the Constitution, which prohibits unfair labour practices.
- 41 On the second issue, the Petitioners submitted that their right to legal representation during the orderly room proceedings was wrongfully denied, rendering the entire disciplinary process fatally defective. The charges levelled against them were grave, carrying life-altering consequences, including loss of employment, pension, and livelihood. In such circumstances, the presence of legal counsel was not a privilege but a fundamental safeguard to ensure fairness and due process. The refusal by the Respondents to allow the Petitioners to be represented by an advocate violated both Article 50(1) and 50(2)(g) of the

Constitution, which guarantee every person the right to a fair hearing and, where applicable, to choose and be represented by counsel of their choice in proceedings that could result in deprivation of rights.

- 42 The Petitioners placed reliance ***in David Oloo Onyango v Attorney-General [1987] eKLR*** the Court held that even in administrative or disciplinary proceedings, a person whose rights or legitimate expectations are likely to be affected must be given a fair opportunity to present their case and to be heard, either in person or through a representative of their choice. The Court went further to state that; *"I would say that the principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly"*
- 43 It is the Petitioners' submission that the denial of legal representation not only violated their constitutional rights under Articles 47 and 50, but also offended the spirit of the Forces Standing Orders, which envisioned a fair, transparent, and impartial hearing process for police officers accused of disciplinary offences. The orderly room proceedings, conducted in the absence of counsel, cannot stand as valid disciplinary processes in law. Consequently, the decisions made therein were unconstitutional, unlawful, and *void ab initio*.

- 44 The Petitioner further submitted that the Police Act (repealed) and the Forces Standing Orders imposed clear procedural duties on disciplinary officers: to ensure that the accused officer was informed of the offence, accorded sufficient time to prepare, allowed to call witnesses, and given the right of representation and appeal. The Petitioners' proceedings fell short of these mandatory requirements, rendering the entire process void for non-compliance.
- 45 The Petitioners submitted that the denial of representation and of a fair opportunity to defend themselves also infringed their right to fair labour practices under Article 41 of the Constitution. This right extends to disciplinary action, which must be conducted in a humane, transparent, and impartial manner. The Petitioners were long-serving officers who had legitimate expectations of fair treatment and procedural due process. The Respondents' conduct fell far below these standards, amounting to a violation of both constitutional and statutory provisions.
- 46 On the third issue, the Petitioners submitted that Section 5 of the Pensions Act provides that: "*(1) Every officer shall have an absolute right to pension and gratuity. (2) The right to pension and gratuity shall not apply in respect of compensation for past services, nor shall anything in this Act affect the right of the government to dismiss any officer at any time and without compensation. (3) Where*

an officer has completed ten years of pensionable service, the benefits accruing to the officer under the Act shall vest in that officer and shall become payable in such manner and at such times as may be determined under this Act."

47 The Petitioners submitted that it is trite law that pension and gratuity are not privileges but accrued property rights protected under Article 40 of the Constitution. They cited ***Felister Waithieni Mugweru v National Police Service Commission & 2 others [2018] eKLR***, wherein the Court held that: "*A pension is not a mere act of grace dependent on the sweet will of the employer; it is a right to property which accrues by reason of one's service.*"

48 The Petitioners submitted that pension and gratuity are not matters of discretion or benevolence on the part of the Government, but are vested and enforceable rights accruing to an officer by virtue of long and faithful public service. Section 5 of the Pensions Act guarantees every officer an absolute right to pension and gratuity once they have rendered more than ten years of pensionable service. Both Petitioners far exceeded that threshold, having served for 17 and 20 years respectively, thereby crystallizing their entitlement under the law.

49 It was submitted that the Petitioners' entitlements, having lawfully accrued through long and dedicated service to the Kenya Police Service, have crystallized into enforceable

property rights which the Respondents have no lawful basis to withhold.

- 50 On the fourth issue, the Petitioner submitted that they have demonstrated that their rights under Articles 40, 41, and 43 of the Constitution have been violated through the Respondents' unlawful withholding of their pension and terminal dues. Having each served for more than a decade and a half, their pension rights have crystallized into enforceable property rights, and the continued deprivation amounts to unconstitutional expropriation and denial of fair labour and social security rights.
- 51 The Petitioners submitted that they have endured prolonged financial and psychological distress for over two decades due to the Respondents deliberate neglect. The withholding of their rightful dues has deprived them and their families of a dignified livelihood and social security, contrary to Article 28 of the Constitution, which safeguards human dignity.
- 52 The Petitioners placed reliance in ***Felister Waithieni Mugweru v National Police Service Commission & 2 Others [supra]***, the Court ordered the payment of withheld pension and gratuity to a dismissed officer, holding that pension is an accrued right that cannot be withheld arbitrarily. Similarly, in ***Karani v Attorney General [2023] KEELRC 3306 (KLR) and Kisa & Another v National Police Service Commission & 3***

Others [2025] KEELRC 1601 (KLR), the Court directed the computation and payment of all withheld pension and gratuity, together with interest, recognizing that such benefits form part of a former officer's property and social security entitlements.

2nd and 3rd Respondent's Submissions

- 53 The Respondents submitted on two issues; whether the suit is time barred; and whether the Petitioners' were paid their terminal dues.
- 54 On the first issue, the Respondents submitted that the Petitioners admit they were discharged/dismissed from the service on 23rd May 2002 and 7th November 2008 respectively, when the cause of action arose. This suit was filed on 27th August 2024; thus, it is statute barred under section 90 of the Employment Act that limits the period within which to institute proceedings within 3 years from the date of occurrence of cause of action.
- 55 The Respondents submitted that prior to filing the suit, the Petitioners did not seek any leave to extend the period in which to file the case. From when the cause of action arose to 27th August 2024 when the present claim was filed in court, the period that has lapsed in between is a record 16 years and 22 years respectively. The Petitioners surpassed the statutory time provided by a margin of over 13 years and 9 years respectively.

56 The Respondents placed reliance in **Attorney General & another v Andrew Maina Githinji & another [2016] eKLR**, while setting aside the ruling of the Employment Court (Ongaya J), Waki and Kiage JJA, a majority decision against Nambuye JA held at paragraphs 16 and 18 as follows: *“I have considerable sympathy for the reasoning in all the above cases which leads me to the conclusion that the cause of action in this case did not arise after the conclusion of the criminal case against the respondents. The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not..... Having found that the cause of action arose on 2nd February 2010 and that the claim was filed on 16th June 2014, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time barred as at 1st February 2013, and I so hold.”*

57 It is the Respondents’ submission that the orderly room proceedings as against the Petitioners did not bar the petitioners herein from moving to civil court within the stipulated time of the cause of action to protect his employment rights.

- 58 On the second issue, the Respondents submitted that the Petitioners both underwent separate and distinct disciplinary proceedings which resulted in their dismissal.
- 59 The Respondents submitted that as per the provisions of Paragraph D25 of the Public Service Commission Human Resource Policies and Procedures Manual for Public Service 2016; the Petitioners were not eligible for pension benefits save for the employer's contribution under NSSF and the Widows and Children's Pension Scheme which the 2nd and 3rd Respondents state that the same was paid.
- 60 The Respondents submitted that the Petitioners conveniently failed to avail copies of any demand/complaint they have presented to them over any unpaid terminal benefits. He who alleges must prove and without any evidence to the contrary, thus, the terminal dues owing to them were all paid.
- 61 The Respondents submitted that the Petitioners cannot legally rely on a circular on terminal benefits dated 2018 for occurrences/dismissal that occurred in 2002 and 2008 respectively. They cited ***Kenya Revenue Authority v Orb Energy Private Ltd [2025] KEHC 82 (KLR)*** wherein Mabeya J while determining whether or not legislation applies retrospectively disallowed the Applicant's application to introduce new evidence and observed that *"a close reading of the same shows that the decision was intended to be progressive. It was to take*

effect from the date of the agreement and/or after its passage and not otherwise.” Further at paragraph 25 the Honourable Judge stated; “... In any event, retrospective applicability of legislation is frowned at unless the legislature expressly so states in the legislation itself.”

62 It is the Respondents’ submission that this court has no discretion to entertain this matter as it is not only time barred but it relates to terminal dues which the 2nd Respondent’s already paid and a 2018 circular which cannot apply retrospectively to dismissals that occurred in 2002 and 2008.

63 The Respondents submitted that this claim is statute barred and this Court cannot legally direct/authorize a circular to apply retrospectively and/or order the payment of terminal dues already paid and settled.

Interested Party’s Submissions

64 The Interested Party submitted that under Section 89 of the Employment Act, employment and labour relations claims should be filed in the ELRC within a period of three (3) years from the date of the occurrence of the cause of action. The instant suit was instituted by the Petitioners in the year 2024, about 16 and 22 years respectively after the cause of action had arisen in the years 2002 and 2008 respectively. It clearly falls outside the limitation period prescribed under Section 89 of the Employment Act.

- 65 The Interested Party submitted that by dint of Article 234(3)(c)(iv) of the Constitution, the jurisdiction of the Public Service Commission does not extend or apply to the National Police Service Commission. Therefore, the Public Service Commission Circular Ref: PSC/ADM/13/(28) dated 21st October, 2022 and the addendum thereto dated 7th December, 2022 Ref. No. PSC/ADM/13/(37) does not apply to the Petitioners.
- 66 The Interested Party submitted that the Petitioners being former police officers fall squarely under the mandate and jurisdiction of the National Police Service Commission in view of Article 234(3)(c)(iv) of the Constitution. Therefore, the circulars issued by PSC to the rest of the public service do not apply to them.
- 67 It is the Interested Party's submission that there is no cause of action against it and the petition should be struck out and/or dismissed as against it.
- 68 The Interested Party submitted that Section 89 of the Employment Act provides: *"Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof."* Additionally, Section 4 of the Limitations of Actions Act, Cap.22 provides that actions

founded on contract may not be brought after the end of six years from the date on which the cause of action accrued.

- 69 The Interested Party cited ***Elias Kibathi & another v Attorney General [2021] KEELRC 1630 (KLR)*** the court held: *“Whereas Section 90 of the Employment Act, 2007 places a limitation period of 3 years for actions founded on contract as opposed to other contracts, it is for stakeholders in the sphere of employment and Labour Relations who necessarily were part and parcel of the process leading to enactment of the Employment Act, 2007 who intended a shorter period within which actions based on employment and Labour relations should be filed. The petitioner has not demonstrated any illegality and or unlawfulness in that respect. The Employment Act, 2007, is a latter Legislation and so the intention of the legislature was clear, and definitive that it intended suits emanating from employment contracts to have a shorter limitation period. It cannot be denied that Parliament has legislative authority to legislate in the manner it did provided that the legislation does not contradict a specific Article of the Constitution. The provision of a shorter period under Section 90 does not contradict the Constitution and does not become unlawful simply because it provides a shorter period for specific contract. With regard to the issue of Extension of time, part III of the Limitation of Actions Act provides for: - “Extension of periods of limitation.” based on disability,*

acknowledgment and part payment; fraud, mistake, and ignorance of material facts, upon application for leave of Court to enlarge time upon which the suit may be filed out of time.”

The provision of Section 90 does not specifically refer to part III of Limitation of Actions Act, Cap. 22 Laws of Kenya and does not state expressly that enlargement of time, if sought on sound grounds may not be extended. The petitioner has not therefore established any unconstitutionality, illegality or unlawfulness in this regard.”

70 It is the Interested Party’s submission that the Petitioners’ right to sue having lapsed, they lacked the capacity to bring any cause of action against the Interested Party herein and their claim as constituted herein should be struck out and/or dismissed with costs.

71 I have examined all the averments and submissions of the parties herein. There are 3 issues for this court’s consideration as follows:

- 1 Whether the petition before court is time barred.
- 2 Whether the petitioner’s rights under the constitution have been flouted.
- 3 What remedies if any the petitioners are entitled to.

ISSUE NO 1

72 The interested party herein the PSC has submitted that this petition is time barred the cause of action having

arisen in 2002 and 2008 respectively. This is in relation to the time when the petitioners were dismissed from the service.

- 73 It is indeed true that the petitioners were dismissed from the service in 2002 and 2008 respectively. The petitioners have averred that they were unfairly and unprocedurally dismissed from the service. That as it may be it is indeed true that a claim for unfair and wrongful termination would be time barred as at the time of filing this petitioner in 2024.
- 74 The claim before court however is two fold with one aspect dealing with breach of constitutional rights which touches on unfair termination. The other aspect hinges on failure to pay terminal dues.
- 75 As to issue of breach in relation to unfair termination, the claim should have been filed within 3 years following the termination. However given that the petitioners filed a constitutional petition, it is true that the three year period would not normally lie unless the delay is inordinate as held in **Mitei vs NSSF (2022) KECA 310 of 2017**. The cause of action having arisen in 2002 and 2008 respectively in this case, filing a claim for wrongful dismissal is coming in way too late and I agree with the interested party that the petition in relation to wrongful dismissal is time barred and is dismissed.

76 I indicated that the other limb deals with payment of terminal dues or pension. Pension is an entitlement to every retiree and is payable after termination/retirement as the case may be. There is basically no time limit within which pension should be paid as the payment remains owing if not paid and it is in the category for which I can say falls under continuing injury as provided for under section 89 of the Employment Act 2007 which provides as follows.

“Limitations notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”.

77 The 1st respondent and the interested party submitted and rightfully so that the mandate of employing and dismissing officers in the National police service fail under the office of the National Police service which is not a party to these proceedings. There is no entity present in court that can answer as to whether the petitioners were paid their petition or not. The petitioners having chosen to file their petition without the inclusion of the National Police service, the petition must therefore fail.

78 It would be futile to proceed and consider the other issues this court would have determined. I therefore proceed to strike out this petition. There shall be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 15th Day of January, 2026.

**HELLEN WASILWA
JUDGE**