



**Tanui v National Police Service Commission & 2 others (Petition  
E002 of 2025) [2026] KEELRC 349 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 349 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E002 OF 2025**

**MA ONYANGO, J**

**FEBRUARY 6, 2026**

**IN THE MATTER OF ARTICLES 22, 23, 41, 47 AND  
50 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF UNLAWFUL DISMISSAL OF FROM EMPLOYMENT**

**BETWEEN**

**JOSEPH KIPNGETICH TANUI ..... PETITIONER**

**AND**

**NATIONAL POLICE SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Vide his Petition dated 24<sup>th</sup> February, 2025 the Petitioner avers that he was employed as a Police Inspector and was serving in Ijara District when he was unlawfully removed from service on 22<sup>nd</sup> June, 2006. That he appealed against his dismissal within the stipulated period to the Public Service Commission (PSC) but his appeal was not determined before the promulgation of *the Constitution* of Kenya, 2010.
2. He contends that with the enactment of the new Constitution, the Kenya Police Force was restructured and replaced by the Kenya Police Service and the National Police Service Commission (NPC).



3. The Petitioner states that he wrote to the Inspector General of Police on 25<sup>th</sup> February, 2015 seeking to know the outcome of his appeal and was informed that the PSC had distanced itself from police matters and further that the NPC had declared all cases determined before the new constitution as ineligible for appeal. He avers that at the time of this declaration his appeal had not been determined, making his case an exception to the blanket declaration.
4. The Petitioner avers that on 13<sup>th</sup> March, 2024, the National Police Service wrote to him informing him that his appeal was disallowed 19 years after he had initially filed his appeal. That this occasioned an unjust delay and a denial of justice.
5. It is the Petitioner's position that the delay in determining his appeal was not due to his inaction but due to the administrative failures of the Respondents which violated his right to fair administrative action under Article 47 of *the Constitution*. Further, that the prolonged delay amounts to a denial of the Petitioner's right to fair hearing under Article 50 of *the Constitution*.
6. The Petitioner states that despite the lapse of time this matter is justiciable as a constitutional petition and that the actions of the Respondents are unlawful, unfair and in contravention of the Petitioner's constitutional rights under Articles 41, 47 and 50 of *the Constitution* of Kenya, 2010.
7. The Petitioner prays for the following reliefs:
  - a. A Declaration that the Petitioner's dismissal from service was unlawful, unfair, and unconstitutional.
  - b. A Declaration that the Respondents violated the Petitioner's constitutional rights under Articles 41, 47 and 50 of *the Constitution* of Kenya, 2010.
  - c. An Order compelling the Respondents to pay the Petitioner all salaries, benefits, and allowances from the date of his unlawful dismissal (22<sup>nd</sup> June 2006) until his retirement.
  - d. An Order for compensation in the sum of Kshs. 10,000,000/= for unlawful dismissal, emotional distress, and economic loss suffered as a result of the Respondent's actions.
  - e. A Declaration that the delay in resolving the appeal violated the Petitioner's right to fair administrative action and a fair hearing.
  - f. Costs of this Petition.
  - g. Interest on (c) and (d) above at court rates from the date of dismissal until payment in full.
  - h. Any other relief that this Honourable Court deems fit and just to grant.
8. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed preliminary objections against the petition. In the 1<sup>st</sup> Respondent's Preliminary Objection dated 4<sup>th</sup> May, 2025 it raises the following grounds:
  - a. That the Petition as filed herein is scandalous, frivolous and vexatious.
  - b. That the suit herein offends Section 3(1) of the *Public Authorities Limitation Act* (Cap 39).
  - c. That the Petitioner was dismissed before the 1<sup>st</sup> Respondent was institutionalized, established and operationalized.
  - d. That the Petitioner has not demonstrated in this Petition how the 1<sup>st</sup> Respondent's acts of commission or omission contributed to the violation of Petitioner's constitutional rights.



- e. That the suit herein is bad in law, lacks merit, is an abuse of the court process, brought in bad faith and as such the 1<sup>st</sup> Respondent urges this Honourable court to dismiss the same with costs.
9. The 2<sup>nd</sup> Respondent's Preliminary objection dated 11<sup>th</sup> April, 2025 raises the following grounds:
- a. That the suit herein is time barred and reinstatement cannot issue after 3 years from the date of dismissal.
  - b. That the Petitioner was dismissed before the 1<sup>st</sup> Respondent was institutionalized, established and operationalized.
  - c. That the Petitioner has not demonstrated how his rights have been infringed by the 1<sup>st</sup> Respondent.
  - d. That the suit herein is bad in law, lacks merit, an abuse of the court process, brought in bad faith and as such the 1<sup>st</sup> Respondent urges this Honourable court to dismiss the same with costs.
10. The preliminary objections were disposed of by way of written submissions. Both Respondents filed their submissions. I have not seen the Petitioner's submissions on the record.

### **Submissions of the 1<sup>st</sup> Respondent**

11. In the 1<sup>st</sup> Respondent's submissions dated 20<sup>th</sup> June, 2025 in support of its preliminary objection it crystalizes the issues for determination to be three; whether the suit is time barred, whether the Petitioner's constitutional rights were violated by the 1<sup>st</sup> Respondent and whether the suit is frivolous, vexatious, bad in law and an abuse of court process.
12. On the first issue it is submitted that the Petitioner having been dismissed from service on 22<sup>nd</sup> June, 2006 and the petition filed on 24<sup>th</sup> February, 2025, more than 18 years after the dismissal, the suit is time barred as has been decided in several cases including Benjamin Wachira Ndiithi v Public Service Commission [2014] eKLR; and, Daniel Kago Gachanja v Inspector General & 2 others [2020] eKLR.
13. It is submitted that in Gathoni v Kenya Co-Operative Creameries Ltd [1982] KLR 104, Potter JA stated that the law of limitation is intended to protect defendants against unreasonable delay in the bringing of suits against them. That the statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.
14. It is submitted that in Anacleth Kalia Musau v Attorney General & 2 others [2020] eKLR the court held that the overriding purpose of all limitation statutes is based on the maxim interest reipublicae ut sit finis litium, that it is in the public interest that there be an end to litigation and that a party will not be permitted to prosecute stale claims.
15. It is submitted that under section 12(3)(vii) of the [Employment and Labour Relations Court Act](#) the court is mandated to reinstate an employee who has been unfairly dismissed within three years of the dismissal.
16. It is submitted that in Civil Appeal No. 308 of 2012 Law Society of Kenya v Centre for Human Rights and Democracy & 13 others [2013] eKLR the honorable justices Kiage, Murgor, Sichale,



J. Mohammed & Odek quoted the case of RE: The Matter of The Interim Independent Electoral Commission [2011] eKLR on the limits of a court's jurisdiction thus:

“[30] The Lillian ‘S’ case [Owners of Motor Vehicles Tillian S’ Vs, Caltex Oil (Kenya) Ltd [1989) KLR] case establishes that jurisdiction flows from the law, and the recipient-court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*”

17. It is submitted that as was held in *Bosire v Royal Media Services* (2015) eKLR the question of limitation touches on the jurisdiction of the court, which means that if a matter is statute barred, the court would not have jurisdiction to entertain it.
18. It is submitted that as pronounced in *The Owners of the “Motor Vessel Lilian S” v Caltex Oil (Kenya)* (1989)KLR, jurisdiction is everything and without it a court has no power to make one more step.
19. It is submitted that in *Kamau Macharia v KCB and others* [2012] eKLR the Supreme Court held that:

“... jurisdiction flows from either *the Constitution* or Legislation or both thus, a Court can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”
20. It is submitted that this court does not have jurisdiction to hear the Petitioner's claim which has been filed outside the limitation period in section 2 of the Public Authorities *Limitation of Actions Act*.
21. On the second issue it is submitted that the petition does not disclose any constitutional provisions or violations of fundamental rights and freedoms of the Petitioner by the 1<sup>st</sup> Respondent. That as was held in *Susan Waithera Kariuki & 4 others v Town Clerk Nairobi City Council & 3 others* [2013] eKLR:

“as a basic minimum, the petitioners are required to not only cite the provisions of *the constitution* which have been violated, and the manner in which they have been violated with regard to them. She further added that in demonstrating the manner in which there has been a violation of their rights or of *the Constitution*, the petitioners should present before the court evidence or a factual basis on which the court can make a determination whether or not there has been a violation.”
22. On the third issue the 1<sup>st</sup> Respondent submits that the petition is an abuse of court process, misconceived, frivolous and vexatious and brought in bad faith relying on the decision in *The Trust Bank Limited v Amin Company Ltd & another* (2000) KLR 164 where the court defined what a vexatious suit means.
23. The 1<sup>st</sup> Respondent further relied on the decision in *Paul Nganga Nyaga & 2 others v Attorney General & 3 others* [2013] where the court stated that it will not allow its function as a court of law to be misused and will summarily prevent its machinery from being used as a means of vexation or oppression in the process of litigation.
24. On the last issue whether the suit is bad in law the 1<sup>st</sup> Respondent submitted that by invoking Article 47 of *the Constitution* and the *Fair Administrative Action Act* which were not in force when the Petitioner



was dismissed on 22<sup>nd</sup> June, 2006, the Petitioner is asking for retrospective application of the law. That as was held in Johnson Ogechi Mose (supra) the cause of action was stale and *the Constitution* will not aid the Claimant to revive the claim.

25. The 1<sup>st</sup> Respondent further relied on the decision in Premar Construction Co. Ltd v Minakshi Navin Shah Civil Appeal No. 85 of 2002 and Paul Nganga Nyaga & 2 others v Attorney General & 3 others [2013] eKLR where the court relied on the decision in Peter George Antony D’Costa v Attorney General & another, Nairobi Petition No. 83 of 2010 (unreported) (supra).

### **Submissions of the 2<sup>nd</sup> Respondent**

26. For the 2<sup>nd</sup> Respondent the issues for determination were identified to be whether the claim is time barred, whether *the constitution* of Kenya 2010 can apply retrospectively in favour of the Petitioner, and whether the Petitioner is circumventing relevant labour laws.
27. The 2<sup>nd</sup> Respondent submitted that the petition is time barred and offends the mandatory provisions of section 4 of the *Limitation of Actions Act*.
28. Relying on the definition of a preliminary objection in Cause No. 1201 of 2012 Banking Insurance and Finance Union (k) v Bank of India and the decision in Attorney General & another v Andrew Maina Githinji & another, Civil Appeal No. 21 of 2015 (2016) eKLR, the 2<sup>nd</sup> Respondent submits that the petition is barred by limitation.
29. It is submitted that as held in G4S Security Services (K) Limited v Joseph Kamau & 468 others [2018] eKLR and in John Kiiru Njiiri v University of Nairobi [2021] eKLR, time did not stop running because of the Petitioner’s appeal against his dismissal.
30. On whether *the Constitution* of Kenya 2010 can apply retrospectively in favour of the Petitioner, the 2<sup>nd</sup> Respondent submitted that the Supreme Court held in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others that in non-criminal legislation the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appear that this was the intention of the legislature.
31. The 2<sup>nd</sup> Respondent further submits that in Keroche Industries Ltd v Kenya revenue Authority & 5 others [2007] eKLR the court opined that retrospective laws are intended to deal with future acts and ought not to change the character of past transactions unless by express words or necessary implication it appears that such was the intention of the legislature.
32. On whether the Petitioner has circumvented the relevant labour laws the 2<sup>nd</sup> Respondent submits that in Mombasa Industrial Court Petition 1 of 2013 Josphat Ndirangu v Henkel Chemical (EA) Ltd [2013] eKR the court held that litigants should not avoid the provisions of the *Employment Act* regarding unfair termination or wrongful dismissal by going behind the statute and seeking to rely directly on Article 41 of *the Constitution* on the right to fair labour practices as fair labour practices is given effect in various statutes which are primary.
33. It is further submitted that the same was held in Francis Atonya Ayeka v The Kenya Police Service & another Petition 37 of 2017; Elizabeth Mburu v Kenya Breweries [2014] eKLR and Sumayya Athmani Hassan v Paul Masinde Simidi & another [2019] eKLR
34. The 2<sup>nd</sup> Respondent urged the court to make a similar finding and to dismiss the petition for camouflaging a statute barred claim as a petition and for offending the mandatory provisions of section 4 of the *Limitation of Actions Act*.



## Analysis and Determination

35. I have considered the preliminary objections filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and in my view the only issue for determination is whether the suit by the Petitioner is time barred. The other issues raised in the preliminary objections are matters that cannot be categorized as preliminary objections as defined in *Mukisa Biscuits Manufacturing Ltd s West End Distributors (1969) EA 696* where the court observed: -

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

36. From the outset, it is important to point out that the Petitioner was dismissed on 22<sup>nd</sup> June, 2006, as pleaded in his petition. At that time the law that applied to employment contracts was the repealed *Employment Act*, No. 2 of 1976. Under the Act an employee was a servant who served at the pleasure of his employer who was deemed to be his master. All that was required of an employer in the event of termination of employment was to give notice or pay in lieu of notice. The employer was further entitled to summarily dismiss an employee for gross misconduct which was again solely determined by the employer as there was no requirement for a hearing before dismissal. This applied across the Board including in the Public Service where the regulations did not provide for a hearing before termination of employment.

37. Further, employment was not provided for in the former Constitution of Kenya as a constitutional right. The same was elevated to the constitutional threshold in *the Constitution* of Kenya, 2010 which introduced labour relations in Article 41 as part of Rights and Fundamental Freedoms under the Bill of Rights.

38. This reason alone would be sufficient ground to dismiss the petition herein on the basis that at the time of dismissal of the Petitioner labour rights were not constitutional rights and could not therefore be litigated through a constitutional petition.

39. The other ground that militates against the petitioner’s claim is the *Limitation of Actions Act*. Under section 4 thereof the applicable limitation period for employment contracts, like all other contracts, was 6 years. This means that the Petitioner should have lodged his claim in court on or before 22<sup>nd</sup> June, 2012.

40. The Petitioner has argued that his appeal was determined in 2024 and therefore his case is not statute barred. The letter he refers to is dated 13<sup>th</sup> March, 2024 and is reproduced below:

National Police Service Commission

Our Ref: PF/NO.217737 DATE:13<sup>th</sup> March, 2024

Mr. Joseph Kipngetich Tanui

Box 504-30106

Turbo

Tel No.0XXXXXXXX08



Re: Appeal Against Dismissal

we acknowledge receipt of your letter dated 18<sup>th</sup> March, 2015 on the above subject.

We note that you were removed from the Service on 22<sup>nd</sup> June, 2006 which is way back before the Commission was established under *the Constitution* of Kenya, 2010.

The Commission issued a guideline Ref No. NPSC/1/8/9/Vol. II dated 23<sup>rd</sup> September, 2013 directing that all cases that were dealt with and finalized prior to 3<sup>rd</sup> October, 2012 being the date Commission was operationalized be disallowed.

The purpose of this letter is to communicate the decision of the Commission that your appeal is disallowed.

Signed

Peter Leley

signed

CS/Chief executive officer

National Police Service Commission

41. The Petitioner's letter of dismissal is dated 22<sup>nd</sup> June, 2006. According to the law, that is the date the cause of action arose. The time taken by an appeal does not change the date of accrual of cause of action which accrued upon dismissal.

42. Section 4(1) of the *Limitation of Actions Act* provides:

4. Actions of contract and tort and certain other actions

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

- (a) actions founded on contract;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award;
- (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

43. While considering the issue of limitation of actions in *Divecon v Samani* (1995-1998) EA 48, the Court of Appeal held as follows:

“...to us, the meaning of the wording of section 4(1) is clear beyond any doubt. It means that no one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action. A perusal of Part III shows that its provisions do not apply to actions based on contract. In light of these clear statutory provisions, it would be unacceptable to imply as the learned Judge of the Superior Court did, ‘that the



wording of section 4(1) of the *Limitation of Actions Act* (Chapter 22) suggests a discretion that can be invoked’.

[Emphasis added]

44. It is for the foregoing reasons that this petition must fail. As categorically stated by the Court of Appeal in *Divecon v Samani*, this court has no right or power to entertain the petition herein.
45. The petition is accordingly dismissed for having been filed out of time and is therefore time barred, and for disclosing no constitutional violations.
46. There shall be no orders for costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**M. ONYANGO**

**JUDGE**

