

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. E255 OF 2024

(Before D. K. N. Marete)

ANTHONY OWINO.....APPELLANT

VERSUS

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

**INSPECTOR GENERAL OF POLICE.....2ND
RESPONDENT**

**DIRECTORATE OF CRIMINAL INVESTIGATIONS.....3RD
RESPONDENT**

**ATTORNEY GENERAL.....4TH
RESPONDENT**

JUDGMENT

This matter was originated by way of a Memorandum of Appeal dated 29th August, 2024. It is an appeal from a ruling delivered on 25th July, 2024 at Milimani in CMCC No. E447 of 2023.

The Memorandum of Appeal sets out the following as grounds:

1. The Learned Magistrate erred in law and in fact by holding that the cause of action in the above elucidated suit arose in 2018, based on a letter by the 3rd Respondent dated 25th April, 2018 citing retirement on public interest, as opposed to the 1st Respondent who is the employer of the Appellant, who in fact communicated the Appellant's

termination vide letter dated 24th January, 2022, hence the cause of action is still alive to date.

2. The Learned Magistrate erred in law and in fact, in failing to appreciate that the Appellant has only received one communication from the 1st Respondent, his employer, on his termination, and that therefore a great travesty of justice has been occasioned by dismissing the suit on account of a letter sent to him in 2018 by the 3rd Respondent who is not the employer of the Appellant, and that termination only ought to have been communicated by the 1st Respondent.
3. The Learned Magistrate erred in law and in fact, in failing to appreciate that no response was filed by the 1st Respondent, nor any documents to the Statement of Claim as proof of when the Appellant was in fact terminated, so as to arrive at a proper decision as to when the cause of action arose, and substantively determine whether in fact the suit is statutorily barred.

The Appellant prays for orders that:

- a) *The appeal herein be allowed and the ruling of the trial Court be set aside and the suit in the trial Court be reinstated for hearing and determination on the merits.*
- b) *Costs of this appeal be awarded to the Appellant in any event.*

The Appellant's case before the trial court was presented through the following documents, all of which form part of the Record of Appeal;

- (i) A Statement of Claim dated 8th March, 2023,
- (ii) A Verifying Affidavit of even date,
- (iii) A Claimant's List of Witnesses dated 8th March, 2023,
- (iv) A Claimant's List and Bundle of Documents dated 8th March, 2023, and
- (v) A Claimant's Further List and Bundle of Documents dated 11th May, 2023.

At the hearing before this Court, the Appellant filed Written Submissions dated 24th July, 2025.

The Appellant's case as presented across comes out thus: He was employed by the 1st Respondent, the National Police Service Commission, as a police officer under a fixed term contract of service from 23rd March 2002, and was at all material times attached to and performing duties under the Directorate of Criminal Investigations, the 3rd Respondent herein. He served for over sixteen years in various capacities in departments including anti-stock theft, flying squad and general investigations, with his last posting at the DCI's office at Transzoia West Sub-County.

On 26th October 2015, the Appellant was arrested on allegations that he had solicited Kenya Shillings Two Hundred Thousand from, one, Dr. Leonard Rabach, who was facing criminal charges at the Kitale Chief Magistrates' Court. He was charged before the Eldoret Court in EACC No. 8 of 2015. The matter proceeded to full hearing until 15th November 2016, when the Appellant was acquitted of all charges.

Following the acquittal, the Appellant applied for reinstatement and was reinstated vide letter dated 13th November 2017, Ref: PF/NO.80907/39, which was received by him on 22nd November, 2017. Simultaneously, the 2nd Respondent issued a show cause letter of the same date requiring the Appellant to show cause as to why he should not be retired on public interest grounds. The Appellant duly responded on 27th November, 2017 and was thereafter reinstated and reported back to the DCIO's office at Trans-Nzoia West Sub-County where he continued performing duties as assigned to him.

In August, 2018, while following up on unpaid salary, the Appellant was informed that he had been removed from the National Police Service by the Directorate of Criminal Investigations vide letters dated 20th April, 2018 and 25th April, 2018, indicating that he had been retired on ground of public interest. The Appellant avers that neither of these letters was ever served upon him or brought to his attention. He promptly appealed against the decision vide letter dated 3rd September, 2018 addressed to the 1st and 2nd Respondents. That appeal was only determined vide letter dated 24th January, 2022, wherein the 1st Respondent, the National Police Service Commission, confirmed his removal from the service.

The Appellant's central submission is that the sole entity vested with authority to hire or dismiss police officers in Kenya is the 1st Respondent. Neither the 2nd Respondent, the Inspector General of Police, nor the 3rd Respondent, the Directorate of Criminal Investigations, possesses any such mandate. He relies upon the Court of Appeal judgment delivered on 31st July, 2025 in **Independent Policing Oversight Authority v Siddique v/o Arshad Sharif & 6 Others [2025] KCEA 1456 (KLR)** wherein the Court of Appeal, having considered Articles 245 and 246 of the Constitution of Kenya, 2010 affirmed that neither the Inspector General nor the Directorate of Criminal Investigations has the mandate to hire or dismiss police officers and that the Inspector General is only in charge of the discipline of police officers.

The Appellant further submits that the 1st Respondent issued no communication to him regarding his removal until 24th January, 2022, which letter constitutes the first and only official confirmation of termination by his employer. It is therefore submitted that the cause of action accrued on 24th January, 2022 and that the Statement of Claim filed on 8th March,

2023 was filed within the three-year period prescribed by Section 3(2) of the Public Authorities Limitation Act, Chapter 39, Laws of Kenya.

The Appellant further submits that under Section 89(5) and (6) of the National Police Service Act No. 11A of 2011, a disciplinary sanction including dismissal only takes effect upon approval and confirmation by the National Police Service Commission. Any purported communication of removal by the 3rd Respondent in April, 2018 was therefore without legal basis and cannot constitute the operative date of termination. This is because there is no employer-employee relationship between the Appellant and the Directorate of Criminal Investigations.

In the alternative, the Appellant relies on the authority of **Aggrey Outa Ong'ang'o v Nairobi County Government [2019] eKLR** where it was held that where an employee exercises an internal appeal following communication of dismissal, the cause of action is postponed to the conclusion of the appeal, as the disciplinary hearing must be deemed to include the appeal process. The Appellant, having appealed in September, 2018, submits that his cause of action could not have begun to run before that appeal was determined in January, 2022.

The 2nd, 3rd and 4th Respondents filed a Preliminary Objection dated 31st May 2023 and Written Submissions dated 26th September 2025. The 1st Respondent entered appearance through a Memorandum of Appearance dated 5th December, 2024 but filed no separate submissions.

The 2nd, 3rd and 4th Respondents oppose the appeal and urge this Court to affirm the trial court's ruling. Their case rests on three pillars.

First, they submit that the cause of action accrued in August 2018, when the Appellant, by his own pleadings, became aware of his retirement. At paragraph xiii of the Statement of Claim, the Appellant admitted that in August 2018, while following up on unpaid salary, he was informed of letters dated 20th and 25th April, 2018 which communicated his retirement on public interest. They further rely on paragraph xxi of the Statement of Claim, which records that on 3rd September, 2018 the Appellant requested a review of the decision to remove him, on grounds that he had not been accorded a fair hearing which is consistent with knowledge of his retirement as at that date. Reliance is placed on the principle that parties are bound by their pleadings as affirmed in **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] KEHC 5465 (KLR)**.

They further rely on the authorities of **Hilarion Mwabolo v Kenya Commercial Bank [2013] KEELRC 932 (KLR)** and **James Kenyaga v Postal Corporation of Kenya (Cause 373 of 2016) [2021] KEELRC 391 (KLR)** for the principle that in employment matters, the cause of action accrues on the effective date of termination or dismissal, being the date stated in the relevant letter or the date on which the claimant becomes aware of termination and not the conclusion of any internal disciplinary mechanisms.

Second, the Respondents submit that the claim filed on 8th March, 2023 was filed four years and seven months after the cause of action accrued in August 2018, well outside the three-year limitation window prescribed by Section 3(2) of the Public Authorities Limitation Act, Cap. 39, which provides that no proceedings founded on contract shall be brought against the government or a local authority after the end of three years from the date on which the cause of action accrued.

Third, the Respondents submit that this Court has no jurisdiction to extend the limitation period in contractual claims against public authorities. They rely on **Divecon v Samani (1995-1998) EA 48** for the proposition that the limitation bar in contract claims is absolute and that the provisions of the Limitation of Actions Act, supra, permitting extension in cases of fraud, mistake or disability do not apply to claims under the Public Authorities Limitation Act. It is therefore submitted that once the claim was found to be time-barred, the trial court had no jurisdiction to entertain it further, and the appeal ought to be dismissed with costs.

The Respondents further submit that it is not open to the Appellant on appeal to approbate and reprobate by pleading one date in the lower court and seeking to rely on a different date on appeal and that the January, 2022 letter is characterised in the Appellant's own list of documents as a response to an appeal against removal, which presupposes that a removal had already occurred and was known to the Appellant prior to that date.

The issues for determination therefore are:

1. Whether the trial court correctly found that the cause of action accrued in 2018.
2. Whether the claim filed on 8th March 2023 was statute-barred under Section 3(2) of the Public Authorities Limitation Act.
3. Whether the appeal should be allowed.

On the 1st issue, the question of when a cause of action accrues in employment matters has been the subject of considerable judicial analysis. The general rule is that time begins to run from the date on which the cause of action arises, which in cases of termination or dismissal is ordinarily the effective date of that termination. This Court is guided by the principle that

the accrual date is a question of fact to be determined from the circumstances of each case and not by rigid application of any single rule divorced from those circumstances.

It is not in dispute that the Appellant became aware in August, 2018 that letters purporting to retire him on public interest grounds existed and had been issued by the 3rd Respondent in April, 2018. His own pleadings confirm this. It is equally not in dispute that he appealed that decision in September, 2018. What is squarely in dispute is whether that awareness and those letters, emanating from an entity that was not his employer, were sufficient to start the limitation clock running against him.

Article 246 of the Constitution of Kenya, 2010 establishes the National Police Service Commission as the authority responsible for the management and administration of the National Police Service, including the power to appoint, confirm, promote, retire and exercise disciplinary control over members of the Service. The Inspector General of Police, under Article 245, is responsible for the command of the National Police Service. The Directorate of Criminal Investigations is established under Article 247. Neither the Inspector General nor the Directorate of Criminal Investigations is vested with the power to dismiss or retire police officers.

This constitutional architecture was confirmed by the Court of Appeal in **Independent Policing Oversight Authority v Siddique v/o Arshad Sharif & 6 Others [2025] KCEA 1456 (KLR)**. That decision, although rendered after the events in this case, is declaratory of the law as it has always been under the Constitution of Kenya, 2010. A declaration that an entity lacks authority to terminate employment is not a new legal rule; it is an articulation of the existing constitutional order.

Moreover, Section 89(6) of the National Police Service Act, No. 11A of 2011 expressly provides that disciplinary sanctions, including dismissal, only take effect after approval and confirmation by the Commission. The statutory framework thus confirms what the Constitution already establishes that the dismissal of a police officer is legally incomplete and ineffective until it is approved and confirmed by the National Police Service Commission.

Against that backdrop, this Court is satisfied that the letters of April, 2018 from the Directorate of Criminal Investigations, even if they had been served on the Appellant were not capable of constituting an effective termination of his employment in law. A defective or unauthorised communication of termination cannot give rise to a complete cause of action. Until the 1st Respondent, the entity constitutionally and statutorily vested with that power, confirmed the Appellant's removal, the termination had not achieved legal completeness. The 1st Respondent's confirmation came on, for the first time, by a letter dated 24th January, 2022.

There is further support for this position in the nature of the internal appeal process. In the authority of **Aggrey Outa Ong'ang'o v Nairobi County Government [2019] eKLR** the court observed that where an employee exercises an internal appeal following communication of dismissal, the cause of action is postponed to the conclusion of the appeal, since the disciplinary hearing must be deemed to encompass the appeal proceedings and the employee is entitled to await the outcome before approaching the court. This is a sound principle that gives practical effect to the statutory and regulatory right of appeal within the employer's hierarchy, and prevents employees from being penalised for exercising rights the law expressly confers upon them. The Appellant exercised precisely such a right when he

appealed in September, 2018. Their hope of regaining his position was not conclusively dashed until January, 2022.

The Respondents' reliance on the principle that parties are bound by their pleadings is well-taken as a general proposition, but it does not assist them here. The Appellant's pleadings do not concede that the April, 2018 letters constituted a valid or legally effective termination. They record that he learned of their existence in August, 2018 and that he promptly appealed. The distinction is material. Knowledge of an unauthorised communication is not the same as acknowledgment of a legally effective dismissal. The Appellant consistently maintained, throughout his pleadings and submissions, that only the 1st Respondent had authority to terminate his employment. This was had only in January, 2022. There is no inconsistency between the factual narrative in the pleadings and the legal position advanced on appeal.

The authorities cited by the Respondents, **Hilarion Mwabolo v Kenya Commercial Bank** and **James Kenyaga v Postal Corporation of Kenya [2013] KEELRC 932 (KLR)** are distinguishable. In each of those cases, the termination was effected by the employer itself and the date of accrual was simply the date on which that employer communicated the termination or when it took effect. Neither case involved a situation where the communication of termination had emanated from an entity that was not the employer and that lacked constitutional and statutory authority to effect a dismissal. Those cases accordingly do not govern the present matter.

On the 2nd issue, it follows from the foregoing analysis that the cause of action accrued on 24th January, 2022, being the date on which the 1st Respondent first communicated to the Appellant the confirmation of his removal from the National Police Service. The Statement of Claim was filed on 8th March 2023, approximately thirteen months after that date. This is

well within the three-year period prescribed by Section 3(2) of the Public Authorities Limitation Act aforesaid. The claim is not statute-barred.

On the 3rd issue for determination, the trial court erred in holding that the cause of action arose in 2018. That finding was premised on the premise that knowledge of the April, 2018 letters in August, 2018 was sufficient to start the limitation period, without regard to the constitutional and statutory framework governing the dismissal of police officers and to the pendency of the internal appeal. It also erred in failing to consider the significance of the 1st Respondent's silence until January, 2022 and the effect of the internal appeal process on the accrual of the cause of action. These errors in law warrant the intervention of this Court. The ruling of the trial court is set aside and the suit is reinstated for hearing and determination on its merits.

Having considered the respective cases of the parties and the law applicable, this Court finds and holds that the Appellant's cause of action accrued on 24th January, 2022, and that the Statement of Claim filed on 8th March 2023 was filed within the statutory limitation period. The trial court in the circumstances erred in upholding the preliminary objection.

I am therefore inclined to allow the appeal and order as follows;

- i) The ruling of the trial court delivered on 25th July, 2024 in CMCC No. E447 of 2023 be and is hereby set aside in its entirety.
- ii) The suit in the trial court, CMCC No. E447 of 2023 is hereby reinstated and shall proceed to hearing and determination on its merits.
- iii) The costs of this appeal shall be borne by the Respondents.

Delivered, dated and signed this **14th** day of **May**
2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Miss Cosmos holding brief for Wageni instructed by Wageni & Company Advocates LLP for the Appellant.
2. Miss Mochoge instructed by State Law Office for the Respondents.