



Ryoba v National Police Service Commission & 2 others (Petition E129 of 2024) [2025] KEELRC 764 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 764 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E129 OF 2024
HS WASILWA, J
MARCH 13, 2025**

BETWEEN

NAFTALI NYAMAHANGA RYOBA PETITIONER

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

INSPECTOR GENERAL NATIONAL POLICE SERVICE 3RD RESPONDENT

RULING

1. The application before Court is an application dated 4th September 2024, filed by the 2nd and 3rd Respondents, in which the 1st Respondent raised a preliminary objection and prays for the suit to be struck out with costs. The grounds for the objection are that this Honourable Court lacks jurisdiction as the suit is time-barred pursuant to Section 3(2) of the *Public Authorities Limitation Act*. Further, the 1st Respondent contends that the Petition constitutes an abuse of the Court process and should therefore be struck out with costs.
2. The Respondents filed a Preliminary Objection dated 2nd September 2024, stating that the Honourable Court lacked jurisdiction to hear and determine the Petition dated 25th July 2024. The Respondents contended that the suit was time-barred and in violation of the mandatory provisions of Section 4(1) (a) of the *Limitation of Actions Act* and Section 90 of the *Employment Act*, 2007.
3. It was asserted that the cause of action arose from a contract of employment between the Petitioner and the Respondent, and that the Petitioner was dismissed from employment on 9th February 2004. The Respondents emphasized that a period of more than 19 years had elapsed since the termination, rendering the claim statutorily barred under the cited provisions. The suit was therefore said to be an abuse of the court process, defective, bad in law, and ought to be struck out.



4. The 2nd and 3rd Respondents filed a Preliminary Objection dated 29th November 2024, opposing the Petition dated 25th July 2024 on grounds that the Honourable Court lacked jurisdiction to hear and determine the matter. The Respondents contended that the Petition was time-barred under Section 90 of the *Employment Act*, 2007, which mandates that no civil action or proceedings arising from an employment contract shall be instituted unless commenced within three years from the date of the alleged act, neglect, or default, or within twelve months in the case of a continuing injury or damage.
5. The Respondents submitted that the cause of action arose on 9th February 2004, when the Petitioner was dismissed from employment, as evidenced by the 2nd Respondent's letter of the same date. Consequently, a period of 20 years and 5 months had lapsed by the time the Petition was filed, thereby offending the provisions of Section 90 of the *Employment Act*, 2007, and Section 4(1)(a) of the *Limitation of Actions Act*.
6. The Respondents relied on the Court of Appeal decision in *Mukisa Biscuits Manufacturing Ltd (1969) EA 696*, which defined a Preliminary Objection as a pure point of law that is argued on the assumption that all the facts pleaded are correct and cannot be raised if facts must be ascertained or if judicial discretion is required.
7. They further cited the Court of Appeal decision in *Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR*, where the court held that Section 90 of the *Employment Act*, 2007, is couched in mandatory terms, and claims based on an employment contract must be filed within three years. The Respondents also relied on *Hilarion Mwabolo v Kenya Commercial Bank [2013] eKLR*, where the court held that a cause of action in an employment dispute accrues on the date of termination and is not held in abeyance by a request for review or appeal.
8. The Respondents emphasized that from 9th February 2004 to 25th July 2024, a period of 20 years and 5 months had lapsed, exceeding the statutory three-year limit. They submitted that the Petitioner had not provided any justification for failing to file the suit within the required period, as the limitation period lapsed on 10th February 2007.
9. The Respondents asserted that limitation is a jurisdictional issue, and courts have no discretion to extend time where the law prescribes a specific period for instituting claims. They submitted that the role of the court is to interpret the law as enacted by Parliament, and while some litigants may be adversely affected, the law must be applied as it stands. The Petitioner had not demonstrated any continuing injury or damage to justify invoking exceptions to the statutory time limits.
10. On the question of whether the Petitioner was entitled to the reliefs sought, the Respondents submitted that courts are barred from granting reliefs where they lack jurisdiction. They relied on *Peter Njogu Mwangi & 3 Others v General Motors E. A. Limited & 3 Others [2018] eKLR*, where the court found that a claim barred by statute could not be entertained, and lack of jurisdiction meant the court could not grant reliefs sought.
11. The Respondents therefore urged the court to find that the Petition was time-barred, an abuse of the court process, and incompetent. They prayed that the Petition be struck out with costs to the Respondents and that the Preliminary Objection be allowed.

Petitioner's Case

12. The Petitioner filed a Replying Affidavit dated 24th November 2024 in response to the 1st and 3rd Respondents' Preliminary Objections dated 4th September 2024 and 2nd September 2024, respectively. He averred that he had followed up on the outcome of his appeal dated 19th December 2018, which



was received by the 1st Respondent on 20th December 2018, through letters dated 25th April 2022 and 8th August 2023, both of which were duly served upon the 1st and 2nd Respondents.

13. He annexed copies of the said letters as evidence. The Petitioner contended that despite receiving his letters, the 1st and 2nd Respondents never responded, which he claimed was a violation of his right to information under Article 35 of *the Constitution* of Kenya, 2010, as well as his right to fair administrative action and a fair hearing.
14. He stated that it was only after filing and serving the Petition that the Respondents, through letters dated 3rd September 2024 and 17th September 2024, responded to his inquiries. He annexed copies of these responses for the court's consideration.
15. The Petitioner further deponed that in its response, the 2nd Respondent alleged that a decision had been made by the 1st Respondent and communicated via a letter dated 30th July 2020, but admitted that this letter was never forwarded to him. He contended that this was despite the fact that the Respondents had his postal address, email address, and phone number, as demonstrated in their correspondences.
16. He further stated that the 1st Respondent's letter dated 17th September 2024 made no reference to any prior decision but merely indicated that his appeal was unsuccessful without providing reasons for the decision. The Petitioner maintained that from these recent developments, it was evident that the 1st Respondent had never made any decision on his appeal. He argued that even if a decision had been made, it was never communicated to him, despite his persistent follow-ups through letters dated 25th April 2022 and 8th August 2023.
17. The Petitioner submitted that in light of the foregoing, his cause of action was not time-barred, as Chapter 30, Paragraphs 31(2) and 44 of the Police Service Standing Orders, 2016, allowed him to apply for a review or appeal the decision of the 1st Respondent before the Honourable Court. He asserted that since he had never received any outcome of his appeal except for the recent letters from the 1st and 2nd Respondents after filing the Petition, the limitation period had not begun to run.
18. The Petitioner contended that the present matter was a constitutional petition, and the Honourable Court had jurisdiction to determine whether the conduct of the Respondents violated his constitutional rights. He therefore argued that the suit was not time-barred as alleged by the Respondents. He concluded by stating that the facts deponed in his affidavit were true to the best of his knowledge, information, and belief, save where sources of information had been stated.

Petitioner's Submissions

19. The Petitioner filed submissions dated 6th February 2025 in response to the Respondents' Preliminary Objections dated 2nd September 2024 and 4th September 2024. The submissions also address the 1st Respondent's written submissions dated 29th November 2024 and 24th January 2025. The Preliminary Objections are premised on the grounds that the Honourable Court lacks jurisdiction and that the suit is time-barred under Section 4(1)(a) of the *Limitation of Actions Act*, Section 3(2) of the Public Authorities Limitations Act, and Section 90 of the *Employment Act* 2007 (now Section 89).
20. The Petitioner relies on a Replying Affidavit sworn on 24th November 2024 to oppose the Preliminary Objections. The Petitioner submits that the suit is grounded on constitutional violations rather than an employment or contractual dispute and, therefore, is not subject to the statute of limitations.
21. The Court of Appeal in *International Centre for Insect Physiology and Ecology (ICIPE) v Nancy Menally* (2018) eKLR affirmed that the Employment and Labour Relations Court (ELRC) has jurisdiction to determine constitutional issues arising from employment and labour relations. This



position was upheld in *United States International University (USIU) v Attorney General* (2012) eKLR and *Daniel N. Mugendi v Kenyatta University & 3 others* (2013) eKLR. In *Kenya Union of Sugar Plantation & Allied Workers v Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Cooperative Development & 3 others* [2020] eKLR, Justice Nduma Nderi, interpreting Article 162(2)(a) of *the Constitution* and Section 12(1) of the ELRC Act 2011 (as amended in 2014), reaffirmed the ELRC's jurisdiction to enforce constitutional rights.

22. The Petitioner submits that this Court is properly seized of jurisdiction under Article 23(3) of *the Constitution* to determine whether the Respondents violated his constitutional rights.
23. The cause of action arises from violations of the Petitioner's constitutional rights, including the right to information under Article 35, the right to fair administrative action under Article 47, and other rights under Articles 10, 19, 20, 21, 48, 49, 50, and 59. The Petitioner seeks a declaration that the Respondents' failure to determine his appeal for over five years violated these rights and compensation for the violation.
24. Articles 20(1) and 21(1) of *the Constitution* impose a duty on the Respondents to respect and uphold fundamental rights and freedoms. The Petitioner, through letters dated 25th May 2022 and 8th August 2023, followed up on the outcome of his appeal lodged on 20th December 2018. The 1st and 2nd Respondents did not respond until after the Petition was filed, thereby violating his right to access information. This breach is ongoing, as the 1st Respondent has yet to provide a reasoned decision. The right to information under Article 35 is binding upon the Respondents, who are public institutions.
25. The right to fair administrative action under Article 47 requires administrative decisions to be expeditious, lawful, and procedurally fair. The Police Service Standing Orders, Chapter 30, provide for appeals and reviews of disciplinary decisions. Appendix 30(1) requires appeals to be made in writing within fourteen days, while Appendix 31(2) allows for reviews where new information arises. Appendix 33(8) mandates that an accused person be informed in writing of the decision and the right to appeal. Appendix 44 provides for an appeal to the High Court if the officer is dissatisfied with the decision.
26. The Petitioner's appeal, lodged on 19th December 2018 and received on 20th December 2018, remains undecided. The 1st Respondent's failure to adjudicate the appeal violates the Petitioner's right to fair administrative action. The 2nd Respondent's letter dated 17th September 2024 states that the appeal was dismissed but does not attach any decision or reasons. This contradicts the 2nd Respondent's claim that a decision was made on 30th June 2020, which was never communicated to the Petitioner. The Respondents' conduct constitutes a continued breach of the right to fair administrative action.
27. The Petitioner submits that the suit is not a labour dispute under Article 41 of *the Constitution* or the *Employment Act*. The Petition does not seek reinstatement, unpaid salaries, or other employment-related remedies. The Petitioner does not rely on an employment contract but instead alleges constitutional violations. Therefore, Sections 4(1)(a) of the *Limitation of Actions Act* and 3(2) of the Public Authorities Limitations Act do not apply.
28. The cause of action arose on 25th May 2022 and 8th August 2023, when the Petitioner followed up on his appeal without receiving a response. The breach is ongoing, as the 1st Respondent has yet to provide a reasoned decision. Appendix 33(8) of the Police Service Standing Orders requires a written decision, which the 1st Respondent has failed to provide. The Supreme Court in *Wamwere & 5 others v Attorney General (Petition 26, 34 & 35 of 2019)* (Consolidated) [2023] KESC 3 (KLR) held that there is no limitation period for claims of human rights violations.



29. The Court further stated that whether there is inordinate delay depends on factors such as the explanation offered and whether justice will be served. The Petitioner's appeal process was delayed for over 20 years, and no decision has been communicated.
30. Section 90 of the *Employment Act* does not apply to the Petition. Section 3(2)(b) of the *Employment Act* explicitly excludes police officers from the Act's provisions. Since the Petitioner was a police officer before dismissal, Section 90 does not apply. The Preliminary Objections based on this provision should therefore be dismissed. The Petitioner has demonstrated that the claim is based on continued constitutional breaches rather than an employment dispute. The Petition is not time-barred, and the Honourable Court has jurisdiction to hear and determine the matter. The Petitioner prays that the Honourable Court dismisses the Preliminary Objections with costs.
31. I have examined all the averments and submission of the parties herein. From the facts of this case it is indeed true that the applicant herein was dismissed from service on the 9th February 2004, 19 years ago.
32. The petitioner respondent on their part aver that the application is based on breach of his constitutional rights and is therefore not time barred. They aver that the cause of action arose on 25th May 2023 and 8th August 2023 when the petitioner followed up his appeal without receiving an answer. The applicants cited *Wamuma & 5 Others v AG* (Petition 26, 34 & 35 of 2019) where the court held that there is no limitation period for claim of human rights violations.
33. As per this authority, there is indeed no limitation period for rights issue. If there is a delay however it must not be inordinate or unreasonable. The court relays on *Luka Chebii vs NSSF* in CA NO 310/2017 where JAA Musinga, Mbogholi – Msagha & K I Laibuta, the learned judges confirmed the ruling of this court that 7 years delay in filing a case was in order delay. The court affirmed the ELRC's finding that though there is no limitation period in filing a rights case, the court must go ahead and consider if the delay is reasonable.
34. In the present case I find the delay of 19 years extremely inordinate. I therefore find the preliminary objection merited and I allow it and dismiss the petition in its entirety accordingly. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MARCH, 2025.

HELLEN WASILWA
JUDGE

