



**Agogo v County Secretary County Assembly of Taita Taveta & 2 others
(Petition E015 of 2024) [2025] KEELRC 1234 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1234 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E015 OF 2024**

**M MBARŪ, J
APRIL 30, 2025**

BETWEEN

DISCKSON OKOTH AGOGO PETITIONER

AND

**THE COUNTY SECRETARY COUNTY ASSEMBLY OF TAITA
TAVETA 1ST RESPONDENT**

THE COUNTY GOVERNMENT OF TAITA TAVETA 2ND RESPONDENT

THE PUBLIC SERVICE COMMISSION 3RD RESPONDENT

RULING

1. The 1st and 2nd respondents filed Notice of Preliminary Objections dated 6 February 2025 concerning the petition dated 20 May 2024. The grounds are that;
 1. The petition offends the provisions of section 90 of the *Employment Act* and other relevant law provisions.
 2. The petition seeks a claim for payment of money and other dues from the respondents, which is purely a claim arising from the employer-employee relationship.
 3. The petition ought to have been filed by way of Memorandum of Claim;
 4. The cause of action arose on 30 April 2020, which is well past four (4) years from the time the petitioner ought to have instituted a claim for payment of any dues against the respondents.
 5. This being a claim for money, the same ought to have been filed in court within a time of 3 years from the date the cause of action arose as provided under section 90 of the *Employment Act*;
 6. The petition is incurably defective;



7. The petition amounts to a nullity and the court lacks jurisdiction to hear and determine the matter;
 8. The prayers and remedies sought by the petitioner can only be vitiated by way of Memorandum of Claim and the court has no discretion to grant the orders sought;
 9. The petition should be dismissed with costs.
2. Parties attended and agreed to address the objections by way of written submissions.

Determination

3. The objections and pleadings filed were analysed, and the issues for determination are;
- Whether the petition offends the provisions of section 90 [now section 89] of the *Employment Act*;
- Is this a proper petition?
- Whether the court has jurisdiction to determine the petition, and
- Who should pay the costs?
4. The petitioner avers that he was employed by the 3rd respondent on permanent and pensionable terms. Upon attaining the retirement age, the 3rd respondent issued a letter dated 26 July 2019, notifying the human resources office that the petitioner would exit the office on 1 July 2020. The 1st and 2nd respondents proceeded to delete the petitioner's name from the payroll on 30 April 2020, before the retirement date on 1 July 2020, as indicated by the 3rd respondent. The matter was unresolved, leading to inconveniences and loss due to premature retirement two months in advance.
5. The petitioner has claimed that his right to fair labour practices was violated; he could not receive his pensions in time, he was forced to travel from Voi to Nairobi to resolve the matter, and he lost Ksh. 423,726 was a seven-month prolonged stay at the duty station pending clearance.
- The petitioner opted to file a petition.
6. In a petition, a party can urge a claim for constitutional rights violations. By invoking the constitutional petition route, the petition should clarify which law has been breached vis-à-vis his rights under the *constitution* that are not secured under the law. This position is addressed at length in the case of *Sumayya Atbmani Hassan v Paul Masinde Simidi & another* [2019] KECA 107 (KLR). The court held that the rights articulated under Article 41 of the *constitution* are now elaborated under the *Employment Act* and the *Labour Relations Act*. A party seeking to invoke these rights does not need to go the constitutional petition route. By filing a Memorandum of Claim, such a party can be heard on their issue.
7. Indeed, the Employment and Labour Relations Court Rules permit a party who alleges that their constitutional rights have been violated to move under a Memorandum of Claim and assert their right. Unless there is a breach of the law, a party should not invoke the constitutional petition route. See *Munga v Kenya Maritime Authority & another; Inspector General (Corporations) & another (Interested Parties)* (Petition E004 of 2024) [2024] KEELRC 2740 (KLR) (7 November 2024) (Ruling).
8. In this case, the petitioner is agitating his claims for employment upon retirement. He seeks payment of Ksh. 423,726 and claims his rights under Article 41 of the *constitution* have been violated. Such matters can well be addressed under a Memorandum of Claim. The need to file a petition is not addressed.



This is not a proper petition.

9. The cause of action arose on 30 April 2020 when the petitioner asserted that the 1st and 2nd respondents prematurely retired him, causing him loss and damage. He did not file the petition or a Memorandum of Claim to urge his case until 5 November 2024.
10. Under section 90 of the *Employment Act*, a claim seeking to assert employment and labour relations claims must be addressed within 3 years from the date the cause of action arose. Even in a case where the petition was proper, which is not the case here, filing a petition and not a Memorandum of Claim cannot cure the time limit, as held in *Thuita Mwangi v Attorney General & 2 others* [2021] KEELRC 1467 (KLR).
to file the petition out of time cannot cure the legal threshold. From the date the cause of action arose, the petitioner should have moved the court to urge his claims on or before 30 April 2023.
11. The petition was improper, and the claim that should have been filed in time was not.
12. A claim filed out of time denies the court jurisdiction to hear and determine it. The court is denied the discretion to extend time to hear a claim out of time.
13. Without jurisdiction, the court must put down its tools. The petition is fatally defective and hence dismissed with costs to the respondents.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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