



**Muchira v Teachers Service Commission (Employment and Labour Relations  
Petition E045 of 2024) [2025] KEELRC 1286 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1286 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E045 OF 2024**

**HS WASILWA, J**

**MAY 7, 2025**

**BETWEEN**

**TERESIA KUTHI MUCHIRA ..... PETITIONER**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. In opposition to the Petitioner’s petition dated 4<sup>th</sup> January 2024, the Respondent filed a Notice of Preliminary Objection dated 14<sup>th</sup> June 2024 on grounds that the Petitioner’s case is time barred and grossly offends the mandatory provisions of Section 89 [sic] of the *Employment Act* and prays the petition be struck out with costs to the Respondent.

**Respondent’s Submissions**

2. The Respondent submitted that the Petitioner was employed by the Respondent as a teacher, therefore, the relationship between the parties was guided by an employment contract between them. It is clear that the relationship between them was that of an employer and employee.
3. The Respondent submitted that Section 89 [sic] of the *Employment Act* provided that ‘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.’
4. The Respondent submitted that the Petitioner affirmed in his petition that after the disciplinary process, the Respondent vide a letter dated 4<sup>th</sup> October 2006 informed him of its decision to dismiss him from service. Therefore, the Petitioner waited for over 18 years since his dismissal and removal from the register of teachers to file the instant petition.



5. It is the Respondent’s submission that any action against it arising from the disciplinary proceedings ought to be filed within 3 years from the date the cause of action arose which arose on 4<sup>th</sup> October 2006 when he was dismissed. Therefore, the Petition is time barred having been filed outside the required period of 3 years.
6. The Respondent submitted that the petition is within the purview of the Employment Act and therefore barred by statute. Further, the Petitioner filed a constitutional petition instead of a claim with the aim of circumventing the limitation of time.
7. The Respondent submitted that the Employment Act regulates the right to fair administrative action and fair hearing under employment contract, therefore, the Petitioner should not be allowed to avoid the provisions of the Act by quoting constitutional provisions.
8. On jurisdiction, the Respondent submitted that it is trite law that jurisdiction flows from the constitution and statute and that when a court determines it has no jurisdiction, it must not proceed as stated in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.
9. It is the Respondent’s submission that where a suit is time barred the court lacks jurisdiction to entertain it. The cause of action having been brought outside the stipulate time, therefore, this court lacks jurisdiction to entertain it. The Respondent relied on the Court of Appeal case of Anaclet Kalia Musau v Attorney General & 2 Others [2020] KECA 723 (KLR) which states:

“To demonstrate that time limitation is a jurisdictional question and that if a matter is statute-barred a court has no jurisdiction to entertain it, we cite the decision of the Supreme Court in the case of Nasra Ibrahim Ibren V. Independent Electoral and Boundaries Commission & 2 others, Supreme Court Petition No. 19 of 2018, where that court stressed the fact that jurisdiction is everything and that a court may even raise a jurisdictional issue suo motu. It said:

“40 A jurisdictional issue is fundamental and can even be raised by the court suo motu as was persuasively and aptly stated by Odunga J in Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B” [2008] 1 EA 367 stated thus:

“25. What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...” (Emphasis supplied).”

### **Petitioner’s Submissions**

10. The Petitioner submitted that the court has jurisdiction as there is no time limit in the interpretation of Constitution and whether a party’s rights have been infringed by a body purporting to act



unconstitutionally. He relied on *Pascal Barasa Olaimo & 75 others v Attorney General* [2019] KEELRC 947 (KLR)

“The question of limitation of time in regard to allegations of breach of human rights and fundamental freedoms have in many cases been raised by the state and in the case of *Joan Akinyi Kaba Sellab and 2 others vs Attorney General, Petition No. 41 of 2014*, the learned judge observed that:

“Nonetheless, I take into account the views of the court with regard to limitation in respect of claims for enforcement of fundamental rights. In a line of cases such as *Dominic Arony Amollo vs Attorney General, Nairobi High Court Misc. Civil Case No. 1184 of 2003 (OS) 2010 eKLR*, *Otieno Mak’ Onyango vs Attorney General and another, Nairobi HCCC No. 845 of 2003*, (unreported), courts have consistently held that there is no limitation with respect to constitutional petitions alleging violation of fundamental rights.

(25) I note also the sentiments of the court in *James Kanyiita vs Attorney General and another, Nairobi Petition No. 180 of 2011* that although there is no limitation period for filing proceedings to enforce fundamental rights and freedoms, the court in considering whether or not to grant relief under Section 84 of *the constitution* is entitled to consider whether there has been inordinate delay in lodging the claim. The court is obliged to consider whether justice will be served by permitting a respondent whether an individual or the state, in any of its manifestations, should be vexed by an otherwise state claim”

11. The Petitioner submitted that she has tendered evidence showing that she has been following up on the matter and therefore barring her on time would be unjust. Evidence on record shows she tried to approach all the offices in this country and came to this court as last option. The petitioner got a pro-bono advocate on record just to roll the last dice in the hope to get justice that she has for very long pursued.
12. It is the Petitioner’s submission that Article 159 (2) (d) of *the Constitution* provides that judicial authority has urged courts to do justice without undue regard to procedural technicalities. Further, the Court has inherent powers to give orders necessary to meet the ends of justice as provided under Section 3A *Civil Procedure Act*. Therefore, this court is properly clothed with immense powers to ensure justice is upheld at all times.
13. I have considered the averments and submissions of the parties herein. It is indeed true that the petitioner herein was terminated by the respondents 18 years ago in 2006. It is also true that courts have held that there is no limitation period in constitutional petitions dealing with rights issues. It is also true as held in *James Kanyita (supra)* that though there is no limitation period for filing proceedings to enforce fundamental rights and freedoms the court would still decide on whether to allow grant of reliefs sought or whether there has been inordinate delay in lodging the claim
14. In the instant claim, the cause of action having occurred 18 years back, it is indeed true that the petitioner has approached this court too late in time and therefore guilty of laches and therefore the petition cannot be allowed to proceed at this point in time.
15. I uphold the preliminary objection as filed and dismiss the petition in its entirety for being time barred. There will be no order of costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

