



**Wandeta & another v National Police Commission & 2 others; Public Service Commission (Interested Party) (Petition E133 of 2024) [2025] KEELRC 1758 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1758 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E133 OF 2024**

**HS WASILWA, J  
JUNE 18, 2025**

**BETWEEN**

**OBED INGALULA WANDETA ..... 1<sup>ST</sup> PETITIONER  
FESTO ANJELE NAMOLO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE NATIONAL POLICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT  
THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR &  
COORDINATION NATIONAL GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**THE PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**RULING**

1. In opposition to the Petition dated 27<sup>th</sup> August 2024, the Interested Party filed a Notice of Preliminary Objection dated 6<sup>th</sup> September 2024 on the following points of law:
  1. Under Section 89 of the *Employment Act*, Cap.226 of the laws of Kenya, employment and labour relations claims should be filed in the ELRC within a period of three (3) years from the date of the occurrence of the cause of action.
  2. By instituting the instant suit in the year 2024, about 16 and 22 years respectively after the cause of action had arisen in the years 2002 and 2008 respectively clearly falls outside the limitation period prescribed under Section 89 of the *Employment Act*.
  3. In view of grounds 1 and 2 above, the instant Petition is not only bad in law for want of jurisdiction but also statutorily time barred.



4. By dint of Article 234(3)(c)(iv) of *the Constitution*, the jurisdiction of the Public Service Commission does not extend or apply to the National Police Service Commission.

### **Petitioners' Submissions**

2. The Petitioners submitted that the petition is not time barred as *the Constitution* does not provide for time limits for filing constitutional references. It is well settled from numerous decisions of the courts that statutory provisions on limitation of actions do not apply to constitutional petitions alleging violations of fundamental rights.
3. The Petitioners relied on the case of Calvin Ouma Magare & 18 others v Director of Public Prosecutions & 4 others [2022] KEHC 1460 (KLR) where the court held:

“Therefore, as to whether the instant petition is time barred, the question of limitation of time in regard to allegations of breach of human rights and fundamental freedoms has in many cases been raised by the state and in the case of *Joan Akinyi Kaba Sellah and 2 others vs Attorney General, Petition No. 41 of 2014*, the learned judge observed inter alia that 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.”

4. The Petitioners submitted that this court is clothed with requisite jurisdiction to hear and determine the petition. They cited the case of London Distillers Kenya Limited & another v Kenya Union of Commercial Food Allied Workers Union [2021] KEHC 6738 (KLR) where the court stated:

“In addition thereto, I find that the jurisdiction of this Court is limited by Article 162(2) of *the Constitution*, that empowers the Employment and Labour Relations Court, to hear and determine all disputes, arising out of an employer and employee relationship, as well as, disputes between an employer and a trade union. It is worth noting that the ELRC in exercising its mandate, the Employment and Relations Court, being a Court of equal and concurrent status as this Court, has jurisdiction to hear and determine constitutional violations on fundamental rights and freedoms arising from an employer and employee relationship, as well as, all disputes falling under Article 41 of *the Constitution*, as is in this case, as well as, all disputes stipulated under Section 12 of the *Employment and Labour Relations Court Act* 2011.”

5. The Petitioners submitted that having demonstrated that this court has the requisite jurisdiction to hear and determine this suit and that the suit is not time barred, it follows that there is no legal basis for striking it out.

### **Respondents' Submissions**

6. The Respondents submitted that the suit is statute barred under section 90 of the *Employment Act* that limits the period within which to institute proceedings within 3 years from the date of occurrence of cause of action. The Petitioners admitted that they were discharged/dismissed from the service on 23<sup>rd</sup> May 2002 and 7<sup>th</sup> November 2008 respectively. Therefore, the cause of action arose on 23<sup>rd</sup> May 2002 and 7<sup>th</sup> November 2008 whereas this suit was filed on 27<sup>th</sup> August 2024.



7. It is the Respondents submissions that no leave to extend the period in which to file the case was sought prior to its filing though the suit was filed when the statutory time provided has surpassed by a margin of over 13 years and 9years.
8. The Respondents submitted that the orderly room proceedings as against the Petitioners did not bar them from moving to civil court within the stipulated time of the cause of action to protect his employment rights. They cited Attorney General & Another v Andrew Maina Githinji & Another, Civil Appeal No. 21 of 2015 (2016)eKLR, while setting aside the ruling of the Employment Court (Ongaya J), Waki and Kiage JJA, a majority decision against Nambuye JA held:

“I have considerable sympathy for the reasoning in all the above cases which leads me to the conclusion that the cause of action in this case did not arise after the conclusion of the criminal case against the respondents. The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2<sup>nd</sup> October 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not”.  
“Having found that the cause of action arose on 2<sup>nd</sup> February 2010 and that the claim was filed on 16<sup>th</sup> June 2014, it follows by simple arithmetic that the limitation period of three years was surpassed by a long margin. This claim was time barred as at 1<sup>st</sup> February 2013, and I so hold”.
9. The Respondents submitted that this court has no discretion to entertain this matter. Furthermore, this is not a mere technicality but a jurisdictional issue. The role of this court is to interpret the law and not enact laws as it is the mandate of parliament. In its role to interpret the law, some parties will adversely be affected like in the instant case but the law is the law.

### **1<sup>st</sup> Respondent’s Submissions**

10. The 1<sup>st</sup> Respondent submitted that Section 3(2) of the *Public Authorities Limitation Act* stipulates that no proceedings founded on contract shall be brought against the government or local authority after the end of three years from the date on which the cause of action accrued. The Petitioners entered into a contract of employment with the government and enlisted in the Kenya Police Force on 26<sup>th</sup> September 1984 and 4<sup>th</sup> April 1988 respectively and they were terminated on 23<sup>rd</sup> May 2002 and 7<sup>th</sup> November 2008.
11. It is the Respondent’s submission that the petition was filed on 27<sup>th</sup> August 2024, 22 years after the termination of the 1<sup>st</sup> Petitioner’s employment on 23<sup>rd</sup> May 2002 when the cause of action arose; and 19 years after the statutory time limit lapsed. similarly, the 2<sup>nd</sup> Petitioner’s employment was terminated on 7<sup>th</sup> November 2008, 16 years before institution of this suit and 13 years after the statutory time limit lapsed. The time lapse is way beyond the mandatory timelines and it is difficult to argue for grace to be heard.
12. The 1<sup>st</sup> Respondent submitted that by virtue of Section 3(2) of the *Public Authorities Limitation Act*, the petition is time barred. It is trite law that the issue of limitation goes to jurisdiction, therefore, this court lacks jurisdiction to hear the Petitioners.
13. I have considered the averments and submissions of the parties herein. It is indeed true that a petition contending constitutional breaches do not have a limitation period as held in *Joan Akruji Kaba Sellah & 2 Others vs AG per No 41 of 2014* & 2 Others authorities cited by the petitioner herein.



14. It was however held in *Mitei vs NSSF 2022 (KECA) 310 of 2017* holding *Daniel Mitei Mitai & 9 Others vs AG (2019) ECLR* that a delay of bringing a petition of must not be inordinate.
15. The courts have observed that though there is no limitation period for filing constitutional petitions where there is a delay, it must not be inordinate and an explanation must be provided.
16. In the current petition, the petitioners are filing suit after 16 years and 22 years from the time of dismissal but the claim is not about an unfair dismissal but of payment of their pension /terminal dues. The question is when the cause of action arose and which matter I cannot determine in this preliminary objection.
17. For this reason alone, I will indulge them and allow them to present their petition and explain their case. The preliminary objection is thus dismissed and I direct the parties to proceed with the petition. Costs in the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> OF JUNE, 2025.**

**HELLEN WASILWA**

**JUDGE**

