



Katana v National Police Service Commission & 2 others (Petition E184 of 2024) [2025] KEELRC 1696 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1696 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E184 OF 2024**

B ONGAYA, J

JUNE 12, 2025

BETWEEN

STEPHEN KAHINDI KATANA PETITIONER

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

Before Hon. Justice Byram Ongaya on Thursday 12th June 2025

1. In response to the petition dated 13.11.2024, the 2nd and 3rd respondents filed a notice of preliminary objection dated 17.01.2025 through the learned Senior State Counsel Ms. Mary Mochoge for the Attorney General. They opposed the petition upon the following grounds:
 - i. That the Court lacks jurisdiction under the law to entertain, interrogate and determine the petition as the same is time barred, the substratum thereof having been filed outside the provided time limit.
 - ii. That the petition herein is filed out of time allowed under Section 90 of the *Employment Act*, No. 11 of 2007 hence the Court lacks the requisite jurisdiction to entertain the matter in its present form.
 - iii. That the petitioner is circumventing the *Employment Act* and the *Labour Relations Act* by relying on the constitutional provisions having realised the matter is statute barred under the parent Acts which give effect to constitutional rights.
 - iv. That the petition is an abuse of the court process.



- v. That the petition is incompetent and ought to be struck out with costs.
2. The 1st respondent filed its submissions dated 03.06.2025, and the 2nd and 3rd respondents filed submissions dated 17.01.2025 in support of the notice of preliminary objection.
 3. The petitioner filed his submissions dated 17.03.2025 through Bob Okumu & Company Advocates.
 4. The petitioner's case is that in as much as the petition does not fall under the provisions of the Employment Act, as per Section 3 of the Employment, this matter is rightfully before this Court because the issues raised therein are employee-employer related as provided in Section 12(1) of the Employment and Labour Relations Court Act. He prayed that the 2nd and 3rd respondents' preliminary objection be dismissed with costs. The Court has considered the parties' respective positions and returns as follows:
 - a. The petition is dated 13.11.2024. The petitioner alleges that he was kidnapped by suspected members of a terrorist group known as Al Shabaab while on leave in Lamu and during which time he had been granted leave effective 26.07.2011. He alleges he remained in captivity until he escaped to re-join his family on 20.12.2011 and taken to hospital. He further alleged that upon reporting back on duty, he was informed that he had been dismissed from the GSU on grounds of absenteeism during his leave. He does not state the date he reported back to work but in his letter of appeal dated 09.09.2014 he states that he reported to back on 22.01.2022 to GSU headquarters. In his appeal letter of 24.06.2023 to the chairperson of the National Police Service Commission, he stated that on 09.12.2011 he was charged in orderly room proceedings and dismissed in his absentia. From the facts, it appears to the Court that the petitioner learned about his dismissal or termination on 22.01.2022 when he reported at the GSU headquarters. He offers no explanation why he appealed belatedly on 09.09.2014 and then, again, very belatedly on 24.06.2023. Further, the petitioner effective 22.01.2022 had knowledge of all facts about his cause of action arising out of the dismissal but he took no steps to file suit.
 - b. The Court finds that the petitioner has not offered any good reason for the failure to file suit within the prescribed statutory time of limitation in section 3(2) of the Public Authorities Limitation of Actions which states 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 and as was held by Onesmus Makau J to be the applicable law on limitation of action for dismissal of a police officer in Samson Leteipa ole Kimongo v Inspector General, National Police Service & 2 others [2022]eKLR. The court holds accordingly and the petition is liable to being struck out. The Court considers that each party to bear own costs of the proceedings especially that the respondents did not expressly invoke section 3(2) of the Public Authorities Limitation of Actions in the Preliminary Objection and only raised it in the submissions.

In conclusion the petition herein is struck out and each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 12TH JUNE, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

