



**Wambugu & 2 others v Equity Bank & 2 others (Petition
45 of 2019) [2025] KEELRC 1653 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1653 (KLR)

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

PETITION 45 OF 2019

B ONGAYA, J

JUNE 5, 2025

**IN THE MATTER OF ARTICLES 2, 3, 10, 22, 232 & 236 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE ALLEGED VIOLATION OF RIGHTS
AND FUNDAMENTAL FREEDOMS GUARANTEED UNDER
ARTICLES 27, 28, 41, 47, 48 & 50 OF THE CONSTITUTION OF
KENYA, 2010**

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

AND

**IN THE MATTER OF MALICIOUS PROSECUTION AND
UNLAWFUL TERMINATION OF THE PETITIONERS'
EMPLOYMENT**

BETWEEN

**JOHN MACHARIA WAMBUGU 1ST PETITIONER
GABRIEL KARIME NJARAMBA 2ND PETITIONER
ERIC MAKOKHA 3RD PETITIONER**

AND

**EQUITY BANK 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**



RULING

1. For determination before the Court are the 1st respondent's preliminary objection dated 23.05.2019 and the 2nd and 3rd respondent's notice of preliminary objection dated 07.12.2022.
2. The 1st respondent's preliminary objection dated 23.05.2019 was filed through Oundo Muriuki & Company Advocates. The objection was to the petition upon the following grounds:
 - i. The petitioner's petition dated 14.02.2019 is time-barred and offends the mandatory provisions of section 90 of the *Employment Act*, 2007.
 - ii. The petitioner is circumventing the *Employment Act* and *Labour Relations Act* by relying on constitutional provisions, having realised that the matter is statute-barred under the parent Acts, which give effect to the constitutional rights.
 - iii. The petition is null ab initio and an abuse of the Court process as the petitioners' claim is time-barred.
 - iv. The petition is therefore incredibly defective, bad in law and ought to be struck out with costs.
3. The 2nd and 3rd respondents' notice of preliminary objection dated 07.12.2022 was filed through the Attorney General. Their objection was on the following grounds:
 - i. That the suit is time-barred and offends mandatory provisions of section 90 of the *Employment Act*, 2007.
 - ii. That the petitioner is circumventing the *Employment Act* and the *Labour Relations Act* by relying on constitutional provisions, having realised the matter is statute-barred under the parent Acts, which give effect to the constitutional rights.
 - iii. That with respect to special damages sought, the claim arises from a criminal case for which this Honourable Court lacks jurisdiction to entertain.
 - iv. That the claim on malicious prosecution is statute-barred.
 - v. That the suit is an abuse of the Court process.
 - vi. That the suit is incompetent and ought to be struck out with costs.
4. In response, the petitioners filed their reply affidavit sworn by the 1st petitioner on 22.05.2023, through Gitobu Imanyara & Company Advocate. It was urged as follows:
 - a. The preliminary objections before this Court are incompetent and ought to be dismissed forthwith with costs.
 - b. The *Constitution* guarantees the petitioners the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent tribunal or body.
 - c. Article 159(2)(d) of the *Constitution* grants the petitioners the right to a fair trial guided by the principle that justice shall be administered without undue regard to procedural technicalities.



- d. There was a breach of the right to fair administrative action as entrenched under Article 47(1) of the Constitution, which guarantees the petitioners the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - e. Since the respondents' actions interfered gravely with the petitioners' constitutional rights, this Court ought to make such declarations to the effect that the defective administrative actions of the 1st respondent led to the malicious prosecution occasioned to the petitioners by the 2nd and 3rd respondent and that such violations ought to be compensated with damages.
 - f. the Constitution being the supreme law of the country binding on all persons and state organs, its validity and legality is not subject to challenge by or before any Court or other state organ as stated under Article 2(1) and (3).
 - g. The High Court has jurisdiction to hear any question in respect to the interpretation of the Constitution, including the determination of the question whether any law is inconsistent with or in contravention of the Constitution.
 - h. The petitioners rely on Article 22(1) of the Constitution that every person has the right to institute proceedings claiming that a right, in the bill of rights, has been denied, violated, infringed or threatened. Together with Article 23(1) of the Constitution, they are permitted to move this Court to hear and determine the petition notwithstanding the allegations of time lapse as raised by the Respondents.
 - i. This Court should determine the issue of the suit being time-barred as an issue that touches on the constitutional rights of the petitioners, and section 90 of the Employment Act should be deemed as inconsistent with the constitutional provision of the right to a fair hearing. Further, considering that this Honourable Court was constituted succeeding the Constitution, the same should follow such provisions of the Constitution.
 - j. In any case, seeking remedies for human rights violations cannot and should not amount to an abuse of court process, as the Constitution has granted the fundamental rights and freedoms to its citizens.
 - k. The respondents have not pleaded any prejudice for such inadvertent delay, and the petitioners are likely to suffer great loss and irreparable damage if this Honourable Court does not make such declarations.
 - l. Furthermore, seeing that the respondent have been able to file their responses to the petition and relevant documents, and that time has not greatly affected the quality of their responses if at all, this Court is in a position to make such conclusive orders based on the materials filed.
 - m. The issue of time bar is curable in law and the respondents cannot use it as a hindrance to limit the remedies available to the petitioners for the respondents' infringement of the petitioners' constitutional rights.
 - n. The petitioners rely on the constitutional principles set out under Article 2 and Article 19(3) (c) that the rights and fundamental freedoms in the Bill of Rights are subject only to the limitations contemplated in the Constitution.
5. The parties filed their respective submissions. The Court returns as follows:



- a. As submitted for the respondents, the cause of action is time barred under section 90 of the *Employment Act*, 2007. The section prescribe three years' time of limitation for suits and cause of action based on the contract of service.
 - b. The 1st petitioner was summarily dismissed on 14.04.2015 and the 2nd petitioner was dismissed on 23.02.2015. The 3rd petitioner was dismissed on 03.02.2015. The petition was filed on 14.02.2019 long after lapsing of the period of limitation of three years.
 - c. As submitted for the respondents the preliminary objection is a pure point of law based on uncontested fact of lapsed time of limitation. The objection is upheld.
 - d. The Court has considered the submissions for the petitioners that the lapsed period of limitation could be excused in a constitutional petition for enforcement of the Bill of Rights and other constitutional provisions. The claims being based on a contract of service, the petitioners ought to have pleaded material facts justifying the delay and then proved such particulars with due evidence. The petitioners' case is that the delay was due to the criminal proceedings they underwent stating from around the time of dismissal and being criminal case No.23341 of 2014 in Busia Chief Magistrates Court. That they were absolved from the criminal charges on 20.09.2017 and filed the petition on 14.02.2019. However, the Court finds that the time of limitation of three years had not lapsed as at the time they were absolved in the criminal case and no explanation has been offered for the delay after they were so absolved. Accordingly, the delay in filing the petition beyond three years from the date of the dismissal of each of the petitioners is found inexcusable.
 - e. The claim for malicious prosecution as based upon or revolving and evolving from the employment relationship is found time barred and as an independent claim would fall outside the Court's jurisdiction.
 - f. The Court returns that the preliminary objections will be upheld that the cause of action was time barred and with no shown reason to suggest that the delay in filing the petition was excusable.
 - g. The Court has considered the historical background of the case involving the criminal case for which the petitioners were exculpated and each party to bear own costs.
6. In conclusion the preliminary objections are upheld and the petition struck out for being time barred with orders, each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5TH JUNE, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

