



**Mutuma v National Police Service Commission & 2 others (Petition E208 of 2023) [2024] KEELRC 935 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 935 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E208 OF 2023**

**B ONGAYA, J**

**APRIL 8, 2024**

**IN THE MATTER OF ARTICLES 2, 21, 23, 25, 28, 41,  
47 & 50 OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN MATTER OF SECTION 4 OF THE FAIR  
ADMINISTRATIVE ACTIONS ACT (NO. 4 OF 2015)**

**AND**

**IN MATTER OF SECTIONS 24, 45, 46, 49, 56, 57(2), AND  
88(3) OF NATIONAL POLICE SERVICE ACT (11A OF 2011)**

**AND**

**IN THE MATTER OF REINSTATEMENT INTO THE NATIONAL POLICE SERVICE  
OF PF NO. 237227/2008145383 – EX-IP SOLOMON MUTIIRIA MUTUMA**

**BETWEEN**

**SOLOMON MUTIIRIA MUTUMA ..... PETITIONER**

**AND**

**NATIONAL POLICE SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein filed the Preliminary Objection dated 14.11.2023 through Ernest Kioko, Senior Litigation Counsel in the Office of the Attorney General pursuant to the provisions of



Section 4(1) of the [Limitation of Actions Act](#), Cap 22 Laws of Kenya on grounds of law that the suit herein is time barred.

2. The Petitioner filed replying affidavit to the Preliminary Objection and stated that:
  - a. That he was dismissed from duty as Inspector of Police on 14.06.2020 and appealed against the decision on 15.07.2020 pursuant to the guidelines set under Chapter 30 of the [National Police Service Standing Orders](#) and as recommended in the dismissal letter.
  - b. That through inquiries on the status of his appeal his final response was given vide a letter dated 21.02.23 informing him that his appeal had been disallowed and the dismissal from the police service upheld on 21.10.22.
  - c. That having exhausted the internal mechanisms of dispute resolution, he then filed the instant petition which he pleaded is within the set timelines of the [Employment Act](#) and the [Limitations of Actions Act](#).
  - d. That the claim against the Respondents accrued on 21.02.2023 and that the suit has timeously been brought before this Honourable Court.
  - e. The Petitioner concluded to plead that the preliminary objection be struck out with costs and the Honourable Court do proceed to hear the main Petition.
3. The 1<sup>st</sup> Respondent on the other hand equally raised and filed a preliminary objection dated 13.03.2024 through Valerie Kasaiyian, Senior Litigation Counsel for the National Police Service Commission that the suit be struck out on grounds that:
  - a. no constitutional issues are discernible in the entire petition to warrant its admission and adjudication before the Honourable Court; and,
  - b. the petition is an abuse of the court process.
4. The court has considered both notices of preliminary objections and the parties' respective positions and returns as follows:
  - a. It is submitted for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents that section 90 of the [Employment Act](#) provides that notwithstanding the provisions of section 4 (1) of the [Limitation of Actions Act](#), no civil action or proceedings based or arising out of the 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. Further, the Court has no jurisdiction to extend the time of limitation. That in the instant case the cause of action arose on 24.06.2020 when the petitioner received the dismissal letter and the petition was filed on 07.11.2023 after 3 years of limitation. Further, the petitioner filed the suit to circumvent the statutory time of limitation. For the petitioner it is submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have invoked time of limitation under section 4(1) of the [Limitation of Actions Act](#) which prescribes 6 years and further that in the submissions they misleadingly invoke section 90 of the [Employment Act](#) but which does not apply to the petitioner's service as a police officer. It is submitted that the petitioner was dismissed on 24.06.2020 and administratively appealed on 15.07.2020. His cause of action accrued on 21.02.2023 when his appeal to the 1<sup>st</sup> respondent was dismissed so that the petition is well within the time of limitation of six years under section 4(1) of the [Limitation of Actions Act](#). The Court finds that as submitted for the petitioner the preliminary objection is misconceived as is misleading. The [Employment Act](#) appears not to apply per section 3 (2) (b) of the [Act](#).



The suit is not time barred under section 4 of the [Limitation of Actions Act](#). The preliminary objection must fail.

- b. The 1<sup>st</sup> respondent's objection must as well fail. The objection is that the petition does not raise violations of the [Constitution](#). However, the petitioner alleges in paragraph 25 of the petition that paragraph 15(5) of the [National Police Standing Orders](#) and Regulation 11(5) of the [National Police Service Commission \(Discipline\) Regulations, 2015](#) on the waiver of 7 days' notice of disciplinary hearing are contrary to Articles 2, 21, 23, 25, 47 and 50 of the [Constitution](#). He seeks a declaratory prayer in that regard. At paragraph 20 of the petition, he alleges violation of Articles 47 and 50 (1) and (2) of the [Constitution](#). He has pleaded the particulars of constitutional violations. In view of the face of the pleadings in the petition, the 1<sup>st</sup> respondent's preliminary objection must as well collapse.

In conclusion the preliminary objections filed for the respondents dated 19.11.2023 and 13.03.2024 are hereby dismissed with costs and parties to take directions and a date for further steps towards the expeditious hearing and determination of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 8<sup>TH</sup> APRIL 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

