



**Noor v National Police Service & 2 others (Petition E210 of 2023)
[2024] KEELRC 934 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 934 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E210 OF 2023**

B ONGAYA, J

APRIL 8, 2024

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 10, 25(C), 27, 28, 41(1),
47(1) AND (2) AND 50(1) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

MOHAMED TAWANE NOOR PETITIONER

AND

THE NATIONAL POLICE SERVICE 1ST RESPONDENT

INSPECTOR GENERAL OF NATIONAL POLICE SERVICE . 2ND RESPONDENT

HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Monday 08th April 2024)

RULING

1. The petitioner filed the petition dated 30.10.2023 through Omondi Gatune & Company Advocates. The petitioner prayed for judgment against the respondents for:
 - a. A declaration that the acts of the respondents in dismissing the petitioner from the Administration Police Service is a breach of the petitioner’s constitutional rights under Articles 10, 25(c), 27, 28, 41(1), 47(1) and (2), 50(1) of *the Constitution* of Kenya 2010 and that the same are null and void for all intent and purposes.
 - b. A declaration that the respondents acted unlawfully in dismissing the petitioner as the respondents contravened section 4 of the *Fair Administrative Action Act*.



- c. An order to quash the dismissal of the petitioner by the respondents from the Police Service made on the 10.11.2016 for breaching the petitioner's right to fair trial under Articles 25, 47(1) and (2) of *the Constitution* and section 4 of the *Fair Administrative Action Act*.
 - d. An order to compel the respondents to reinstate the petitioner to the Police Service as his dismissal was unlawful, irregular and unjustifiable.
 - e. An order for payment for all back pay salaries that the petitioner ought to have earned save for the irregular and wrongful loss of employment.
 - f. In alternative to (c), (d), and (e) an order directing the respondents to compensate the petitioner general damages for the violation of his rights under Article 25, 41, 47 and 50 of *the Constitution*.
 - g. The petitioner be paid pension for 22 years being Kshs.211, 200; Kshs.1,056, 000 lump sum; and Kshs13,200 monthly pension.
 - h. Costs of the petition and interest thereon.
 - i. Any other relief or order that the Court may deem fit to grant.
2. The petitioner's case is as follows:
- a. He was enlisted into the Kenya Police Service on 16.09.1994 as No. 67551 and served for over 22 years of clean service.
 - b. About 2015 he fell ill and was admitted to the male ward at Mandera County referral Hospital between 30.06.2015 to 15.07.2015 he was critically ill and diagnosed with meningitis. He was discharged on 15.07.2015 and he reported on duty for a period of 1.5 years until his dismissal on 23.01.2017. He received a letter dated 10.11.2016 stating his dismissal had been determined a year before.
 - c. He was not given a letter to show cause or invited to a disciplinary hearing per sections 88 and 89 of the *National Police Service Act* and it is his case that his rights and freedoms were violated as prayed for the petitioner. The dismissal was with loss of his 22-years' service benefits. He was in the rank of Police Constable with a potential for promotion and to retire at the age of 65 years. At dismissal, he was 48 years old without potential to secure alternative age with his youthful life having withered in the service of the respondents.
3. The respondents filed the notice of preliminary objection dated 30.01.2024 through the learned litigation counsel Ruth J. Rop. It was urged as follows:
- a. The suit is time barred and offends the mandatory provisions of section 90 of the *Employment Act*, 2007 and section 4(1) (a) of the *Limitation of Actions Act*
 - b. The petitioner is circumventing the *Employment Act* having realised the dispute is time barred.
 - c. The suit is an abuse of Court process, is incompetent and it be struck out with costs.
4. Chief State Counsel Oscar Eredi filed a notice of appointment dated 30.01.2024 for the 3rd respondent.
5. The only issue for determination is whether the petition is time barred. The petitioner was dismissed from the service by the letter dated 23.01.2017 and with effect from 10.11.2016. From 23.01.2017, the 6 years of limitation under section 4 of the *Limitation of Actions Act* lapsed on 23.01.2023. The petition was filed on or after 30.10.2023, long after lapsing of that time of limitation. The cause of action



was time barred and for unexplained reasons, the petition was filed belatedly. The Court finds for the petitioners that the petition was time barred. Needless to state, the time of limitation in section 90 of the *Employment Act*, 2007 did not apply because police service is exempted from the general application of the Act per section 3(2) (b) thereof. Even if the petitioner alleged constitutional violations, the time of limitation applied unless the petitioner established grounds or circumstances leading to belated filing of the petition, but none are shown to have existed.

6. The Court has considered the petitioner's assertion that his administrative appeal dated 15.12.2022 had not been determined. However, nothing stopped him from taking appropriate legal action to get the appeal determined. In any event, the appeal did not affect the already accrued cause of action flowing from the dismissal. However, in view of the pending appeal, each party will bear own costs of the suit.

In conclusion, the preliminary objection is upheld with orders each party to bear own costs of the petition.

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

BYRAM ONGAYA

PRINCIPAL JUDGE

