



**Kubai v Teachers Service Commission (Cause E288 of 2020)
[2024] KEELRC 1525 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1525 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E288 OF 2020**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

BENJAMIN KUBAI CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The Claimant filed his Statement of Claim on 13th July 2020.
2. He states that he was employed by the Respondent as a Primary School Teacher in the year 2007.
3. He was accused in the year 2015, of sleeping with and impregnating a minor, a 17-year-old form 2 student, at [Particulars Withheld] Secondary School.
4. The complaint was not reported by, or at the Secondary School where the girl schooled. It was reported by her father at a Police Station. Neither the girl, nor her father, appeared at the disciplinary hearing conducted against the Claimant by the Respondent.
5. He was interdicted on 11th January 2016. He was heard by a Disciplinary Committee convened by the Respondent, on 24th May 2017. The Disciplinary Committee made a decision that the Claimant is dismissed, on 24th May 2017. He states at paragraph 19 of the Statement of Claim, that he received the letter of summary dismissal, on 16th June 2017.
6. He avers that dismissal was unfair and unlawful, and prays for reinstatement, arrears of salary and compensation for unfair termination, among other orders.
7. The Respondent entered appearance and filed a Notice of Preliminary Objection, dated 20th August 2020. Objection is based on Section 90 of the *Employment Act*. The Claim was filed on 13th July 2020, outside the limitation of 3 years from the date the cause of action arises. The Respondent states that



dismissal was effective from 24th May 2017, when the Disciplinary Committee determined that the Claimant is summarily dismissed.

8. The Claimant submits that he appealed against the decision of the Disciplinary Committee, in accordance with Section 46 of the *Teachers Service Commission Act*, which governs the Respondent. He appealed on 24th July 2017. The appeal was determined on 21st July 2019. 3 years lapsed on 22nd July 2022. The Claim was filed inside the limitation period.
9. Parties agreed that the Objection is heard and determined on the strength of their Pleadings, Documents and Submissions. They confirmed filing and exchange of Submissions at the last appearance before the Court for mention, on 3rd April 2024.

The Court Finds: -

10. This Court previously, shared the view adopted by the Claimant in his response to the Objection – that time does not begin to run, until all internal dispute resolution mechanisms granted under the relevant law or contract, have been exhausted.
11. There is evidence that the Claimant invoked Section 46 of the Teachers Service Commission, and appealed against the decision of the Disciplinary Committee, which was made on 24th May 2017, and communicated to him on 16th June 2017.
12. In *Rift Valley Railways [Kenya] Limited v. Hawkins Wagunza Musonye & Desidery Tyson Otieno*, [2016] e-KLR, the Court of Appeal held that time does not stop running, merely because Parties are engaged in out-of-court processes. It is incumbent upon Parties to bear in mind the provisions of Section 90, even as they pursue internal dispute resolution mechanisms. According to the Judgment of the Court of Appeal, Parties should file their Claims, even as they negotiate and pursue other internal dispute resolution mechanisms, to avoid falling afoul of the limitation law. There was no reason why the Claimant did not file his Claim, as soon as the decision to dismiss him was communicated. Section 46 of the *Teachers Service Commission Act*, did not bar him from filing the Claim. The Claim went stale, 3 years from the date of termination.
13. The Claimant therefore ought to have considered Section 90 of the *Employment Act*, even as he pursued his appeal. He did not have to exhaust the internal mechanism before filing the Claim.
14. The Court does not have the power to extend time prescribed under Section 90, unless the *Employment Act* itself, provides for such extension. To ignore Objection and proceed with the Claim, would mean that the Court has opted to extend time, and admit the Claim for hearing, contrary to Section 90 of the *Employment Act*, and the interpretation of the Court of Appeal on that provision.
15. The Court is bound by the decision of the Court of Appeal.

It is ordered: -

- a. The Preliminary Objection is upheld.
- b. The Claim is declined for want of jurisdiction under Section 90 of the *Employment Act*.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA



JUDGE

