



**Karioki v Teachers Service Commission (Cause E600 of 2023)
[2024] KEELRC 1454 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1454 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E600 OF 2023**

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

BETWEEN

NTABO DENIS KARIOKI CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection, dated 10th August 2023.
2. Objection is founded on Section 90 of the *Employment Act*, which stipulates that Claims founded on violation of contracts of employment, must be brought to Court before the expiry of 3 years, from the date the cause of action accrues.
3. The Respondent also cites Section 3[2] of the *Public Authorities Limitations Act* and Section 21 [1] of the *Teachers Service Commission Act*, in urging the Court to decline jurisdiction on temporal ground.
4. The Respondent states that, in his own Statement of Claim, at paragraph 10, the Claimant pleads that his service was terminated through a letter from the Respondent, dated 25th March 2019. He presented the Claim on 31st July 2023, 4 years after the cause of action arose.
5. The Claimant filed a Replying Affidavit sworn on 27th October 2023. He underscores that he applied for review of dismissal decision, and the final decision of the Respondent, dismissing him, was communicated through a letter dated 9th March 2022.
6. Accordingly, the cause of action arose on 9th March 2022. He filed his Claim on 31st July 2023, within the limited time of 3 years.
7. Parties agreed before the Court on 16th November 2023, to have the Objection argued and considered on the strength of their Pleadings, Affidavits and Submissions. They confirmed filing and exchange of the Submissions on 2nd February 2024, at the last appearance before the Court.



The Court Finds:-

8. The Claimant pleads at paragraph 10 of his Statement of Claim, that his service was terminated on 25th March 2019.
9. He exhibits the disciplinary proceedings against him, which took place at the Respondent's Head Office, on 1st March 2019. At the end of the proceedings, the decision is recorded: 1. Dismissed. 2. To be removed from the Register of Teachers.
10. The proceedings of the Review Committee meeting have similarly been exhibited by the Claimant. The meeting was held on 1st March 2022, and decision upholding dismissal, made on 9th March 2022.
11. The Claimant confirmed on review that he was dismissed on 25th March 2019. He confirmed receipt of the decision dismissing him. He told the Review Committee that he last taught, in September 2017. He last earned his salary in March 2018. He also appears to have conceded that he deserted duty, attributing desertion to his bout of Schizophrenia. He told the Committee that he ceased working also, because the relatives of a girl-child, a pupil, the Claimant had been accused of having sexual intercourse with, in his rented house, at Lokichar Town, Turkana County, became hostile to him.
12. The date of dismissal is therefore not contested.
13. The Claimant filed an application for review, which the Respondent submits was filed late. The decision of the Review Committee, was communicated through a letter dated 9th March 2022.
14. The Court is satisfied that the cause of action arose on 25th March 2019, when the Claimant acknowledges receipt of the decision terminating his contract.
15. His late application for review, did not renew his cause of action. He ceased to be an Employee of the Respondent when he was dismissed, on 25th March 2019.
16. It could even be strongly argued that he repudiated his contract, way back before the disciplinary hearing, when he fled from the School on 20th October 2017, after he deflowered his pupil. He ceased to teach, and repudiated his teaching service, effective from 20th October 2017. His salary was stopped in March 2018. There was no meaningful employment relationship or contract of employment, after the Claimant fled the School, from 20th October 2017. Under the automatic theory of termination of contract, a contract is terminated automatically when either party expressly repudiates a fundamental term of the contract. The other party to the contract does not have to accept repudiation, for termination to take effect. The Claimant ceased to teach. Teaching was a fundamental breach, a repudiation of the contract by the Claimant, which would become effective, without the Respondent electing to accept repudiation [under the elective theory].
17. The Respondent appears to have endorsed the elective theory however, and did not accept that the contract was at end, with the fleeing of the Claimant from the School. It went on paying his salary until March 2018. The Claimant formally ceased to be an Employee upon dismissal on 25th March 2019. He would only have made his late application for review, as an ex-Employee of the Respondent, not an Employee.
18. This conclusion has support in the decision of the Court of Appeal in *Rift Valley Railways [Kenya] v Hawkins Wagunza Musonye & another* [2016] eKLR.
19. The Court of Appeal held that consultations, negotiations, conciliation, and other forms of dispute resolution mechanisms invoked after termination of employment, do not have the effect of suspending, the date when the cause of action arises on termination. An application for review, such as was made



by the Claimant herein, did not suspend the date when his cause of action arose, going by the decision of the Court of Appeal. To hold that there was a renewal of the date the cause of action arose, would result in application by the Court, of judicial craft and innovation, as stated by the Court of Appeal.

20. It is ordered:-

- a. The Preliminary Objection is sustained, and the Claim declined for want of temporal jurisdiction.
- b. 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

