



Muraguri v Principal Secretary, Ministry of Interior Coordination of National Government & 2 others (Employment and Labour Relations Petition E171 of 2023) [2024] KEELRC 1379 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1379 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E171 OF 2023**

MN NDUMA, J

JUNE 6, 2024

BETWEEN

JOSEPH GATHII MURAGURI PETITIONER

AND

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

THE PUBLIC SERVICE COMMISSION 2ND RESPONDENT

THE. HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

- 1 The respondent filed a preliminary objection dated 11/10/2023 to wit that the suit is time barred by dint of section 90 of the *Employment Act*, 2023 in that the suit was instituted in the year 2023, being 37 years after the cause of action arose.
- 2 The facts of the suit are set out in the petition including violation of the rights of the petitioner protected under Articles 41, 47 50 and 236 of the *Constitution* of Kenya 2010 in that the 2nd respondent unlawfully interdicted the petitioner from employment without pay and terminated his employment on 6th August 1986. That the 1st and 3rd respondents had vacated the illegal interdiction and dismissal after learning that both interdiction and dismissal was unlawful.
- 3 That notwithstanding, the 2nd respondent by a letter dated 10/11/2021 confirmed that the petitioner stood dismissed from employment as from 6/8/1986 on account of desertion of duty and should refund the money paid to him after reinstatement by a letter dated 19/2/1993.
- 4 The petitioner seeks the following reliefs:



- A. A declaration that the petitioner herein be and is hereby deemed an employee of the 1st and 2nd respondents as from 1982 to January, 2018 and stands reinstated with back pay until the date of attainment of retirement age of 60 years.
 - B. All salaries accrued between the period of illegal interdiction and full salary while on study leave be computed and paid in full.
 - C. All house allowance withdrawn from the pay slips of the petitioner from October 1986 to March 1988 be reinstated up until March 2018 being the retirement age of the petitioner
 - D. The petitioner be paid his pension up to the date of his retirement
 - E. An order of *mandamus* be issued compelling the 1st and 2nd respondents to pay general damages subjected to the petitioner through their illegal actions of violations of petitioner's rights cited in this petition.
 - F. Any other order the court may deem fit and just to grant.
 - G. Special damages incurred by the petitioner during studies in the U.K. for Master's degree in Economics such as air tickets, accommodation and food at an average of 2 million.
 - H. Costs of the suit and interest be awarded to the petitioner.
- 5 The parties filed written submissions and authorities which the court has carefully considered.
- 6 The point of departure is the *locus classicus* decision in *Mukisa Biscuits Manufacturing Ltd* (1969) EA 693 as follows:
- " A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."
- 7 It is submitted that the petitioner admits that he was dismissed from service on 6th August 1986 and the dismissal was communicated to the petitioner by a letter dated 6/8/1988 produced by the petitioner.
- 8 That therefore the cause of action arose on 6/8/1986 yet the petition was filed on 4/9/2023.
- 9 That the suit is statute barred by dint of the section 4(1) of the *Limitation of Actions Act* Cap 22 Laws of Kenya that limits the period within which to institute a suit founded on contract to within six (6) years next after the cause of action arose.
- 10 That the petitioner seeks to be paid arrear salary from 6/8/1986 to the date of retirement upon attainment of 60 years in March 2018 less amount received after reinstatement *vide* a letter dated 19/2/1993 following advice from 3rd respondent to 1st respondent to vacate both interdiction and dismissal of the petitioner, and general damages and other reliefs all arising from alleged unlawful interdiction and dismissal.
- 11 That even the benefits alleged not to have been paid upon retirement in March 2018 are caught by the doctrine of laches and in violation of section 90 of the *Employment Act*, 2007 in that the suit was filed more than three (3) years from the date of retirement in March 2018, the suit having been filed in the year 2023.



12 The court was referred to the decision of the court in *Ndirangu verses Henkel Chemicals (EA) Ltd* [2013] eKLR (Mombasa Industrial Court Petition 1 of 2013, in which Stephen Radido J. held:

" Section 90 of the Act now regulates limitation time in employment contracts to three years and section 4(1) of the *limitation of Actions Act* is not applicable and therefore the claimant cannot be heard to argue that the limitation was 6 years."

Determination

13 From a comprehensive reading of the petition, the cause of action in this matter arose on 6th August 1986, when the claimant was dismissed from employment for absconding work. Indeed the main relief sought is payment of full salary from 6th August 1986 to retirement date in March 2018 less amount received after reinstatement on 19/2/1993.

14 Other reliefs sought include award of general, punitive and special damages and pension for 36 years of service.

15 All the above reliefs arise from disputes that arose more than three years from the date the petition was filed in the year 2023.

16 Indeed, this is a mundane claim for terminal benefits and compensation arising from matters that arose while the petitioner worked for the respondents and upon being dismissed from service about 37 years from the date the cause of action arose.

17 The filing of the petition is a ruse meant to circumvent the stark reality in this matter, that it is indeed a claim arising out of an employment contract and the suit is long time barred firstly by dint of section 4(1) of the *limitation of actions Act* Cap 22 laws of Kenya, having been filed more than six years from the date the dismissal took place and also in terms of section 90 of *Employment Act* 2007, having been filed more than three years from the date the petitioner retired.

18 Accordingly, the preliminary objection is upheld and the court strikes out the suit for lack of jurisdiction to entertain the same.

19 Each party to bear their own costs of the suit

DATED AT NAIROBI THIS 6TH DAY OF JUNE, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Odukenya for 1st and 3rd respondent

Mr. Ogosso for 2nd respondent

Mr. Gathii for petitioner

Mr. Kemboi, Court Assistant

