



**Mugoh v Teachers Service Commission & another (Petition  
E096 of 2024) [2024] KEELRC 2702 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2702 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E096 OF 2024  
B ONGAYA, J  
OCTOBER 30, 2024**

**BETWEEN**

**JOSEPH MUGOH ..... PETITIONER**

**AND**

**TEACHERS SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PENSIONS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> respondent filed the Notice of Preliminary Objection dated 02.07.2024 through Isaac Ochieng<sup>7</sup> Advocate. The Commission prays that the petition be struck out with costs to the 1<sup>st</sup> respondent as the Honourable Court lacks jurisdiction to entertain the claim on the grounds that:
  - i. The petition herein is statute barred pursuant to the provisions of section 90 of the [Employment Act](#) as read together with section 3(2) of the [Public Authorities Limitation Act](#).
  - ii. The instant petition does not meet the threshold of constitutional pleadings test, as espoused in the cases of Anarita Karimi Njeru v Republic [1979] eKLR and Matemu vs. Trusted Society of Human Right Alliance, Civil Appeal No. 290 of 2012.
  - iii. The proceedings herein have been commenced contrary to the law.
2. The 1<sup>st</sup> respondent and the petitioner filed their respective written submissions while the 2<sup>nd</sup> respondent did not file any submissions on the said preliminary objection. The Court returns as follows:
  - a. The 1<sup>st</sup> respondent has submitted that the petition was filed on 24.06.2024 whereas the petitioner was dismissed from the teaching service by letter dated 13.07.2019. The petition has therefore been filed after lapsing of three years of limitation per section 90 of the [Employment Act](#), 2007. On 13.07.2021, the 1<sup>st</sup> respondent wrote to the petitioner stating that the discipline



review case was held on 05.07.2021 and the dismissal had been upheld. He was notified that per regulation 156(9) of the TSC Code of Regulations the decision was final. It is submitted for the 1<sup>st</sup> respondent that despite that review decision, the pending administrative appeal or review had no consequence on the running of the time of limitation. The 1<sup>st</sup> respondent has cited Fred Mudave Gogo –Versus- G4S Security Services (K) Ltd [2014] eKLR and Attorney General –Versus- Andrew Maina and Another [2016] eKLR where it was held that the time of limitation in section 90 of the *Employment Act* 2007 was mandatory and the time of limitation cannot be extended. It was submitted that the review did not adjourn the running of the time of limitation from the dismissal date.

- b. For the petitioner it was submitted that the petitioner was required to exhaust the internal review or appeal process and in that regard, he was entitled to move to Court only after the 1<sup>st</sup> respondent communicated the decision on the review as was held by the Court of Appeal in Geoffrey Muthiga Kabiru and 2 others –Versus- Samuel Munga Henry and 1756 Others [2015] eKLR.
  - c. The Court has considered the rival submissions. The dismissal was on 13.07.2019 and the review decision communicated on 13.07.2021. The three years from dismissal date were lapsing on 13.07.2022. The petitioner has failed to explain why he did not file the proceedings between 13.07.2021 and 13.07.2022. He had an opportunity to move the Court in that period of about a year. Thus, it appears to the Court that even if constitutional claims of violation of the Bill of Rights would not be time barred on account of a good reason shown for failure to promptly file the petition, in the instant case the want of exhaustion of internal review or appeal process did not aid the petitioner because by the time the review decision was communicated, the petitioner still had sufficient time to move the Court prior to lapsing of the time of limitation. The Court also considers that even if the review decision had been delivered long after lapsing of the three years of limitation, unless another good reason beyond exhaustion of the review procedure was shown, the proper action was for the petitioner to file the proceedings and seek a stay pending the determination of the review proceedings.
  - d. Accordingly, in the instant case the cause of action is found to have been time barred especially that the review decision was delivered within the time of limitation and the petitioner has not shown a good reason why the mandatory period of limitation should not apply.
  - e. As to whether the petition met the threshold for a proper constitutional petition, the Court returns in the affirmative. The petitioner alleged violation of Article 27(1) on right of equal protection and equal benefit of the law; Article 40(2) (a) on protection of property; Article 43 (1) (e) on entitlement to social protection; Article 50 on fair hearing; Article 258 on the right to institute proceedings to enforce provisions of the *Constitution*; and, prayed that he was entitled to his pensions benefits otherwise lost after the respondent’s decision to dismiss him. But for the time barring, the Court returns that the petitioner has properly established a cause of action for under Articles 22 and 258 for enforcement of the pleaded provisions Bill of Rights and the *Constitution* generally.
  - f. The Court has considered the history of the case and all circumstances and each party to bear own costs of the proceedings.
3. In conclusion and the finding of the time barring, the Court upholds the notice of preliminary objection to extent as found herein and the petition is dismissed with orders each party to bear own costs of the proceedings as the case determined accordingly.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
WEDNESDAY 30<sup>TH</sup> OCTOBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

