



REPUBLIC OF KENYA



KENYA LAW
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**Omido v Secretary, Board of Management, Namundera Mixed Secondary School
(Petition 31 of 2017) [2023] KEELRC 255 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 255 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 31 OF 2017
S RADIDO, J
FEBRUARY 1, 2023**

BETWEEN

NAPHTALY OMIDO PETITIONER

AND

**SECRETARY, BOARD OF MANAGEMENT, NAMUNDERA MIXED
SECONDARY SCHOOL RESPONDENT**

RULING

1. On 15 March 2018, the Court upheld a Preliminary Objection raised by the Respondent and dismissed the Petition.
2. In the Ruling, the Court stated:
 7. The decision complained of was eight (8) years old and the delay was not properly explained. The Court noted that the applicant had the option of pursuing other mechanisms of appeal provided by the relevant *Act*. The JR application was dismissed.
 8. The Petition was filed immediately after this Ruling and substantially seeks the same orders sought in the JR application which is to declare invalid the proceedings by the Board that preceded the disciplinary hearing and the Court to review the decision of the disciplinary committee.
 9. The matters raised in the Petition are mundane employment and labour disputes, which the Petitioner seeks to elevate to constitutional matters so as to circumvent the limitation period, the Petition having been filed more than eight (8) years from the date the cause of action arose.
 10. The issue of limitation of time with regard to a JR application was dealt with by Hon Njagi J and the suit dismissed on that basis.



11. Filing the matter as a Petition does not cure that defect, since this is a matter arising from a contract of employment between the Petitioner and the Respondent and the same cannot be litigated more than three (3) years from the date the cause of action arose in terms of section 90 of the *Employment Act*, 2007.
12. Accordingly, the issue raised in this Petition are not only res judicata by virtue of the Ruling by Hon Njagi J in Kakamega JR No 7 of 2016 but the same is time barred by dint of section 90 of the *Employment Act*, 2007 as read with section 27 of the *Limitation of Actions Act*, Cap 22 Laws of Kenya. The preliminary objection is upheld with the result that the Petition is dismissed with costs.
3. The Petitioner (and now applicant) was dissatisfied with the Ruling and he lodged a Notice of Appeal with the Court on 26 March 2018.
4. In the interlude, the applicant has filed several applications culminating in a Motion dated 29 December 2020, but filed in Court on 30 May 2022 seeking summons to be issued against a Mr Moses Wanyama Barasa and another Motion dated 20 November 2022 and filed on 21 November 2022 seeking to reinstate an application dismissed on 21 June 2022 and summoning Mr Moses Wanyama Barasa.
5. The Respondent filed a replying affidavit in opposition to the last application on 8 December 2022, and the Court gave directions on 6 December 2022 (the directions required the applicant to file and serve a further affidavit together with submissions before 31 December 2022 and the Respondent to file and serve its submissions before 20 January 2023).
6. Instead of filing the further affidavit and submissions, the applicant went off tangent and filed another Motion dated 28 December 2022 seeking an order summoning Mr Moses Wanyama Barasa and grant of leave to appeal out of time.
7. The Court has considered the record, the Motion(s) and affidavits and come to the view that it cannot issue or grant any of the orders sought by the applicant.
8. The Court is of that view for the simple reason that there is no Petition pending before it upon which it could grant an order summoning any person to verify authenticity of documents.
9. The Court also is unable to grant leave to the applicant to appeal out of time against a decision of the Respondents made on 22 May 2009, as the decision has been the subject of previous litigation and adjudication by the High Court and this Court differently constituted.
10. There is a legal principle that litigation must come to an end, and the litigation herein at this level of the judicial forum came to an end with the Ruling of 15 March 2018, dismissing the Petition.
11. The Motions under consideration are dismissed with further costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF FEBRUARY 2023.

Radido Stephen, MCI Arb

Judge

Appearances

Applicant in person

For Respondent Cavin Anyuor, Advocate, Teachers Service Commission



Court Assistant Chrispo Aura

