



**Maina v National Police Service Commission & another (Petition  
189 of 2022) [2023] KEELRC 658 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 658 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 189 OF 2022  
B ONGAYA, J  
MARCH 10, 2023**

**BETWEEN**

**NAOMI WAMBUI MAINA ..... PETITIONER**

**AND**

**NATIONAL POLICE SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL POLICE SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The petitioner filed the petition dated September 16, 2022 through MM Uvyu & Company Advocates. He prayed for judgment against the respondents for:
  - a. A declaration that the petitioner's fundamental freedoms and rights under Chapter 4 of the [Constitution of Kenya 2010](#) have been infringed and or violated by the 1<sup>st</sup> respondent.
  - b. A declaration that the 1<sup>st</sup> respondent's vetting and decision arising thereof was in violation of the petitioner's fundamental rights under Articles 27, 40, 47 and 50 of the [Constitution of Kenya 2010](#).
  - c. An order of judicial review to quash the 1<sup>st</sup> respondent's decision of December 6, 2016.
  - d. An order of injunction restraining the 2<sup>nd</sup> respondent from implementing the 1<sup>st</sup> respondent's decision of December 6, 2016.
  - e. An order directing the 2<sup>nd</sup> respondent to reinstate the petitioner in employment in the same capacity she was before the unlawful dismissal.
  - f. Payment of dues being the salary and allowances from the date of dismissal until the date of reinstatement.
  - g. Any other or further relief as the court may deem just and expedient.



2. The 2<sup>nd</sup> respondent filed a preliminary objection dated November 22, 2022 through Brenda Opiyo, Litigation Counsel. The 2<sup>nd</sup> respondent opposed the petition upon the following grounds:
  - a. That the petition is scandalous, frivolous and vexatious.
  - b. That the petition offends section 3(1) of the [Public Authorities Limitation Act](#) Cap 39.
  - c. The petition is therefore incompetent and should be dismissed by the Honourable Court.
  - d. The suit is bad in law, brought in bad faith and should be dismissed with costs to 1<sup>st</sup> respondent.
  - e. The petition is bad in law, brought in bad faith and be dismissed with costs to the respondents.
3. The 1<sup>st</sup> respondent and the petitioner have filed their respective submissions on the preliminary objection.
4. The background to the petition is as follows and as mutually agreed upon by the parties per their submissions. The petitioner was enlisted in the National Police Service on June 31, 2007. He was vetted by the 1<sup>st</sup> respondent on June 3, 2016 in line with the National Police Service (Vetting) Regulations, 2013. On December 6, 2016 the 1<sup>st</sup> respondent returned that the petitioner lacked financial probity. The petitioner was served with the decision on December 28, 2016 and on December 29, 2016 she requested for Hansard record from the 1<sup>st</sup> respondent. On July 11, 2017 the petitioner attended the vetting review interview.
5. The 1<sup>st</sup> respondent does not state whether a decision was made after the vetting review interview. The petitioner states that she requested for the outcome by her several correspondences but never received any response to date. She states that she sent a letter on June 11, 2019 as exhibited and received the same date by the 1<sup>st</sup> respondent. It is her case that the decision of the vetting review interview is still pending as it has not been delivered or communicated. Thus, the petitioner's case is that the cause of action has not crystallised and is therefore a ground to validate the petition as not being time barred. Further, the petition is not based on contract alone but also upon the alleged violation of rights and freedoms.
6. The main issue the parties have submitted upon is whether the petition is time barred. It is submitted for the 1<sup>st</sup> respondent that section 3(2) of the Public Authorities [Limitation of Actions Act](#) states, "No proceedings founded on contract shall be brought against the Government or local authority after the end of three years from the date on which the cause of action accrued." It is submitted for the 1<sup>st</sup> respondent that the cause of action accrued on December 6, 2016 when the petitioner was dismissed from the service and as per the petition on record and yet, the petition was filed belatedly on September 16, 2022.
7. The Court finds that on the material on record, the 1<sup>st</sup> respondent has not communicated to the petitioner the decision after the vetting review interview. Accordingly, the injury appears to be continuing and the time of limitation based on the section as relied upon by the 1<sup>st</sup> respondent is defeated. Further, as urged for the petitioner, the dispute is based on contract as much as is based on alleged violation of constitutional rights and freedoms. It therefore appears to the Court that to that extent, the petition cannot be defeated as its scope goes beyond a contract of service.
8. Accordingly, the Court finds that the preliminary objection must fail as unfounded.

In conclusion:

1. The notice of preliminary objection dated November 22, 2022 is hereby dismissed with costs in the cause.



2. Parties to fix the matter for mention for further steps towards the expeditious hearing and determination of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 10TH MARCH, 2023**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

