



M'Rithaa v Inspector General of the National Police Service & 3 others (Employment and Labour Relations Cause E540 of 2020) [2023] KEELRC 1616 (KLR) (30 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1616 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E540 OF 2020**

SC RUTTO, J

JUNE 30, 2023

BETWEEN

ELIAS MICHENI M'RITHAA CLAIMANT

AND

THE INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE 1ST RESPONDENT

THE DEPUTY INSPECTOR GENERAL IN CHARGE OF KENYA POLICE SERVICE 2ND RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The claimant brought the instant suit through his Statement of Claim dated September 16, 2020 in which he avers that he was enlisted in the Kenya Police Service as a constable on October 10, 1981 and worked as such until July 6, 2010 when he was summarily dismissed while based at Isiolo Police Station as a police driver. According to the claimant, he was unlawfully, hurriedly, unprocedurally and unfairly charged, tried and convicted. He further states that upon dismissal, he was never paid any dues yet he had reached the age of 50 thus pensionable. Consequently, the claimant seeks against the respondents declaratory and monetary reliefs as well as costs of the suit and interest.
2. Upon being served with the Statement of Claim, the respondents filed a Reply dated April 27, 2021 in which they aver that the claimant's termination was lawful, procedural and in accordance with the



law and the Constitution. Subsequently, the respondents filed a Notice of Preliminary Objection dated January 24, 2023 premised on the following grounds:

- i. THAT the suit is time barred and offends the mandatory provisions of Section 3(2) of the Public Authorities Limitations Act.
- ii. THAT the suit is equally time barred and offends section 4(1) (a) of the Limitation of Actions Act.
- iii. THAT the suit is an abuse of the court process.
- iv. THAT the suit is incompetent and ought to be struck out with costs.

3. The Preliminary Objection was canvassed through written submissions which I have considered. The respondents submitted that no leave was sought to extend the period within which to file the case. It was further submitted that the claimant surpassed the requisite period by over 7 years, 2 months and 2 weeks and the claimant has not made any justification/explanation as to why he did not move this Court for appropriate remedy within the prescribed period. In support of the respondents' submissions, the case of Banking Insurance and Finance Union (K) vs Bank of India and Ndirangu vs Henkel Chemicals (EA) Ltd (2013) eKLR were cited. It was the respondents' further submission that when considering the provisions of Section 4(1) of the Limitations of Actions Act, the claim would still be statute barred as it is filed outside 6 years stipulated under the said provisions.

4. On the part of the claimant, it was submitted that the claim is not time barred and that Section 3(2) of the Public Authorities Limitation Act does not apply to this claim for the reason that the said statute is limited to proceedings against what used to be called local authorities and not other public or statutory bodies nor commissions and independent offices like the 1st, 2nd and 4th respondents. It was further submitted on behalf of the claimant that the 1st, 2nd and 4th respondents do not fall under the Government of Kenya nor a local authority but rather under Commissions. The claimant further submitted that the 1st, 2nd and 4th respondents have not raised a point of law since the same has been brought under the wrong provisions and as such the same cannot bind this Court. To fortify the claimant's submissions, the Court was invited to consider the determination in the case of Tom Ojienda and Associates vs National Land Commission and another (2022) KEHC 11463 (KLR)

5. Having considered the pleadings on record, the respondents' Notice of Preliminary Objection and the submissions on record, I find the singular issue for determination as being the question of time bar.

6. From the record, and as per the claimant's admission in the Statement of Claim, he was dismissed from employment on July 6, 2010 whereas the matter was filed on September 17, 2020. By simple arithmetic, the intervening period is 10 years 2 months.

7. The respondents have cited the provisions of the Public Authorities Limitations Act and the Limitation of Actions Act in the Notice of Preliminary Objection. The Public Authorities Limitations Act provides for the limitation period of proceedings against the Government or a local authority. In this regard, Section 2 is couched as follows: -

' For the purposes of this Act—(a) proceedings against the Government includes proceedings against the Attorney-General or any Government department or any public officer as such.'

8. It is not in doubt that the 3rd respondent is a Government department while the 4th respondent is the Attorney General. Further the 1st and 2nd respondents are holders of offices within the Government.



It thus follows that the respondents are subject to the said statute which provide under Section 3(2) of as follows: -

' No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.'

9. The import of the foregoing statutory provision is that a suit founded on contract, including an employment contract as the one herein, cannot be sustained in Court after the lapse of three years from the date the cause of action occurred.

10. As to what amounts to a cause of action, the Court of Appeal in the case *Attorney General & another vs Andrew Maina Githinji & another [2016] eKLR*, cited with approval the case of *Letang vs Cooper [1964] 2 All ER 929* at 934 where the term was defined as follows;

' A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.'

11. What this means is that a cause of action would ordinarily arise at the time the claimant had a cause to complain and in the instant case, would be the date he was dismissed from employment on July 6, 2010. Therefore, the suit was statute barred by the time the claimant moved the Court through the Statement of Claim.

12. Assuming the claimant is right and that the respondents are not subject to the Public Authorities Limitations Act, his Claim would still be caught by limitation of time in light of the provisions of the *Limitation of Actions Act* which provide under Section 4(1) (a) as follows: -

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a) Actions founded on contract.

13. As the suit herein is based on a contract of service, the claimant ought to have moved the Court at the earliest opportunity but not later than at least six years, going by his contention that the Public Authorities *Limitation of Actions Act* is not applicable to the respondents.

14. The total sum of my consideration is that the Claim having been brought close to 10 years after the cause of action arose, is evidently time barred hence cannot be sustained.

15. In this case, I adopt and reiterate the decision of the Court of Appeal in the case of Attorney General & another vs Andrew Maina Githinji & another (supra), thus: -

' The respondents had a clear cause of action against the employer when they received their letters of dismissal on October 2, 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not having found that the cause of action arose on February 2, 2010 and that the claim was filed on June 16, 2014 it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was barred as at February 1, 2013, and I so hold.'

16. It is against this background, that I find that the instant Claim is time barred having been brought three years past the date the cause of action arose.



17. To this end, and in following with the determination in the case of *[Thuranira Karauri vs Agnes Ncheche \[1997\] eKLR](#)*, the Court lacks jurisdiction to hear and determine the matter.
18. Accordingly, the Claim dated September 16, 2020 and filed on September 17, 2020, is hereby struck out for having been brought outside the time stipulated under law.
19. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE, 2023.

.....
STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Khaemba

For the Respondents Mr. Odukenya

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B** of the *Civil Procedure Act (Chapter 21 of the Laws of Kenya)* which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

