



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maingi v AG & 4 others (Petition 108 of 2017)  
[2023] KEELRC 2063 (KLR) (4 August 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2063 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 108 OF 2017  
AN MWAURE, J  
AUGUST 4, 2023**

**BETWEEN**

**PATRICK MUNYAO MAINGI ..... CLAIMANT**

**AND**

**THE HON AG & 4 OTHERS ..... RESPONDENT**

**RULING**

**Introduction**

1. The preliminary objections dated March 13, 2023 filed by 1<sup>st</sup> respondent. The Hon the Attorney General is what the court is considering herein. It challenges the jurisdiction of this honourable court on the basis that it is time barred contrary to section 90 of the [Employment act](#).

**Claimant's submissions**

2. The claimant's/petitioner filed submissions dated March 31, 2023 which the honourable court considered in their entirety.

**The respondent's submissions**

3. The respondent's submissions dated March 17, 2023 were also equally considered.
4. The gist of this suit is that the claimant was dismissed from Government and in particular from the Police Force on October 7, 1994. He successfully appealed the dismissal and was reinstated on July 8, 2009. He worked until his retirement on November 24, 2016. His dismissal was lifted and he was reinstated to the force from 7/10/1994.
5. He filed his suit on November 27, 2017. Indeed this is a unique case where claimant was dismissed from employment on October 7, 1994 but was reinstated with effect of the same day and worked until November 2016 when he retired.



6. This is not one of those clear cut cases and it is the view of this honourable court that since the petitioner continued as an employee until November 2016 he cannot be said to have been dismissed in 1994.
7. It is premature to declare the suit is time bared at this point without giving the claimant the benefit of hearing his petition in full. There will be no prejudice suffered by the respondent if he held his horse for a short while and this case be heard in full to ascertain the true picture herein.
8. In the case of *Musa Mwangwa Mwanasi and 9 others v Chief of Kenya Defence Forces & another* Case No 361 of 2015 the court held:

“However that notwithstanding for the purposes of fair trial as provided under article 50 of the Constitution it is expected that one should not advertently delay commencement of a suit such that the other party is compromised and putting a plausible defence. Further in my view any delay must be explained fully for purposes of establishing whether it can be excused by the court and it is the burden of the delaying party in this case the petitioner to put forth a plausible explanation as to why delay should be considered inadvertent.”

9. The court would rather spend a bit of time in considering the suit in its entirety rather than per chance lock out a deserving litigant out of his rights to justice.
10. In that case the court holds the preliminary objection by the respondent is not merited and the suit will proceed to its full hearing. The same is therefore dismissed and costs of this application will be paid by the respondent.
11. Parties are ordered to file all respective pleadings and file the petition for hearing within 60 days from today's date.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4<sup>TH</sup> DAY OF AUGUST 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

