



**Mburu v Inspector General of Police & 2 others (Petition 57 of 2023)
[2023] KEELRC 2488 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2488 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 57 OF 2023
B ONGAYA, J
OCTOBER 17, 2023**

BETWEEN

JOSEPH MWANGI MBURU PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The 1st and 3rd respondents filed the notice of preliminary objection on 09.06.2023 through learned litigation Counsel Vivian Kirina, for the Hon. Attorney General. The 1st & 3rd respondents raised the preliminary objection upon the following grounds:
 - a. That the Court lacks jurisdiction to admit, hear and determine this petition as it has been filed by the claimant outside the statutory limitation period prescribed by Section 4 (1) (a) of the *Limitations of Actions Act*, Cap. 22 Laws of Kenya and Section 3 (2) of the *Public Authorities Limitation Act*, Cap. 39 Laws of Kenya.
 - b. That the Petitioner is circumventing the Employment and Labour Relations Court by relying on the Constitutional provisions having realized that the matter is statute barred under the parent Acts which give effect to Constitutional rights.
 - c. That the Petitioner has not demonstrated with precision how her fundamental rights and freedoms under the *Constitution* have been violated or are threatened and has not produced any evidence to prove the alleged violations contrary to the principles espoused in *Mumo Matemu v Trusted Society of Human Rights Alliance* (2013) eKLR and *Annarita Karimi Njeru* (1979) eKLR.



- d. That the suit is an abuse to the Court process.
 - e. That the suit is incompetent and ought to be struck out with costs.
2. The preliminary objection is against the petition dated 10.01.2023 and is filed through Ngugi, Mwaniki & Company Advocates.
 3. On the 08.05.2023 the court gave directions for the Preliminary Objection to be canvassed by way of written submissions. The parties filed their respective written submissions. The 1st and 3rd respondents filed their submissions in support of the Preliminary Objection on 21.06.2023. The 2nd respondent filed on 31.05.2023 its submissions in support of the 1st and 3rd respondents' Preliminary Objection. The Petitioner filed his submissions dated 10.07.2023 in opposition to the Preliminary Objection.
 4. In their submissions the 1st and 3rd respondents maintain that the petition is time barred and offends the provisions of Section 4 (1) of the Limitations of Actions Act and Section 3 (2) of the Public Authorities Limitations Act, the cause of action having arisen in the year 2019 when the petitioner was terminated from service. The 1st and 3rd respondents relied on the findings in the cases of Mary Kasiwa v Scorpio Enterprises Limited (2013) eKLR, Benjamin Wachira Ndiithi v Public Service Commission & Another (2014) eKLR, Hilarion Mwabolo v Kenya Commercial Bank (2013) eKLR, YH Wholesalers Limited v Kenya Revenue Authority (2021) eKLR, Banking Insurance and Finance Union (K) v Bank of India (2013)eKLR, Beatrice Kabai Adagala v Postal Corporation of Kenya (2015) eKLR where the Courts expressed themselves on the issue of limitation of actions and that claims filed outside the limitation period are statute barred.
 5. The 1st and 3rd respondent further submitted that the Court lacks jurisdiction to extend time and that the petitioner filed this petition to avoid limitation as the matter is time barred. To buttress this argument the 1st and 3rd respondent relied on the findings in the cases of Maxwell Sifuna v Teachers Service Commission (2022) eKLR, Peter Ndegwa Nderitu v Teachers Service Commission (2019) eKLR, Josephat Ndirangu v Henkel Chemicals (EA) Ltd (2013) eKLR and Alphonse Mwangemi Munga & 10 Others v African Safari Club Limited (2008) eKLR.
 6. As a result of the foregoing the 1st and 3rd respondents argued that the Court lacked jurisdiction to admit, hear and determine the petition, the same having been filed outside the mandatory limitation period.
 7. Further, that the Court cannot extend time and ought therefore to down its tools. For emphasis the 1st and 3rd respondent cited the cases of Divecon v Simani (1995 – 1998) EA 48 and Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers v Embakasi Girls Secondary School (2018) where it was held that the Court lacks jurisdiction to grant leave or extend time to file suits in contractual disputes.
 8. It is also argued that the petitioner has failed to demonstrate with precision how his fundamental rights and freedoms under the Constitution have been violated and relied on the principles as espoused in Mumo Matemu v Trusted Society of Human Rights Alliance (2013) eKLR and Annarita Karimi Njeru (1979) eKLR.
 9. The 1st and 3rd respondent urged the Court to find their preliminary objection with merit and to allow it as prayed.
 10. The 2nd respondent urged the Court to find the preliminary objection dated 04.04.2023 with merit and to allow it as prayed. The 2nd respondent's submission is that the petition is an abuse of the court process and urged this Court to dismiss it with costs to the 2nd respondent.



11. The petitioner on the other hand argues that the Court is clothed with the requisite jurisdiction to hear and determine his petition as it arises from the breach of his fundamental rights and freedoms as protected under the Constitution of Kenya, 2010 and relies on the provisions of Article 50 the Constitution .
12. The petitioner further faults the manner in which his hearing was conducted prior to his termination faulting the respondents for failing to comply with the provisions of Section 89 of the National Police Service Act. He contends that the administrative procedure which he was subjected to and culminated in his dismissal from service was unfair, unlawful, unprocedural and that he has a right to approach this Court for the reliefs sought in his petition. To fortify this argument the petitioner relies on the findings in the cases of Joseph Mwenda Mboko v Provisional Police Officer, Central Police & 2 Others (2013) eKLR and Maxwell Onduso v National Police Service & 3 Others (2021) eKLR.
13. The petitioner urged the Court to dismiss the preliminary objection with costs and allow him to proceed and have his day in Court.
14. The Court has considered the petition. The petitioner has not by description or reference to Articles of the Constitution particularized the alleged constitutional violations. The allegations are generalized allegations of violation of rights and freedoms not disclosed in the petition at all. In the circumstances, the Court returns that the petition fails to meet the threshold for a proper constitutional petition. The preliminary objection is upheld in that respect.
15. The preliminary objection on its face and in the submissions made has failed to disclose the specific cause of action and then the prescribed time of limitation that the petitioner may have breached. It is not clear the start date of the running of the time of limitation and then the violated statutory provision on prescribed time of limitation. The Court returns that ground of preliminary objection will collapse.

In conclusion the preliminary objection is upheld upon the ground that the petition has failed to pass the threshold for pleadings in constitutional petitions and the petition is hereby struck out with orders each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS TUESDAY 17TH OCTOBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

