



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

PETITION NUMBER E022 OF 2021

BETWEEN

JOSEPH HERMAN KIMANI.....PETITIONER

VERSUS

TEACHERS SERVICE COMMISSIONRESPONDENT

RULING

1. The Respondent has filed a Notice of Preliminary Objection, on Grounds mainly that the Petition is time-barred and res –judicata.
2. The Petitioner filed a Replying Affidavit sworn on 6th May 2021, denying the that the Petition is time-barred or res-judicata.
3. Parties agreed to have the Preliminary Objection determined on the strength of their Submissions, which were confirmed to be filed and served, at the last mention in Court on 27th October 2021

The Court Finds: -

4. At paragraph 7 of his Supporting Affidavit in the Petition, the Petitioner states that, “ *I was one of many beneficiaries of a Court of Appeal Judgment, being Teachers Service Commission v. Simon P. Kamau & 19 Others, Nakuru Civil Appeal No. 300 of 2009, wherein the Court directed the Respondent to include the salary increment as per the 1997 Agreement in computing retirement benefits of all the Teachers who were affected by the said Agreement, including Teachers who were in service, as of 1st July 1997.*”
5. The Petitioner prays for declaration that his fundamental rights, including right to fair labour practices, have been violated by the Respondent, by the Respondent’s failure to calculate and pay his retirement benefits as ordered in the Court of Appeal decision.
6. With tremendous respect to the Petitioner, his Petition is clearly *res judicata*. There are High Court and Court of Appeal Proceedings, which dealt with the subject matter. He says he was a beneficiary of the Judgment, so it is out of question, whether he was a Party to those proceedings. It is in total abuse of the process of the court, to file a Petition at the E&LRC, asking the E&LRC to provide an avenue for execution of a Judgment or Judgments, rendered elsewhere.
7. Secondly, it is clear that the Petitioner was retired on 21st November 2000, according to his Petition. The cause of action is barred, under the Limitation of Actions Act and alternatively by Section 90 of the Employment Act. There is no reason for the Petitioner to be seeking retirement benefits, under the CBA, 22 years after he retired.
8. If the Petitioner has questions concerning decree or decrees issued in his favour in other Courts, he ought to have those questions answered in the Courts which issued the decree or decrees, under Section 34 of the Civil Procedure Act, and not file this Petition.
9. ***The Petition must be rejected based on the 2 Grounds- res judicata and time-bar- as argued by the Respondent.***
10. The Petitioner ought to join his colleagues at Nakuru, and pursue settlement to the end from there, instead of opening other unlikely avenues for redress.

IT IS ORDERED: -

a. The Preliminary Objection is upheld and the Petition declined.

b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 15TH DAY OF FEBRUARY 2022.

JAMES RIKA

JUDGE