



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT MERU**

**ELRC PETITION NO.8 OF 2019**

***(Before D.K.N.Marete)***

**MOHAMMED HUKA & 55 OTHERS.....PETITIONERS**

**VERSUS**

**THE COUNTY GOVERNMENT OF ISIOLO.....RESPONDENT**

**J U D G M E N T**

This matter was originated vide a Petition dated 3rd October, 2019. It does not disclose any issue in dispute on its face.

The Respondent in a Response to Petition dated 20th March, 2020 denies the petition and prays that the same be dismissed with costs.

The Petitioners' case is that they were legally employed by the Respondent at Buffalo Springs/Shaba National Reserve on different terms of service/contracts all of which are now relieved on completion/expiry of such terms.

It is the Petitioner's further case that in the duration of their respective employments, most of them being game rangers, they were entitled to their respective annual leaves based on s.22 of the Collective Bargaining Agreement No.14 of 2018 setting out the terms on leave.

The Petitioners avers that the claim for commutation for leave and overtime have been denied even with the intervention of their Union.

They pray as follows;

- i) A declaration that the petitioners are legally entitled to payment in lieu of annual leaves not taken, gratuity and overtime accumulated during the time of their respective employments illegally held on to by the respondent pursuant to the terms set out in the Collective Bargaining Agreement.*
- ii) An order for payment of moneys accumulated over a span of over 25 years in lieu of annual leaves not taken by the petitioners on different years as well as gratuity and overtime over the same duration to the petitioners by the respondents in accordance with the Collective Bargaining Agreement 2013 and the Employment Act 2007.*
- iii) That this honorable court do make such consequential orders, issue such writs and directions as it deems fit and appropriate directing the respondents to pay to the petitioners all accumulated moneys in lieu of leave, together with gratuity and any and all overtime by the petitioners for the duration of their employments.*
- iv) Costs of this petition and any other order(s) that this Honourable court shall deem fit to grant.*

The Respondents case is *in toto* a denial of the petition.

It is her case that it has neither engaged the Petitioners in any form of employment and neither has she remunerated them. Again, the petition is hazy, vague and is not disclosive of the petitioners' breach of their rights.

The Respondent further brings out a case and defence of time bar and wishes to rely on this. This is as follows;

- 8. The respondent further contends that the petition is statutory time barred and shall raise an objection to have the same struck*

out on that ground.

The issues for determination therefore are;

1. Whether the Petition is time barred?
2. Whether this court has jurisdiction to entertain the petition?
3. Whether the petitioners have proven their claims to the required standard of Law?
4. Whether the petitioners are entitled to the relief sought?
5. Who bears the costs of this cause?

The 1st issue for determination is whether the Petition is time barred. The respondents raised this as a defence.

The Respondents submissions cite and rely on paragraph 23 and 26 of the petition which come out as follows;

*“Paragraph 23: in January 1996, the petitioners did not go on their respective annual leaves as provided for by the agreement for reasons given by the respondent as insecurity at the reserve due to attacks on tourists and poaching.*

*26: This trend however continued with the respondents withholding the leave days entitled to the petitioners every year between the years of 1996 to date.”*

This claim and petition is therefore time barred by virtue of section 4 of the Limitations of Actions Act and Section 90 of the Employment Act, 2007 both which provide 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;*
- b) Actions to enforce a recognizance;*
- c) Actions to enforce an award;*
- d) Actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;*
- e) Actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.*

*(2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: provided that an action for libel or slander may not be brought after the end of twelve months from such date.*

*(3) An action for an account may not be brought in respect of any matter which arose more than six years before the commencement of the action.*

*(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.*

*(5) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of a written law may not be brought after the end of two years from the date on which the cause of action accrued.*

*(6) This section does not apply to a cause of action within the Admiralty jurisdiction of the court which is enforceable in rem, except that subsection (1) of this section applies to an action to recover seamen's wages.*

Further,

Section 90 of the Employment Act, 2007 provides thus;

*“Notwithstanding the provisions section 4 (1) of (cap.22) no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage with twelve months next after the cessation thereof.”*

The Petitioners therefore ought to have filed their claims within 3 years from 1996 when the same were purportedly not paid. This petition therefore fails on this and this ground alone.

The petition as set out is statutory barred. It is not compliant with the provisions of the statutes on time and therefore must fail.

On the above finding, all other issues for determination fall by the way side.

I am therefore inclined to dismiss the petition with orders that parties bear their costs of the same.

**Dated and delivered at Nyeri this 9th day of March, 2022.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr.Ashambo instructed by Mutuma Gichuru & Associates Advocates for the Petitioners.
2. Mr. Ken Muriuki instructed by Mbogo and Muriuki Advocates for the Respondents.