



REPUBLIC OF KENYA



Jillo v National Police Service Commission & 2 others (Cause 827 of 2016) [2022] KEELRC 90 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELRC 90 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 827 OF 2016
SC RUTTO, J
APRIL 28, 2022

BETWEEN

RICHARD RAMATTA JILLO CLAIMANT

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Claimant avers that he was wrongfully dismissed from employment hence has through the instant suit, sought various reliefs including reinstatement.
2. The Claim was opposed by the respondents who averred that the Claimant's dismissal was not wrongful as alleged.
3. Subsequent to filing the Response to Claim, the 1st Respondent filed Grounds of Objection dated 21st August, 2019 and through which it urged the Court to dismiss the suit on the basis that: -
 - i. The entire suit is time barred.
 - ii. The suit against the 1st Respondent is misconceived and an abuse of the court process since it lacks the mandate to review disciplinary cases concluded prior to its establishment.
 - iii. The Order of reinstatement is untenable.
4. On 1st December, 2021, the parties agreed to dispose off the matter by way of written submissions.



Submissions

5. The Respondents submitted that by virtue of section 90 of the *Employment Act* and section 3(2) of the *Public Authorities Limitations Act*, the matter ought to have been instituted within three years. That despite the ongoing criminal case, the Claimant was at liberty to institute the claim. Reliance was placed on several authorities including *Benjamin Wichita Ndiithi vs Public Service Commission and another* (2014) eKLR, *Beatrice Kabai Adagala vs Postal Corporation of Kenya* (2015) eKLR, *Josephat Ndirangu vs Henkel Chemicals (EA) Ltd* (2013) eKLR, *Joyce Wanjiku Muchiko & another vs Telkom (K) Limited*.
6. The Claimant submitted that the provisions of the Employment Act, including the Limitation of Action clause, does not apply to the present proceedings. Therefore, the Claim is not time barred by virtue of the foregoing provision. The Claimant placed reliance on the case of *Euticus Guantai Nkunja vs National Police Service Commission & 2 others* [2017] eKLR.
7. He further submitted that the case should proceed on its own merit and not be determined in a summary manner as proposed by the 1st Respondent. The cases of *Ternic Enterprises Limited vs Waterfront Outlets Limited* [2018] eKLR and *Wilmot Mwadilo, Edwin Mwakaya, Amos Nyatta & Patrick Mbinga vs Eliud Timothy Mwamunga & Sagalla Ranchers Limited* [2017] eKLR were cited.

Analysis and determination

8. The sole issue for determination at this juncture, is whether the suit is time barred. From the record, the Claimant was dismissed from employment on 27th January, 2010 whereas the matter was filed on 12th May, 2016. This was about six (6) years four (4) months after the dismissal.
9. Section 90 of the Employment Act provides that: -

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (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 within twelve months next after the cessation thereof.”
10. The Claimant has stated that the provisions of section the Employment Act are not applicable in the matter. Be that as it may, the same cannot be said of the Public Authorities Limitations Act, which provides for the limitation period of proceedings against the Government or a local authority. Section 2 goes ahead to provide that: -

“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.”
11. It is not in doubt that the 1st and 2nd Respondents are government departments while the 3rd Respondent is the Attorney General. 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.”



12. 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.
13. In defining what constitutes a cause of action, the Court of Appeal in the case *Attorney General & another vs Andrew Maina Gitinji & 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.”
14. To this end, 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 27th January, 2010.
15. In light of the provisions of section 3(2) of the *Public Authorities Limitations Act*, time for filing the instant suit started running from 27th January, 2010 until 26th January, 2013. Thereafter, the matter was time barred and no action based on the employment contract could be sustained.
16. On this score, I will adopt and reiterate the decision of the Court of Appeal in the case of *Andrew Maina Gitinji* case (supra), thus: -

“ The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 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 2nd February, 2010 and that the claim was filed on 16th June, 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 1st February, 2013, and I so hold.”
17. In the circumstances, I find and hold that the claim herein is time barred having been brought three years past the date the cause of action arose. As such, and in following with the holding in the case of *Thuranira Karauri vs Agnes Ncheche* [1997] eKLR, where it was found that the issue of limitation goes to the jurisdiction, it is this Court’s finding that it lacks jurisdiction to entertain the instant suit.
18. To this end, there can only be one consequence, and that is to strike out the suit dated 9th May, 2016, for being time barred.
19. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Mr. Onyango for the Claimant

Mr. Kioko for the Respondent

Court Assistant Barille Sora

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

