



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E110 OF 2021

BETWEEN

JULIUS OKARI JACKSON.....PETITIONER

VERSUS

1. NATIONAL POLICE SERVICE COMMISSION

2. INSPECTOR-GENERAL OF NATIONAL POLICE SERVICE

3. DEPUTY INSPECTOR-GENERAL OF KENYA POLICE

4. THE HON. ATTORNEY-GENERAL.....RESPONDENTS

RULING

1. The Petitioner was enlisted in then Kenya Police Force as a Constable, on 15th September 1984.
2. He was charged in Principal Magistrate's Court at Eldoret, Criminal Case No. 130 of 1990, with the offence of stealing goods in transit.
3. He was found to have no case to answer and was acquitted on 4th March 1992.
4. He was removed from the Force with effect from 5th September 1992. He cleared with his Employer, returned his Certificate of Appointment, which was physically destroyed by his Station OCPD. He subsequently made numerous appeals to the Commissioner of Police for reinstatement, which yielded no success.
5. Many years later, on 9th July 2021, the Petitioner filed this Petition, asking the Court to declare that his removal from the Force, based on the charges at the criminal trial and without the benefit of orderly room proceedings, violated his rights under the Constitution of Kenya and the Employment Act; that he is reinstated without loss of benefits and back- salary and allowances calculated at Kshs. 13,447,535; he is paid general damages for constitutional violation; costs; interest; and any other suitable remedy.
6. The 1st Respondent filed a Notice of Preliminary Objection dated 28th July 2021, submitting that the Petition is time-barred; the 1st Respondent does not have the mandate to re-open matters that were dealt with by its predecessor; the Petitioner has not demonstrated how his constitutional rights have been infringed; and the Petition is misinformed and an abuse of the process of the Court.
7. The 2nd, 3rd and 4th Respondents filed their Notice of Preliminary Objection dated 30th July 2021. They too submit that the Petition is time-barred; the Petitioner is circumventing the Employment Act and the Labour Relations Act, by relying on the Constitution; the Petition is in abuse of the process of the Court; and the Petition ought to be struck out.
8. The Respondents submit that the Petition offends statutory time-limits under Section 4 of the Limitation of Actions Act, and Section 90 of the Employment Act. Relying on *Mombasa Industrial Court Petition No. 1 of 2013* [Parties not named]; *Nairobi Industrial Court Petition No. 19 of 2014*, *John Miriti Mbarire v. Attorney- General* [[2014] e-KLR; and Court of Appeal at Mombasa, *Gabriel Mutava & 2 Others v. Managing Director Kenya Ports Authority* [2016] e-KLR, the Respondents submit that constitutional rights are given effect by various legislations, and the primary legislations should not be circumvented, by seeking to rely directly of constitutional provisions.
9. The Petitioner submits that the Preliminary Objection is premature as limitation of time, can only be ascertained through tendering of evidence. Only through trial can it be established, when the cause of action arose. He concedes that he was removed in 1992, but that he

subsequently lodged appeals, which were not dealt with conclusively. He lastly wrote a letter of reminder to the 1st Respondent on 24th September 2020, who promised to look into the Petitioner's grievance. He appears to suggest that his cause of action arose in the year 2020.

10. Parties confirmed filing and exchange of their Submissions on 28th January 2022. Ruling was scheduled for 6th April 2022, which unfortunately coincided with the Annual Judges' Conference.

The Court Finds: -

11. The Petitioner was discharged in 1992. He cleared with the Police Force, returned his Certificate of Appointment, which was shredded by his OCPD at his Eldoret Station.

12. His criminal trial wound up in 1992.

13. He appealed severally against his removal. He asked for reinstatement from the Commissioner of Police, unsuccessfully.

14. He slumbered on his rights for far too long. He is caught up in the mandatory statutory time-limits, applicable to his cause and the remedies sought. It has been established in judicial authorities such as those invoked by the Respondents at paragraph 8 of this Ruling, that the requirements of the primary legislation applicable to a dispute, cannot be circumvented by resort to constitutional provisions. The Petitioner for instance seeks the remedy of reinstatement. The remedy is regulated under the Employment Act and the Employment and Labour Relations Court Act. The Court is guided by the law, reasonableness and practicability in considering the remedy. The Petitioner left employment in 1992, which is 30 years ago. He was 31 years when he left. Is he to be reinstated at the age of 61? Is he to be paid salary for a period of 30 years, from public coffers, when he has not rendered to the public, any form of *utumishi kwa wote*? He appealed on 19th June 2003, and wrote a reminder 7 years later, on 24th September 2020, before filing this Petition on 9th July 2021. Why would he be writing a reminder, 7 years later?

15. The Constitution cannot be invoked to make lawful, reasonable and practicable, that which legislation deems unlawful, unreasonable and impracticable.

16. The pleadings and the documents filed by the Petitioner are clear on the significant dates, and on the date the cause of action arose. They need not be elaborated through a full trial. They speak for themselves.

17. The Petition is time-barred. The Petitioner took too long, even as he claims to have been pursuing internal dispute resolution mechanisms. It has been held by the Court of Appeal in *Rift Valley Railways [Kenya] Limited v. Hawkins Wagunza Musonye & Another [2016] e-KLR*, that internal dispute resolution mechanisms, do not stop time for initiation of claims, from running. Why did not the Petitioner approach the Court in 30 years? Time was not frozen by the numerous appeals made by the Petitioner to his Employer for reinstatement.

IT IS ORDERED: -

a. Preliminary Objection by the Respondents is upheld.

b. The Petition is declined with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF APRIL 2022.

James Rika

Judge