



**Mokaya v National Police Service & 2 others (Petition E018 of 2021)  
[2022] KEELRC 13338 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13338 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E018 OF 2021  
J RIKA, J  
NOVEMBER 30, 2022**

**BETWEEN**

**JACKLINE PAMELA MOKEIRA MOKAYA ..... PETITIONER**

**AND**

**NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR-GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY-GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Petitioner was employed as a Policewoman, on 5<sup>th</sup> February 2009.
2. She was on 10<sup>th</sup> January 2011, charged with the offence of engagement in an act prejudicial to good order and discipline, and was subjected to orderly room proceedings, leading to summary dismissal on the same date.
3. She was then charged at the Principal Magistrate’s Court at Kikuyu, with the offence of aiding a Prisoner to escape contrary to the Penal Code. She was working as a Court Orderly at Principal Magistrate’s Court Tigoni, when Prisoners escaped.
4. She was acquitted on 27<sup>th</sup> July 2014.
5. She avers that after acquittal, she tried pursuing an Appeal against her summary dismissal. She sought to be reinstated to Police Service.
6. It was not until 26<sup>th</sup> October 2021, that the Chief Executive Officer of the National Police Service Commission, wrote to the Petitioner’s Advocates advising that the Petitioner’s Appeal was disallowed, and summary dismissal sustained.



7. The decision dismissing the Appeal, the letter says, was conveyed to the Inspector-General of Police for implementation and communication.
8. Against this background, the Petitioner approached the Court through her Petition, seeking orders of reinstatement or payment of salaries in arrears from the date of summary dismissal.
9. The Respondents have filed a Notice of Preliminary Objection, based on limitation of time. It is the Respondents' position that the Petition is time-barred under Section 90 of the *Employment Act*, 2007. The Court lacks jurisdiction. In their Submissions dated 10<sup>th</sup> June 2022, the Respondents invoke also section 3[2] of the *Public Authorities Limitations Act*. They submit that this provision, similarly time-bars the Petition, divesting the Court of jurisdiction. They invoke various decisions of Superior Courts, among them, *Mary Wambui Munene v. Peter Gichuki Kingara & 6 others* Sup. Ct Petition No.7 of 2013; [2014] e-KLR; and Court of Appeal of Kenya in *Divecon v. Samani* [1995-1998] EA 48, where it was held that the question of jurisdiction is a pure point of law, and should be resolved on a priority basis, and that Courts cannot extend time to confer on themselves jurisdiction not given by the law.
10. The Petitioner concedes that dismissal took place in 2011, but that, the Respondents have failed to take into account events taking place, after her dismissal, and the time she presented the Petition.
11. Specifically, she states that she filed an Appeal against summary dismissal. There was no action taken by the Respondents which was communicated to her, concerning the Appeal. She wrote several letters to the Respondents. On 3<sup>rd</sup> December 2020, the 1<sup>st</sup> Respondent wrote back, promising to give a comprehensive answer on the Appeal. On 26<sup>th</sup> October 2021, the Claimant received communication from the Respondents, advising that the Appeal had been disallowed. The Petitioner prays the Court to reject the Preliminary Objection, and hear the Petition on merit.
12. Parties adopted their Documents and Submissions on record, in canvassing the Application.

**The Court Finds : -**

13. The Petitioner was summarily dismissed after orderly room proceedings, on 10<sup>th</sup> January 2011.
14. Her letter of Appeal, which is not disputed by the Respondents, is dated 26<sup>th</sup> January 2011.
15. There is no response to this letter on record.
16. The Claimant wrote other letters and continued to defend criminal proceedings initiated against her, which culminated in her acquittal, on 24<sup>th</sup> July 2014.
17. She wrote other letters to the Respondents subsequently, seeking the decision on her Appeal, and asking to be reinstated.
18. It was not until 26<sup>th</sup> October 2021, that the 1<sup>st</sup> Respondent wrote to the Petitioner, informing her that her Appeal was conclusively dealt with; that the Appeal was disallowed and summary dismissal upheld; and that the decision was subsequently conveyed to the 2<sup>nd</sup> Respondent, for implementation and communication.
19. The 1<sup>st</sup> Respondent does not say when the Appeal was conclusively dealt with; there is no record showing that the Appeal was conclusively dealt with; there is no letter conveying the decision to the 2<sup>nd</sup> Respondent; and there is no evidence that the decision was communicated to the Petitioner. There is no date given, when the 2<sup>nd</sup> Respondent communicated to the Petitioner, and when the Petitioner received the communication.



20. The decision of the Respondents, declining the Appeal filed by the Petitioner, became known to the Petitioner, on 26<sup>th</sup> October 2021.
21. Termination of employment becomes effective when the Employee receives the letter or notice terminating service or employment.
22. There is no record earlier than 26<sup>th</sup> October 2021, showing the Appeal had been disallowed, and termination sustained. The Effective Date of Termination [EDT], is the date the Employee is informed, that her/his contract has been terminated.
23. Having informed the Claimant that her Appeal was unsuccessful on 26<sup>th</sup> October 2021, the Respondents cannot succeed in their Preliminary Objection. They did not resolve the Appeal, and inform the Petitioner of its resolution, any time before 26<sup>th</sup> October 2021. She would not invoke the jurisdiction of the Court, until she was freed by the Respondents to do so.

**It Is Ordered : -**

- a. The Preliminary Objection is declined.
- b. The Respondents shall file their substantive Response to the Petition within 21 days of this Ruling.
- c. Parties shall thereafter move the Court, on hearing and disposal of the Petition.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30<sup>TH</sup> DAY OF NOVEMBER 2022.**

**JAMES RIKA**

**JUDGE**

