



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E047 OF 2020

BETWEEN

ALICE NJAMBI MUTURA.....PETITIONER

VERSUS

1. PRINCIPAL SECRETARY, MINISTRY OF HEALTH

2. THE HON. ATTORNEY- GENERAL.....RESPONDENTS

RULING

1. The Petitioner filed her Petition on 19th September 2020. She was employed by the Ministry of Health on 10th January 1989 as a Nurse.
2. She received a letter dated 5th May 2017 from the 1st Respondent, alleging that she had not been on duty, since 3rd January 2017.
3. She explained that she was kept away by illness.
4. She received a letter from the 1st Respondent, dated 5th December 2017, dismissing her with effect from 3rd January 2017.
5. She filed this Petition seeking various declaratory orders under the Constitution of Kenya, and seeking in main, reinstatement.
6. The Respondents filed a Notice of Preliminary Objection, stating that the Petitioner's cause of action is time-barred under Section 90 of the Employment Act, which places a time-bar of 3 years from the date of termination, on causes brought under contracts of employment regulated by the Employment Act 2007. It is submitted by the Respondents, that the Petition is an ordinary Claim, which is made as a Petition, with the intention of circumventing the time-bar, under Section 90 of the Employment Act.

The Court Finds: -

7. There is no agreement on relevant dates.
8. The Petitioner submits that the Petition was filed on 8th September 2020. The Respondent submits that the Petition was filed on 11th November 2020. The stamp of the Court on receiving the Petition, indicates the filing date as 19th September 2020.
9. The Petitioner states she received a letter dated 5th December 2017, dismissing her with effect from 3rd January 2017. She has not exhibited the letter of dismissal in her Petition.
10. If indeed she received the letter on 5th December 2017, her contract of employment would be deemed to have been terminated on the date she received communication about termination - 5th December 2017. It cannot have been January 2017. Termination does not take effect until the letter, or notice of termination is in the hands of the Employee. It cannot be retroactive. The Petitioner could not have taken any action in January 2017, without knowledge of the decision to terminate her contract.
11. The Respondents have not disputed the date their letter of dismissal was received by the Petitioner.
12. The Petition does not appear to the Court to be time-barred. The letter of dismissal having been received by the Petitioner in December

2017, the cause of action was alive and well on any date suggested to be the filing date- 8th September 2020, 19th September 2020 or even 11th November 2020. ***IT IS ORDERED:*** -

a. The Preliminary Objection is rejected.

b. Costs in the cause.

DATED AND SIGNED AT CHAKA, NYERI COUNTY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9TH DAY OF APRIL 2021

JAMES RIKA

JUDGE