



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**CAUSE NUMBER E483 OF 2020**

**BETWEEN**

**JOHN WATHIGO KARANJA .....CLAIMANT**

**VERSUS**

- 1. NAIROBI CITY COUNTY**
- 2. PUBLIC SERVICE BOARD**
- 3. PUBLIC SERVICE COMMISSION..... RESPONDENTS**

**RULING**

1. The Claimant was retired in the public interest with effect from 1<sup>st</sup> April 2011. The letter communicating the decision is dated 10<sup>th</sup> December 2015.
2. He was facing charges in Court relating to stealing by servant. He was acquitted by the Trial Court on 14<sup>th</sup> March 2014. Upon acquittal he wrote to the Respondents demanding to be returned to work. His position was that the Trial Court cleared him over the allegations which led to adverse action against him, taken by the Respondents at the workplace.
3. The Respondents did not agree with his position. They issued notice of intention to retire the Claimant on grounds of public interest on 5<sup>th</sup> May 2015. He was required to make representations showing why he should not be retired. He did so on 25<sup>th</sup> May 2015. He was advised he had been retired, through the letter dated 10<sup>th</sup> December 2015.
4. He filed his Statement of Claim on 8<sup>th</sup> September 2020. He seeks orders for payment of arrears of salaries and compensation for unfair termination from the Respondents.
5. The Respondents have raised a point of preliminary objection based on Section 90 of the Employment Act, which places a limitation of 3 years on filing of employment claims, from the date the cause of action arises.

**The Court Finds:** -

6. The Claim is clearly time-barred. There are decisions of the Court of Appeal such as *Hawkins Wagonza Musonye v. Rift Valley Railways [ 2015] e-KLR*, where it was held that the Court would be applying judicial craft and innovation, by extending the period prescribed under Section 90. This is a jurisdictional law, and the Court cannot extend its own jurisdiction. It was the position of the Court of Appeal, that time is not frozen, for the period a Party may be required to exhaust internal appeal mechanisms and other alternative dispute resolution mechanisms, such as permeate the employment and labour relations field. The Claimant herein states he lodged an appeal with the 2<sup>nd</sup> Respondent which he claims was not expedited. The prevailing law as stated by the Court of Appeal, is that time does not stop running by dint of resort to alternative dispute resolution mechanisms. In this dispute 3 years started running at the latest on 10<sup>th</sup> December 2015 when the Claimant was made aware that he had been retired in the public interest. He ought to have filed his Claim by 10<sup>th</sup> December 2018. He only approached the Court on 8<sup>th</sup> September 2020, almost 5 years after the letter of 10<sup>th</sup> December 2015. Relying on the decision of the Court of Appeal above, the Court would allow the preliminary objection. The Court does not have temporal jurisdiction to hear this Claim.

IT IS ORDERED: -

*a. The Claim is declined under Section 90 of the Employment Act, 2007.*

*b. No order on the costs.*

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 22ND DAY OF OCTOBER 2021.**

**JAMES RIKA**

**JUDGE**