



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NUMBER 524 OF 2014

BENSON MOMAI MONGAL.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL....RESPONDENT

JUDGEMENT

1. The claimant herein pleaded that he was dismissed from public service on 12th May, 2010 on account of desertion of duty and asked to appeal to the to the Public Service Commission if he was dissatisfied with the dismissal. He appealed as advised but the PSC disallowed his appeal. According to the claimant the dismissal on account of desertion was never proved against him and the hearing of his appeal went against the principles of natural justice and was therefore unlawful.

2. The respondent pleaded that the claim as filed was statute barred since it offended the provisions of Public Authority Limitation Act. The respondent further pleaded that the claimant's service was procedurally and lawfully terminated and that he was well informed of the decision to dismiss him and was also informed of his right of appeal to Public Service Commission.

3. According to the respondent the claimant was dismissed for absconding duties and his salary stopped with effect from 1st August, 2009 following report from Land Registrar Rachuonyo District Lands Office that the claimant reported to Rachuonyo District Lands Office on transfer but went back to his former station in Trans-Nzoia District. The claimant also failed to hand over West Pokot Lands Control Board Office where he was seconded as Secretary.

4. The respondent in its memorandum of response stated as above that the claim herein was statute barred under Public Authority Limitations Act. The question of limitation is a matter that goes to the jurisdiction of the Court hence must be determined first. If found to be true the court cannot proceed further.

5. In this particular case, the claimant concedes that he was dismissed on 12th May, 2010. This suit was filed on 1st July, 2014 more than three years stipulated under section 3 of the Public Authorities Limitation Act. Section 3(2) of the Act provides that 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. The section is couched in mandatory terms and no provision is made for extension of time once the same has lapsed.

6. The above being the case here, the court has no choice but to down its tools and not proceed further. The suit is therefore dismissed with statute barred.

7. It is so ordered.

Dated at Nairobi this 31st day of May, 2019

Abuodha J. N.

Judge

Delivered this 31st day of May, 2019

Maureen Onyango

Principal Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.