



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION 68 OF 2018

SIMON WAMBUA MUKULA.....PETITIONER

VERSUS

INSPECTOR GENERAL.....1ST RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. By a notice of preliminary objection filed on 4th February, 2019 the 1st and 3rd respondents contended that the cause of action herein having accrued on 24th January, 2003 and the petition herein filed on 3rd August, 2017 the same was statute barred under Limitation of Actions Act and or Employment Act.
2. According to the respondents the petitioner was released from service on 24th January, 2003. The petitioner had not explained why he did not move the court for appropriate remedy within the time stipulated.
3. The respondents further submitted that the petitioner has circumvented the Employment Act by filing the present petition. According to counsel the petitioner was under the notion that there was no limitation on violations of fundamental rights under the constitution and is using the same to bring the present petition. Counsel relied on the case of Mombasa Pet No. 1 of 2013 Josephat Ndirangu Vs Henkel Chemicals 2013 eKLR where Radido J held that primary legislation should not be circumvented by seeking to rely directly on constitutional provision
4. The Petitioner on the other hand submitted that the petitioner brought the petition as a matter of personal inters under article 22 and 258 of the Constitution alleging violation of his rights under article 23 of the Constitution. According to the Petitioner there was no statutory period prescribed for commencement of petitions under article 22 of the Constitution.
5. The facts on which the petition is based is among others that the petitioner underwent a riding course where he qualified as police rider and worked tirelessly until he was dismissed in 2003. According to him the dismissal violated the rules of natural justice as he was never given opportunity to call his witness and was not allowed to give evidence in support of his case. Further the witnesses called against him gave hearsay evidence. According to the petitioner he appealed against the dismissal but his appeal was never responded to.
6. On 27th August, 2008 the Petitioner wrote a letter to the Commissioner of Police, the Nairobi Traffic Commandant and Thika Base Commander complaining against the non-response to his appeal filed on 30th January, 2003 but no response was received.
7. On 29th April, 2013 the petitioner wrote a further letter to the National Police Service Commission raising the issue of the appeal. On 19th November, the petitioner once wrote a letter to Inspector General of Police informing him about the appeal but was told his personal files were destroyed.
8. The petitioner has in the petition not demonstrated what prevented him from moving the court earlier. Nothing in the law save for an order of stay of suit prevents a party from concurrently with an internal appeal process from filing a claim or petition. Further in the petition the claimant has not come out clear on the facts leading to his dismissal. He was more focused on the fact that his dismissal contravened rules of natural justice in that he was never allowed to call witnesses and that the witnesses against him gave hearsay evidence.
9. It is settled rule of constitutional petitions that a party claiming his rights under the constitution have been violated or threatened with violation must succinctly show which constitutional right has been or threatened with violation and in what manner. It is not enough to make broad allegations on violation of rights under the constitution.

10. As observed by my brother and sister judges in matters of similar nature, the constitution creates broad rights and these rights are operationalized through legislation. For instance article 41 which concerns fair labour practices has been significantly operationalized through several labour laws including Employment Act, Labour Relations Act and so on. Therefore where a dispute can be adequately addressed by a statute enacted pursuant to the constitution, it would not be right to approach the same through a constitutional petition.

11. In the circumstances the court is in agreement with the respondents that the filing of the instant petition was intended to circumnavigate the Law of Limitation which could have otherwise prevented the filing of an ordinary suit. The Court therefore finds the objection merited and allows the same.

12. The petition is consequently struck out with no orders to costs.

13. It is ordered.

Dated at Nairobi this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

Delivered this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge