



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 142 OF 2014

TANAT SIYAD TUBE.....CLAIMANT

- VERSUS -

THE ATTORNEY GENERAL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th July, 2018)

RULING

The claimant filed the memorandum of claim on 16.01.2014 through Agina & Associates Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the pre-Court Martial detention in Prison was unlawful, illegal and violated section 72 (1) & (2) of the AFA Cap. 199 and the Constitution of Kenya 1969.
- b) A declaration that his brutal capture by KAR personnel, detention and purported trial were illegal, null and void.
- c) A declaration that the cruel, inhumane and degrading treatment meted to the petitioner violated sections 6, 30, 31 and 32 of the Prison Act, AFA Chapter 199 sections 48, 61, 63, 65, 77(2) (a), 72 of the Laws of Kenya, and section 74(1) of the Constitution of Kenya 1969.
- d) General damages consequential to the declaration of violation of fundamental rights and freedoms of the petitioner in prayers 1, 2, & 3 above as may be asserted by the Court.
- e) Aggravated or exemplary damages for the arbitrary, oppressive conduct of KAR and Prison staff of the Government of Kenya towards the petitioner.
- f) Costs of the petition.
- g) Interest inherent on all monetary awards.

The memorandum of claim was titled in the matter of the Constitution of Kenya 1969; and in the matter of the Armed Forces Act, Chapter 199 of the Laws of Kenya.

The claimant has pleaded thus, “**3.The claimant was a Serviceman of the Kenya Air Force as on 1st August, 1982 based at Eastleigh Kenya Air Force Base in Nairobi, Kenya Army Personnel forcibly entered the said base and he surrendered to them under the threat of instant extrajudicial execution.**” The claimant then proceeds to plead the details about the alleged torture, cruel, inhumane, and degrading treatment he says was visited upon him.

The respondent filed a memorandum of appearance on 19.02.2014 praying the suit be dismissed with costs.

The respondent also filed the preliminary objection on 27.06.2018 through Henry Mugiira, State Counsel, for Attorney General and upon the following grounds:

- a) The Employment and Labour Relations Court of Kenya by dint of Article 165(3) (b) of the Constitution of Kenya 2010 and section 12 of the Employment and Labour Relations Court Act of 2011 lacks jurisdiction to hear the claim.
- b) The action is time barred by virtue of section 3(1) of the Public Authorities Limitation Act and Section 4(1) (a) of the Limitation

of Actions Act, (Cap.22 of the Laws of Kenya).

c) No leave has been sought to bring the claim 30 years after the cause of action accrued.

d) The claim is based on a repealed law.

It is submitted for the respondent that the claim has absolutely nothing to do with “**employment and labour**” and as such the Court lacks jurisdiction. The Court has perused the memorandum of claim and indeed there is no claim or prayer that fits the case in the known jurisdiction of the Court as urged in ground (a) of the preliminary objection.

It is the respondent’s case that the case ought to have been filed at the High Court and this Court agrees accordingly. The Court finds that as submitted, the matter falls outside its jurisdiction.

Considering the matters in issue and towards ends of justice, the Court finds that it will be fair that the matter be transferred to the High Court Constitutional Division for consideration of the other grounds in the preliminary objection and for further orders that will serve ends of justice.

In conclusion, the preliminary objection filed for the respondent is hereby determined with orders as follows:

a) The deputy registrar to cause the Court file herein to be transferred within 7 days to the High Court Constitutional Division at Nairobi for mention before the Presiding Judge on a convenient date to be fixed by the parties at the registry and for further directions on the hearing and determination of the suit.

b) The costs to be in the cause.

Signed, dated and delivered in court at Nairobi this Friday 20th July, 2018.

BYRAM ONGAYA

JUDGE