



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 31 OF 2018

(Before Hon. Justice Mathews N. Nduma)

VASIYA NAHASHON INDIMULIPETITIONER

VERSUS

TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

IBRAHIM WALINGO.....2ND RESPONDENT

RULING

1. The Petitioner was dismissed from employment and removed from the register of teachers on 24th February, 1997 on grounds of having carnal knowledge of his standard six (6) pupil which resulted into pregnancy. The dismissal followed charges made against the petitioner; interdiction on 27th July, 1996 and a disciplinary hearing held on 24th February, 1997.
2. The decision by the Respondent was communicated to the Petitioner on 6th November, 1997.
3. The Petition dated 16th March, 2018 was filed in court on 21st March, 2018, over 21 years after the cause of action arose.
4. In terms of section 4(1) of the Limitation of Action, Act Cap 22 Laws of Kenya;

“The following actions may not be brought after the end of six years from the date of which the cause of action accrued:-

(a) actions founded on contract;

(b) actions to enforce a recognizance;

(c) actions to enforce an award;

(d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”

5. This suit, disguised as a constitutional petition is founded on the termination.
6. In the present case, counsel for the Respondent Oyucho Timon, filed a notice of preliminary objection dated 30th April, 2018 on 7th May, 2018. The Respondent filed submissions on the Preliminary objection on 7th May, 2018. The Petitioner filed submissions on the preliminary objection dated 6th June, 2018 on 11th June, 2018.
7. Having considered the Preliminary Objection to the Petition as filed together with the submissions filed, I am of the conclusive opinion that the suit as filed is based on the termination of a contract of service between the Petitioner and the Respondent on 24th February, 1997 on allegation of sexual misconduct by the Petitioner against his female student.
8. The dismissal followed a disciplinary hearing held on 24th February, 1997 and the decision to dismiss the Petitioner communicated to him

on 6th November, 1997.

9. In **Thuranira Karauri v Agnes Ncheche [1997]eKLR**, the Court of Appeal held;

“As the issue of limitation goes to jurisdiction we shall deal with it first. We do not understand how the judge could proceed with the trial without finally determining such as important point of jurisdiction. the defence stood, and the plaintiff should have been non-suited forever. This finding alone is sufficient to dispose of the appeal.”

10. The Civil Claim instituted by the Petitioner after expiry of 21 years is statutory barred. It is a gross abuse of the court process. The Petitioner is non-suited and the court lacks jurisdiction to entertain this Petition and the same is dismissed with costs.

Ruling Dated, Signed and delivered this 20th day of September, 2018

Mathews N. Nduma

Judge

Appearances

Oyuchio Timon Advocate for the Respondent/Objector

Momanyi Manyoni & Co. Advocates for the Petitioner

Chrispo – Court Clerk