

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 1116 OF 2012

LENPIKE MUTUNGA KIOKO.....CLAIMANT

VERSUS

THE PRINCIPAL SECRETARY MINISTRY OF HEALTH.....1ST RESPONDENT

THE PUBLIC SERVICE COMMISSION.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The respondent raised as preliminary as objection that the claimant's suit is statute barred. According to Mr Odukenya for the respondent, the claimant was dismissed in 1996 when he failed to resume duties after the end of his unpaid leave. Yet this suit was filed on 28th July (nine years later).

2. Mr Odukenya however curiously submitted that in January 2000 the claimant applied for reinstatement which was allowed pending investigations for gross misconduct due to desertion from duty. The claimant reported to work on 3rd March, 2000 and on 15th June, 2001 he was issued with a show cause letter for being absent from duty without permission. On 1st August, 2001 the claimant submitted his defence which was considered but disallowed by the Permanent Secretary. The claimant was consequently dismissed on 4th April, 2002. He appealed against the dismissal to the Secretary PSC but his appeal was disallowed and was informed of the same via a letter dated 22nd September, 2003.

3. From the chronology of events as detailed by counsel for the respondent, it cannot be correct that the claimant was dismissed in 1996 when his salary was stopped. Counsel himself submitted that the claimant was dismissed by a letter dated 4th April, 2002. The final communication on his appeal was through a letter dated 22nd September, 2003.

4. This is the date when the cause of action accrued. This suit was filed on 28th July 2005 which was less than three years limited by section 90 of the Act. Further this cause of action having accrued before the enactment of the present Employment Act, the applicable law was the Limitations of Actions Act which set time at six years.

5. The objection is therefore found without merit and is hereby dismissed with costs.

6. It is so ordered.

Dated at Nairobi this 29th day of September, 2017

Abuodha J. N.

Judge

Delivered this 29th day of September, 2017

Abuodha J. N.

Judge