



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 48 OF 2015

(Formerly High Court Civil Case No. 113 of 2008 at Meru)

JULIUS MATHIU MAIRUKI.....PLAINTIFF

VERSUS

THE DIRECTOR OF CRIMINAL INVESTIGATIONS.....1ST DEFENDANT

INSPECTOR GENERAL OF POLICE.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

(Before Hon. Justice Byram Ongaya on Friday, 22nd July, 2016)

RULING

The plaintiff filed the plaint on 09.09.2008 through Ayub K. Anampiu. The amended plaint was filed on 18.03.2016. The plaintiff prayed for judgment against the defendants jointly and severally for:

- a) A declaration that the dismissal of the plaintiff was illegal, oppressive, discriminatory and vindictive and contrary to laws and specifically police standing orders.
- b) Payment of all benefits, dues and expected salary up to the finalization of the suit.

The plaintiff has among other matters pleaded as follows:

- a) He was until 08.04.2004 a Police Corporal No. 50800 working for the Government of Kenya.
- b) On 23.04.2002 he was charged in orderly room proceedings, the charge was heard and he was reduced in rank to a Constable and transferred from Kasarani Police Division to West Pokot District.
- c) The plaintiff appealed against the reduction in rank to the Commissioner of Police and by the letter dated 08.04.2004 the 1st defendant wrote to the claimant conveying that the claimant had been dismissed way back on 19.08.2003 because the earlier sentence of reduction in rank had been lenient.

The defendants filed the amended memorandum of response on 23.03.2016 through F.O.Makori, Litigation Counsel, for the Attorney General. At paragraph 10, the defendants pleaded that the plaintiff's claim against them is misconceived, fatally defective, not supported by law and the defendants reserved

the right to raise and argue a preliminary objection to have the suit struck out with costs. The defendants' case is that the claimant has pleaded that he was dismissed on 08.04.2007 and the suit should have been filed on or before 08.04.2007 within the three years of limitation under section 90 of the Employment Act, 2007 and under section 3(2) of the Public Authorities Limitation Act as read with section 42(e) of the Limitation of Actions Act.

The court finds that the cause of action accrued long before the Employment Act, 2007 had been enacted and the time of limitation in section 90 of the Act did not apply. Nevertheless, the court finds that the suit was time barred under section 3(2) of the Public Authorities Limitation Act Cap. 39 because the action accrued on 08.04.2004 and the suit should have been filed on or before 08.04.2007 yet it was filed belatedly on 09.09.2008. Accordingly, the court finds that indeed the suit was an abuse of the court process.

In conclusion, the preliminary objection is upheld and the plaintiff's suit is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 22nd July, 2016**.

BYRAM ONGAYA

JUDGE