



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 2281 OF 2015**

**MUSA MWANGI MATHU.....1<sup>ST</sup>  
CLAIMANT**

**STEPHEN KIHARA WAMBUGU.....2<sup>ND</sup>  
CLAIMANT**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....1<sup>ST</sup>  
RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. This ruling relates to a preliminary objection raised by the Respondents by notice dated 19<sup>th</sup> January 2016. The objection is based on the ground that the Claimants’ claim is time barred and offends the provisions of Section 90 of the Employment Act, 2007 and the Limitation of Actions Act.

2. By consent of the parties, the objection was urged by way of written submissions. In the submissions filed on behalf of the Respondents, it was submitted that the claim also offends the provisions of Section 3(2) of the Public Authorities Limitation Act.

3. It is the Respondents’ position that since the Claimants were dismissed in 2004, their claim which was filed in 2015 is way out of time. The notice of preliminary objection raised by the Respondents makes reference to Section 90 of the Employment Act, 2007. This law is however inapplicable in this case for two reasons; first, when the cause of action herein arose this law had not been enacted; second, Section 3(2) of the Act expressly excludes the Kenya Police, of which the Claimants were members, from its application.

4. The applicable limitation law would therefore be the Public Authorities Limitation Act. Section 3(2) of the Act provides as follows:

***“No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”***

5. In the submissions filed on behalf of the Claimants reference was made to the decision by **Ojwang J** ( as he then was) in ***Benjamin Muema v Attorney General & 2 Others [2006]*** in which the learned Judge held that matters of mixed civil law, military law and constitutional principles cannot be determined by an interpretation of limitation periods.

6. I have looked at the Claimants' claims as contained in the Memorandum of Claim dated 18<sup>th</sup> December 2015 and filed in Court on 21<sup>st</sup> December 2015 and have reached the conclusion that they arise from an ordinary employment contract as defined in law. The ratio in the ***Benjamin Muema Case*** is therefore inapplicable in the Claimants' case.

7. Consequently, I find that the claim as filed is way out of time and this Court lacks jurisdiction to entertain it. The claim is therefore struck out with no order for costs.

8. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI**

**THIS 16<sup>TH</sup> DAY OF DECEMBER 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Kamunya for the Claimant

Miss Chesinya for the Respondent