



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 199 OF 2014

JULIUS NJAGI KATHURI.....CLAIMANT

VS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

1. This ruling flows from a preliminary objection taken by the Respondent seeking orders to strike out the Claimant's claim on the ground that it is time barred by dint of the Employment Act, Limitation of Actions Act and Public Authorities Limitation Act.

2. Ms. Chesinya for the Respondent told the Court that the Claimant was discharged from the Kenya Air Force in 1982 and that his claim which was filed on 18th February 2014 was therefore statute barred.

3. The Claimant's claim is brought under the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice & Procedure Rules, 2013. Moreover, the Claimant cites several rights under the Constitution that he alleges were violated by the Respondent.

4. From the pleadings, it emerges that the Claimant was a serviceman with the Kenya Air Force and the circumstances surrounding his discharge were related to the aborted military coup of 1st August 1982. The Claimant seeks the following prayers:

- a. A declaration that his rights under the Armed Forces Act, the Defence Forces Act and the laws of Kenya were violated from the time of his arrest till the date of sentencing by the court martial;
- b. A declaration that his fundamental rights and freedoms under sections 70, 72(3) & (5) and 74(3) of the Constitution were contravened and grossly violated by Kenya Army and Prison Officers of the Government of the Republic of Kenya on 1st August 1982 and on diverse dates thereafter;
- c. A declaration that he is entitled to payment of damages and compensation;
- d. General exemplary and aggravated damages under section 84(2) of the Constitution for the unconstitutional conduct by Government servants.

5. Counsel for the Respondent referred the Court to the case of ***Samson Ngonga Vs Public Service Commission & 5 Others [2013] eKLR*** where **Nduma J** ruled that the Petitioner's claim was time barred by virtue of Section 3(2) of the Public Authorities Limitation Act.

6. I have considered the Claimant's pleadings and have formed the opinion that the Claimant's claim is not merely one arising out of a pure contract of service which would be subject to limitation as submitted by the Respondent. Rather, it is in the nature of a constitutional petition for alleged violation of his fundamental rights and freedoms. The *Ngonga Case* which was based on a pure contract of employment is therefore distinguishable from the Claimant's case.

7. Matters arising out of alleged violation of fundamental rights and freedoms are not subject to limitation and the Court therefore finds the Respondent's preliminary objection not well taken and hereby overrules it. That said, the Court took notice that the Claimant has come to Court by way of a Memorandum of Claim rather than a constitutional petition. I therefore direct the Claimant to amend his pleadings accordingly. The Respondent is directed to file its Reply within 21 days of service of the constitutional petition.

8. The costs of this application will be in the cause.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF FEBRUARY 2015

LINNET NDOLO

JUDGE

Appearance:

Mr. Agina for the Claimant

Ms. Chesinya for the Respondent