



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 132 OF 2014**

**(Before Hon. Lady Justice Maureen Onyango on 30th October, 2015)**

**FRANK NETO WANYAMA .....CLAIMANT**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT**

**JUGEMENT**

By a Memorandum of Claim dated and filed on 11th June, 2014 the Claimant alleges he was employed by the then Kenya Police Force on 19th October, 1991. He remained in service until 5th March 1998 when he was arbitrarily dismissed from service in an oppressive, inhuman and insensitive manner, against the principles of natural justice. He seeks the following orders against the Respondent - the National Police Service Commission, the successor of the Respondent:-

- a. An order that the Respondent do post the Claimant to a police station within the Republic of Kenya
- b. Salary arrears since 5th March, 1998 to date.
- c. In the alternative his dues be calculated and paid forthwith
- d. Costs of this claim
- e. Any other or further relief this Honourable Court may deem fit and expedient to grant.

The Respondent did not file any defence to the Memorandum of Claim. The case was fixed for hearing on 9th April, 2015 but was on that date rescheduled to 21st September, 2015 as there was no proof of service upon the Respondent.

On 21st September, 2015 after ascertaining from the court record that the Respondent had been properly served with the hearing notice and an affidavit of service filed, I allowed the hearing to proceed in the absence of the Respondent.

The Claimant testified and closed his case. The Claimant was led in his evidence by his Counsel Obura Obwatinya who informed the court that he did not wish to file any written submissions.

*In his testimony the Claimant testified that he was enlisted to the Police Force on 19th November, 1991 and posted to Garbatula Police Station in Isiolo where he worked for 6 years. He was then transferred*

to Kitale to start a new Unit called Rapid Anti-Banditry Unit (RABU) together with sixty three other officers. All the sixty three officers were living in deplorable conditions in the police canteen. The plight of the officers leaked to the press and was highlighted in the media. The officers were all taken through orderly room proceedings after which the Unit was disbanded and each of the 63 officers was posted to his local police station. The claimant was posted to Webuye Police Station of Bungoma Division in Western Province where he served for 3 months.

On 5th March, 1998 the Claimant received a signal informing him that he had been convicted of two disciplinary offences namely:-

1. Without lawful excuse breaks out of the Police Lines C/Reg. 3, sub-regulation 13 of the Police Regulations.
2. Being guilty of conduct to the Prejudice of Good Order and Discipline C/Reg. 3, sub-Regulation 41 of the Police Regulations.

The letter stated that he pleaded not guilty to the offences but after full proceedings were conducted he was found guilty on evidence adduced. He was convicted on both offences and sentenced as follows:-

1. Count 1 Reprimanded
2. Count II Dismissal from the Force w.e.f. 1.3.98.

The letter advised him of his right of appeal against both conviction and sentence to the Commissioner of Police within 7 days. The letter of dismissal directed him to surrender all items of Police Kit and equipment issued to him.

The Claimant appealed for reinstatement. A year later he learned that there was a signal for his reinstatement. He also learned that he was still on the payroll and received several payslips but did not receive the salary. His follow up with OCPD and the Provincial Police Officer's office and several reminders bore no fruit. The last complaint he wrote to the Respondent was on 4th April, 2013. He received a response from the National Police Service Commission advising him that the issue was under consideration but again his follow up did not bear any fruit.

The Claimant testified that his last salary was Shs.8545. At the time of hearing he had turned to farming. He prayed for orders as prayed in the Memorandum of Claim.

I have considered the pleadings and the evidence on record.

According to the evidence the Claimant's employment was terminated on 5th March, 1998. According to Section 4(1) of Limitation of Actions Act the claim should have been filed within six years. However, the claim being against a Government Agency should have been filed against the Attorney General after prior notice as provided in both the Government Proceedings Act and Order Rule 1 11 of the Civil Procedure Rules. No application has been made for extension of time for filing the claim nor do the pleadings allude to the fact that the claim is filed out of time. The claim is therefore on the face of it bad in law for having been filed out of time without leave.

Limitation goes to the substance of the case as it extinguishes the right of a person to make a claim as well as compromising the jurisdiction of the court to handle the claim.

In the case of *Divecon v Samani* (1995 - 1998)1AE the Court of Appeal stated that:-

*"No one shall have the right or power to bring after the end of six years from the date on which a cause of action accrued, an action founded on contract. The corollary is that no court may or shall have the right or power to entertain what cannot be done, namely an action that is brought in contract six years after the cause of action arose or any application to extend such time for the bringing of the action."*

In the case of *Motor Vessel "SS Lillian"* [1989] KLR I Nyaranyi J as he then was stated *"Jurisdiction is*

*everything, without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*

The Supreme Court restated the above decision in the matter of *Advisory Opinions of the Supreme Court under Article 163(3) of the Constitution, Constitutional Application No. 2 of 2011* as follows:-

*"The Lillian 'S' case[1989] KLR1 establishes that jurisdiction flows from the law, and the recipient-court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity."*

From the foregoing I find that the claim was filed outside the limitation period without leave and this court has no jurisdiction to hear and determine the same. The case must therefore be struck out which I hereby do.

**Dated, signed and delivered this 30th day of October, 2015**

**MAUREEN ONYANGO**

**JUDGE**