



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 983 OF 2013**

*(Before D.K.N. Marete)*

**BEATRICE MATHENGE.....CLAIMANT**

Versus

**PUBLIC SERVICE COMMISSION & 2 OTHERS.....RESPONDENT**

**RULING**

In this matter, a memorandum of claim dated 28th June, 2013 was filed in court on 27th instant.

The respondent filed a reply to this memorandum of claim on 8th August, 2013 opposing the same and praying that the same be dismissed with costs.

The matter came for hearing on 28th February, 2014 and in the meantime the respondents raised a preliminary objection dated 17th February, 2014 as follows;

*‘TAKE NOTICE that the Respondents in the above suit will on or before the hearing of the suit raise and argue a preliminary objection on the ground that this claim is time barred and offends the mandatory provisions of Section 3 of the Public Authorities Limitation Act, Chapter 39, Laws of Kenya.’*

At the hearing the parties submitted to a determination of the preliminary objection by way of written submissions and therefore today’s ruling.

The respondent in her written submissions contends that the claim is untenable in that it was filed on 28th June, 2013 and therefore offends the mandatory provisions of S.3 (2) of the Public Authorities Limitation Act, Chapter 39, Laws of Kenya in that the approval for the new salary structure for legal officers in the Judiciary and State Law Office were effected on 1st July, 2008. The respondent on 29th November, 2011 informed the claimant of the harmonization of the new structure and also that the same were to be effective as from 1st July, 2010. The cause of action therefore arose on 1st July, 2008 and therefore an action on the subject filed on 28th June, 2013 is time barred, having come in well over four years out of time.

The respondents ought to rely on the authority of **Samson O. Ngonga v Public Service Commission & 5 Others [2013] eKLR** the court while citing the case of **Iga –Vs- Makerere University Civil Appeal No. 51 of 1971**, the court held that;

*“The limitation Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time-barred, the court cannot grant the remedy or relief.”*

The claimant brings out a case against limitation on grounds that it is only on 29th November, 2011 that the claimant was informed of the circular. Her salary was adjusted on 1st July, 2010 but she was not paid her arrears of salary/allowances can therefore on accrual of the right of action. She further argues that this is within the limitation period in that the law provides for filing of an action within three years of such accrual.

The claimant also objects to a reference to attachments AG 1 and 2 in the respondent's submissions in that as these comprise evidence that can only be adduced at trial. I agree.

The cause of action really arose on 1st July, 2010 when the claimant's salary/allowances were adjusted. A year down the line she was informed of the same through a circular/letter dated 29th November, 2011. I therefore find that this action is not time barred and hold as such. I dismiss the preliminary objection and therefore propel and breathe life to the claim. Let the same be activated to fruition.

Delivered, dated and signed the 27th day of June, 2014.

**D.K.Njagi Marete**

**JUDGE**

**Appearances:**

Mrs. Mbabu instructed by P.K. Mbabu & Company Advocates for the Claimant.

Ms. Kassim instructed by the State Law Office for the Respondent.