

Case ID: [2026] KEELRC 48 (KLR) Copy

Title: Githinji v Public Service Commission & another [2026] KEELRC 48 (KLR) Copy

Court: Employment and Labour Relations Court

Judges: S Radido

Date: 22 January 2026

Parties: Githinji v Public Service Commission & another [2026] KEELRC 48 (KLR) Copy

Summary: REPUBLIC OF KENYA

legal\_issues: []

decision: The Claimant was dismissed on 11th May 2021.

legal\_principles: ['Lastly, there is no law or legal principle impairing an employee dissatisfied with a dismissal and facing a criminal charge from moving to challenge the dismissal merely because the criminal process is not concluded.']

---- JUDGMENT TEXT ----

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E948 OF 2024

DAVID NDERITU GITHINJI CLAIMANT

v

PUBLIC SERVICE COMMISSION 1st RESPONDENT

HON ATTORNEY GENERAL 2nd RESPONDENT

RULING

David Nderitu Githinji (the Claimant) was employed by the Public Service Commission (the Commission) in 2008 and deployed to State House.

Around 11 May 2021, the Comptroller of State House wrote to the Claimant to notify him of his dismissal.

The Claimant appealed to the Commission on 22 July 2021, and the Commission held an appeal hearing.

The Commission informed the Claimant through a letter dated 10 May 2022 that the dismissal had been upheld.

The Claimant sued the Commission and the Honourable Attorney General on 17 November 2024, alleging unfair termination of employment and breach of contract.

The Commission raised a Preliminary Objection on 22 October 2025, contending:

THAT the claim dated 7th November 2024 is time-barred and offends (the) mandatory provisions of section 89 of the Employment Act, Cap 226.

The Claimant was dismissed on 11th May 2021.

The Claimant's appeal against dismissal from service was heard and determined by the Public Service Commission pursuant to section 74 of the Public Service Commission Act, cap 185 and Regulation 68 of the Public Service Commission Regulations, 2020.

The suit is an abuse of the court process.

THAT the suit is incompetent and ought to be struck out.

The Court gave directions on the Objection on 28 October 2025, and the Commission filed its submissions on 20 November 2025.

The Claimant filed his submissions on 21 January 2026 (should have been filed and served before 18 December 2025).

The Court has considered the pleadings, Preliminary Objection and submissions and makes the following determinations.

One, the Claimant suffered a legal injury or legal wrong at the point he was informed of the dismissal through the letter dated 11 May 2021 (he asserted he received it on 19 July 2021), and not when his appeal against the dismissal was determined (see *G4S Security Services (K) Ltd v Joseph Kamau & 468 Ors* (2018) eKLR; *Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza and Another* (2016) eKLR; *James Mwaura v the Judiciary* (2020) eKLR and *Patrick K. Waweru v Teachers Service Commission* (2021) eKLR).

Two, in terms of section 89 of the Employment Act, 2007, the Claimant had 3 years within which to invoke the Court's jurisdiction. The period lapsed on or around 10 May 2024 (or latest 18 July 2024).

The Claimant moved the Court on 17 November 2024, outside the prescription on limitation.

Three, the Court does not have jurisdiction to enlarge the limitation time or grant leave to institute an action in an employment contract after the lapse of the limitation time (*Divecon v Samani* (1995 - 1998 1 EA 48))

Lastly, there is no law or legal principle impairing an employee dissatisfied with a dismissal and facing a criminal charge from moving to challenge the dismissal merely because the criminal process is not concluded.

## Orders

The Court upholds the Notice of Preliminary Objection dated 8 October 2025, declines jurisdiction and strikes out the Statement of Claim filed in Court on 17 November 2024.

No order on costs.

Delivered virtually, dated and signed in Nairobi on this 22nd day of January 2026.

Radido Stephen, MCI Arb

Judge

## Appearances

For Claimant Kago Mburu & Associates Advocates

For 1st Respondent Ngelechi Joyce, State Counsel, Public Service Commission

For 2nd Respondent did not participate

Court Assistant Wangu