



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

EMPLOYMENT AND LABOUR RELATIONS

CAUSE NO E312 of 2021

FRANCIS

OLAKI

OJIAMBO.....CLAIMANT

VERSUS

CAPTAIN

HAWK

SECURITY

LTD.....RESPONDENT

RULING

1. The claimant has instituted the instant suit vide a memorandum of claim dated 12th November, 2021, filed on 16th November 2021 and amended on 04th December 2023, and through which he avers that he was employed by the respondent with effect from 01st March, 2018 until 16th

November 2018 when he was verbally terminated without any justifiable cause. On this account, he has sought several reliefs as follows:

- a) A declaration that the termination was unfair, unprocedural, unlawful and untimely.
 - b) An order that the Claimant be paid his dues and benefits of Kshs. 194,998.64 as particularized in in the Memorandum of Claim.
 - c) General damages for unfair dismissal.
 - d) Certificate of service.
 - e) Costs of the claim and interest.
2. The respondent never filed a response in answer to memorandum of claim. The claim was therefore undefended. Hearing notices were also served on the respondent who also failed to attend. In the premises, the court permitted the claimant to proceed ex parte on 26th August 2025. The claimant testified in support of his claim.
3. At the commencement of the hearing, the claimant sought to rely on his witness statement which he asked the court to

adopt as part of his evidence in chief. He also produced the list and bundle of documents filed together with his claim as exhibits before court.

4. A summary of facts as presented by the claimant and which supports his pleadings is that, he was employed by the respondent on 01/03/2018 or thereabouts, as a security guard. That he held that position till he was unfairly dismissed on 16/10/2018 by a letter of dismissal for no obvious reason. That he was earning a monthly salary of Kshs. 6,000/- at the time of termination.
5. From the pleadings and the facts, this court's attention has been drawn to the provisions of section 90 of the Employment Act, 2007. Under Section 90 of the Employment Act (2007), the claim herein appears time-barred. The law provides that employment-related claims must be filed within three years, and those based on a continuing injury must be brought within twelve months after cessation.
6. This claim therefore ought to have been brought within three years, that is before 16/10/2021, while the continuing ones like

underpayments ought to have been brought within 12 months upon cessation (i.e. termination), that is before 16/10/2019.

7. The Responded did not file a defence or participate in the hearing and did not therefore raise the issue. However, as a court I have an **obligation to, act suo moto** (on my own motion) to dismiss a claim that is statutory time-barred, even if the defendant or respondent has not raised the issue.
8. This principle is based on the reasoning that the question of time limitation is a fundamental question of law that touches on the court's **jurisdiction**. A court either has jurisdiction to hear and determine a matter or it does not; if it lacks jurisdiction due to the time bar, it must 'down its tools' and strike out the suit. This is pursuant to the decision in ***The Owners of Motor Vessel "Lillian S" vs Caltex Oil Kenya (1989) KLR 1.***
9. Before I down my tools and strike out this claim, I do hereby invite the parties herein, to address me on the issue of section 90 of the Employment Act, 2007, via a vis this claim and whether the claim herein is indeed statutorily time barred and whether it should be struck out as per my opinion herein.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS ...
11TH.... DAY OF NOVEMBER, 2025.**

.....

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

Appearance:

For the Claimant: N/A

Claimant: N/A