



**Malusi v Inter Security Services Limited (Cause 590 of 2018)
[2023] KEELRC 2050 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2050 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 590 OF 2018
NJ ABUODHA, J
JULY 31, 2023**

BETWEEN

SAKAYO MALUSI CLAIMANT

AND

INTER SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent as security guard. According to the claimant he was entitled to one month's notice of termination or payment in lieu of notice. At the time of termination, his monthly salary was Kshs.8,276/= and house allowance of Kshs.1,000/=.
2. According to the claimant he was on 16th December, 2011 arrested on allegations of theft and charged with stealing contrary to Section 275 of the Penal Code. He was acquitted of the charges on 20th August, 2015. He attempted to report to work but was verbally dismissed without cause. He was further not paid his salary for December among his terminal dues.
3. The claimant therefore claimed from the respondent among others underpayment during the period worked, unpaid salary during suspension and salary in lieu of notice. All totaling to kshs.1,630,170/=.
4. The claimant further averred that he was never called upon to explain anything or defend himself against the allegations that led to his dismissal. The claimant consequently claimed a total sum of Kshs.1,630,170/= on account of underpayment, unpaid salary during suspension, annual leave, salary in lieu of notice and compensation for unfair termination.
5. The respondent filed a statement of response and a notice of preliminary objection. They averred that the claimant was a former employee but remained absent from duty after he was charged in court for stealing at Lamada Godown where he had been assigned to work.



6. The respondent further raised a preliminary objection that the claim was statute barred by virtue of Section 90 of the *Employment Act*.
7. Limitation goes to the jurisdiction of the court hence the court cannot proceed when it is satisfied that a matter is barred by statute. It does not matter that the matter proceeded as an undefended cause. The court on its own motion can decline jurisdiction if it is clear that the claim is statute barred.
8. The claimant herein according to his own pleadings was arrested on 16th December, 2011 on allegations of theft. He was tried and acquitted on 20th August, 2015 he thereafter attempted to go to work but was unsuccessful because according to him, he had been verbally dismissed. It this be the case, from August, 2015 when the claimant alleges, he was verbally dismissed to 23rd April, 2018 when he filed the claim was more than three years provided for under Section 90 of the *Employment Act*.
9. This section is couched on mandatory terms and once lapses the period cannot be extended.
10. To this extent the court find the claim statute barred and hereby strikes the same out with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS DAY OF 31ST DAY OF JULY, 2023.

ABUODHA J. N.

JUDGE

