



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1941 OF 2016**

**BETWEEN**

**JOSEPH MUNYAO NGUTI MBUSU.....CLAIMANT**

**VERSUS**

**CHAIRMAN, SECRETARY, TREASURER RESIDENTS OF COURTS COMPRISING  
HOUSES NO. 75 TO NO. 92 AKIBA ESTATES SOUTH C NAIROBI.....RESPONDENTS**

Rika J

Court Assistant: Emmanuel Kiprono

Chwero & Company Advocates for the Claimant

Isaiah Kandie & Company Advocates for the Respondents

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 21<sup>st</sup> September 2016.
2. He avers, he was employed by the Respondents as a Night Guard.
3. He was injured while opening the gate for one of the residents. He stated in his evidence, when his Claim was heard on 29<sup>th</sup> January 2021, that he was injured on 22<sup>nd</sup> April 2011.
4. He also stated that termination of his contract of employment, took place on the date of the injury, 22<sup>nd</sup> April 2011.
5. He had been promised he would be returned to work upon healing. The Respondent did not return him to work as promised.
6. He avers that termination was unfair and unlawful, and seeks Judgment, in the sum of Kshs. 1,047,272, comprising notice; unpaid salaries for the period of the injury; underpayment of salaries; annual leave; severance; and 12 months' salary in compensation for unfair termination.
7. He gave evidence and rested his case on 29<sup>th</sup> January 2021.
8. In summary, he was employed by the Respondents and injured while at work. He was treated at Kenyatta National Hospital, and confined to his rural home for 5 years, while recuperating. He did not have any letter of employment. He worked in continuity. He was employed on 20<sup>th</sup> October 2008. He left on 22<sup>nd</sup> April 2011. Akiba was a group of residents. He was not a Casual Employee. He had been told to return after healing. The car which knocked him down belonged to a resident, one Abdullahi. Residents agreed that Abdullahi would meet the Claimant's cost of treatment. There was no written agreement with Abdullahi. He however paid the Claimant Kshs. 400,048 which catered for medical expenses. The Claimant conceded that he filed the Claim 5 years after termination. He was not owed any money at the time of the accident.
9. Redirected, the Claimant told the Court that he worked in continuity. Abdullahi compensated him for the accident. It had nothing to do

with the employment. He did not work after the accident. His contract was terminated after the accident.

10. Phillip Mativo and Tabitha Kivuvani who were officials of the Akiba residents' group, at the time the Claimant was injured and left employment in 2011, gave evidence on behalf of the Respondents, on 1<sup>st</sup> July 2021 closing the hearing.

11. They told the Court that the Claimant was a Casual Employee. He left employment in 2011. He reappeared at the residences with Court Summons after 5 years, in 2016. He was injured by a resident's car in April 2011. He was paid Kshs. 370 per day. Members contributed and paid him Kshs. 6,800 to communicate their 'pole.'

**The Court Finds:** -

12. The Claim is time-barred. The Claimant in his own evidence-in-chief and on cross-examination, told the Court that he was injured on 22<sup>nd</sup> April 2011. He left employment on the same date. Termination, according to his own evidence, took place on the date he was injured.

13. This evidence is supported by the evidence of the 2 Witnesses for the Respondent.

14. The Claimant filed the Claim in 2016, a clear 5 years after termination.

15. The Claim is time-barred under Section 90 of the Employment Act.

16. Lastly, it is observed that the Statement of Claim does not conform to the rules of pleading, under the E&LRC [Procedure] Rules, 2016. The Respondents are merely *described*, but not *named*. It would be difficult to give an executable Judgment against residents of Houses No. 75 to 92. It needed to be pleaded who these residents are, and their liability as Employers to the Claimant demonstrated. Residency in those houses must have changed over time.

**IT IS ORDERED:** -

**a. The Claim is declined principally for want of jurisdiction, under Section 90 of the Employment Act, 2007.**

**b. No order on the costs.**

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27<sup>TH</sup> DAY OF JANUARY 2022.**

**JAMES RIKA**

**JUDGE**