



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 253 OF 2018

ALBERT EKWARO EMOIT.....CLAIMANT

v

KALI SECURITY LIMITED .....RESPONDENT

**RULING**

1. Albert Ekwaro Emoit (Claimant) sued Kali Security Co Ltd (the Respondent) on 5 July 2018, and he stated the Issue in Dispute as Unfair treatment at work and failure to pay terminal benefits.
2. In the Memorandum of Claim, the Claimant also alleged breach of contract (underpayment of wages, salary arrears and accrued leave).
3. Among the documents filed by the Claimant was a notice of retirement dated 8 May 2015. The retirement was to take effect on 19 June 2015.
4. The Respondent filed a *Statement of Response* and *Notice of Preliminary Objection* on 5 November 2020.
5. The Notice of Preliminary Objection contended
  - a. **THAT** the Claim is incompetent and fatally defective for want of compliance with the mandatory provisions of section 90 of the Employment Act, 2007 on the three-year limitation of actions arising from the Employment Act.
  - b. **THAT** the employment of the Claimant was terminated by his letter of resignation dated 8 May 2015 which is when all the claims accrued, but the said Claim was only filed on 18 June 2018 more than three years later which fact renders the said Claim fatally defective.
  - c. **THAT** in the premises, the said Claim is an abuse of the process of the Court and the same should be dismissed with costs to the Claimant (sic).
6. The Respondent filed its submissions on the Preliminary Objection on 18 November 2020. The Claimant's submissions which should have been filed and served by 18 December 2020 were not on record.
7. The Court has considered the Objection and submissions on record.
8. The notice of retirement by the Claimant indicated that the contractual relationship would come to an end on 19 June 2015. Any dues accruing to the Claimant became payable upon retirement and not on the date of the notice.
9. In terms of section 90 of the Employment Act, 2007, the Claimant should have instituted legal action on or before 19 June 2018. He commenced the action on 5 July 2018, outside the prescribed limitation deadline.
10. In consideration of binding authority from the Court of Appeal in *Divecon v Samani* (1995-1998) EA 48 and *Attorney General & Ar v Andrew Maina Githinji & Ar* (2016) eKLR, the Court has no hesitation in upholding the Notice of Preliminary Objection.
11. **The Memorandum of Claim filed in Court on 5 July 2018 is dismissed. No order on costs.**

Delivered through Microsoft teams, dated and signed in Kisumu on this 10<sup>th</sup> day of February 2021.

Radido Stephen, MCI Arb

**Judge**

**Appearances**

For Claimant Mr. Nyanga instructed by Nyanga & Co. Advocates

For Respondent Ms. Mbugua instructed by Kibungei & Co. Advocates

Court Assistant Chrispo Aura