



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 398 OF 2016

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

OSCAR OWINO.....CLAIMANT

VERSUS

G4S SECURITY SERVICES (K) LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed a memorandum of claim dated 16th October, 2015 and in his claim he claims he was employed by the Respondent from 1st day of March, 2008 and was employed as a courier guard. His monthly salary was Kshs.14,000/=.

2. The Claimant avers that he was summarily dismissed on 31st March, 2010. The summary dismissal letter is dated 31st March, 2010.

3. The Claimant now prays for unpaid salary at the time of termination plus interest at court rates from time the same due.

The Claimant itemized claims are:-

- (i) Salary for one month of March, 2010 Kshs.14,000/=
- (ii) Salary in lieu of notice Kshs.42,000/=
- (iii) Severance pay Kshs.246,000/=
- (iv) Leave allowance Kshs.42,000/=

4. The Claimant's contention was that he was summarily dismissed maliciously to cover some illegal acts of senior officers in the management.

5. There is no evidence in the court file that the Respondents were served with summons including statement of claim. There is no affidavit of service.

The Respondent has neither put in a notice of appearance nor a response. The case proceeded as an undefended claim.

6. The court has considered the pleadings and the submissions by the Claimant.

The Claimant was dismissed from his employment on 31st March, 2010. The Claimant filed his case on 16th October, 2015. That was more than five years after the act.

Clearly the suit is time barred as the period provided in Section 90 of the Employment Act in which to institute a suit is 3 years after the Act except in cases of continuing injury which provide 12 months after cessation of such injury.

7. A case filed out of time takes away the jurisdiction of the court to hear a suit.

The case of **MARIA MACHOCHO VS TOTAL KENYA LIMITED MISC. CIVIL CASE NO.2 OF 2012** the court ruled that it neither had the statutory jurisdiction nor discretion to grant leave or to extend time to causes of action based on breach of service or actions arising out of Employment Act 2007.

The Claimant case was filed way after the statutory period provided under the said Section 90 of the Employment Act 2007.

The court therefore strikes it off and with no orders as to costs.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 9TH DAY OF DECEMBER, 2021.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE