



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MALINDI

CAUSE NUMBER 63 OF 2017

BETWEEN

BILLY OMONDI NYAARE.....CLAIMANT

VERSUS

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Odhiambo S.E. & Company, Advocates for the Claimant

Erastus K. Gitonga, Advocate for the Respondent

RULING

1. The Claimant filed his Statement of Claim, on 9th November 2017. He states, he was employed by the Respondent in 2014, as an Environment Officer. He does not say in which month, but states he worked up to November 2014, when he was dismissed by the Respondent on account of absence from duty. He was not heard by Respondent's Board of Directors contrary to Respondent's Rules and Regulations. His salary was Kshs. 55,300. He prays for notice pay, compensation for unfair termination, and loss of income, added up at Kshs. 2,597,000. He seeks costs and interest.

2. The Respondent filed its Statement of Response on 27th March 2018. Its position is that the Cause is time-barred under statute, specifically Section 90, Employment Act 2007. The Claimant was dismissed on 30th October 2014. His Claim expired under the 3 year time limit, on 30th October 2017.

3. Parties agreed to have Preliminary Objection considered and determined on the strength of their Submissions.

4. The Claimant submits that he received the letter of dismissal on 10th November 2014. He presented the Claim on 9th November 2017, within the 3 year limitation period.

5. The Respondent reiterates that the cause of action arose on 30th October 2014 when the Claimant was summarily dismissed, and expired on 30th October 2017.

The Court Finds:-

6. In this Court's decision, *Alex Kiema Mwinzi v. Factory Guards Limited [2018] e-KLR*, it was held that termination of a contract of employment becomes effective, on the date the Employee receives notice of termination. Time does not begin to run, until the Employee has received the notice or letter of termination, or letter of dismissal.

7. The letter of summary dismissal is dated 30th October 2014. It indicates Claimant was summarily dismissed with immediate effect, which would point to 30th October 2014, as the date of dismissal. He however states he did not receive the letter until 10th November 2014.

8. The letter was posted from Respondent's Nairobi Head Office, to the Claimant's station at Kilifi. It would not have reached the Claimant

the same day it was drawn. The Claimant stated he received it on 10th November 2014. In his letter of appeal to the Respondent's Board Chairman, he indicates he received the letter of summary dismissal on 10th November 2014. The Claimant wrote this letter of appeal on 10th November 2014.

9. The Court is satisfied that the cause action arose when the Claimant received the letter of summary dismissal, 10th November 2014. The Respondent has not shown that the letter reached the Claimant on the date the letter was drawn, 30th October 2014. The Claimant could not have acted on the letter, internally or externally, without having it in his hands. ***Consequently the Claim was presented within the time allowed under Section 90 of the Employment Act 2007. The Preliminary Objection is declined, with no order on the costs. Parties shall comply with pretrial procedure, and endeavour to schedule the Cause for hearing.***

Dated and signed at Mombasa this 1st day of November 2019.

James Rika

Judge