



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 444 OF 2018**

**JAMES NYAUMA NYANDEGA.....CLAIMANT**

**-VERSUS-**

**BOB MORGAN SERVICES LIMITED... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

**RULING**

The claimant filed the memorandum of claim on 29.03.2018 through Mose Nyambega & Company Advocates. The amended claim was filed on 12.11.2018. The claimant has pleaded that he was indefinitely suspended from duty by letter dated 22.05.2014 following allegations of yard breaking. He was later charged with a criminal offence of yard breaking and stealing contrary to section 306 (a) of the Penal Code. He was acquitted on 04.04.2017 under section 210 of the Criminal Procedure Code. His case is that the indefinite suspension of 22.05.2014 amounted to summary dismissal. In his witness statement at paragraph 3 he states that he was summarily dismissed on 22.05.2014 and prior to that date he had worked for the respondent for 13 years and 4 months effective 01.06.2000 as a security guard.

On 02.09.2019 the respondent filed a preliminary objection through Wainaina Ireri & Company Advocates LLP on the ground that the suit was time barred under section 90 of the Employment Act, 2007.

The Court finds that indeed and as submitted for the respondent it is clear that the claimant has pleaded and considers that he was summarily dismissed by the respondent on 22.05.2014 by reason of the indefinite suspension. The Court finds that on the material before the Court that was the undisputed date the employment relationship between the parties came to an end and it is the date of the cause of action. The suit was filed on 29.03.2018 long after the lapsing of the 3 years of limitation under section 90 of the Act.

Accordingly the suit is liable to being dismissed as the preliminary objection is allowed.

The Court is guided that in **Attorney General & Another –Versus- Andrew Maina Githinji & Another [2016]eKLR**, the Court of appeal held that the time of limitation in section 90 of the Employment Act, 2007 was mandatory and an intervening criminal prosecution did not adjourn or stop the time of limitation from running.

In conclusion the preliminary objection filed for the respondent on 02.09.2019 and dated 27.08.2019 is hereby upheld and the suit is dismissed with costs.

**Signed, dated and delivered in court at Nairobi this Friday, 1st November, 2019.**

**BYRAM ONGAYA**

**JUDGE**