

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

SUIT NO. 43 OF 2017

JACINTA MWELU MWANGANGI.....CLAIMANT

VERSUS

SANA INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

1. In her suit filed 24th February 2017, the Claimant sought relief against the Respondent from her dismissal employment. Among the reliefs she sought was leave. The parties compromised the balance of the claim save for the issue of leave which was for the year 2011, 2012, 2013 and 2014. The said leave was for 21 days per year. The Claimant was of the view that leave was payable. The Respondent had filed a defence denying the leave entitlement. The Claimant and Respondent therefore sought the determination of the leave due from court.

2. In the defence, the Respondent asserted that the Claimant went on leave and her dues paid in cash. The Respondent provided two printouts which indicated that leave was paid for in 2014 and 2015. No printout was availed for 2011, 2012 and 2013. The Respondent as the employer is the keeper of records in terms of Section 74 of the Employment Act. The Claimant was insistent that leave was not commuted to pay for the years she had claimed. One year claimed was commuted into pay so the sums she was claiming would be for the balance of the years. She claimed leave for 2011, 2012 and 2013 which is out of the limitation period as at the time she filed the suit. She was to make the claims within 3 years of her termination as provided for under Section 90 of the Employment Act. She filed suit in 2017 while her termination took place in 2015 a period of two years after the termination. She let these claims on leave lapse as the only live claim on leave at time of filing suit was the 2014 and 2015 leave dues. In my view, the claim for leave for the years in question is thus misplaced as the limitation period had set in. She is not entitled to claim any more pay on the said dues evidence having been adduced of payment made for the relevant period being 2014 and 2015. The balance of her claim on leave is thus dismissed. Each party to bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 21st day of May 2018

Nzioki wa Makau

JUDGE