

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1091 OF 2017

STEPHEN MUKUNA KYAMBI.....CLAIMANT

- VERSUS -

CADBURY KENYA LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 4th May, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 14.06.2017 through Ngugi, Mwaniki & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Kshs.2, 360, 091.30 being accumulated gratuity.
- b. Interest on (a) above from 09.09.2011.
- c. Costs of the case.

Despite service the respondent did not enter appearance, file a response to the claim or attend at the hearing.

The claimant testified to support his case. He was employed by the respondent in 1977 as an electric fitter and was promoted to a senior electric fitter. The claimant's evidence was that he worked for the respondent until 09.09.2011 when he was given a termination notice. The claimant's case was that his service was terminated on account of redundancy. The claimant did not file the termination notice but his case is that his employment having ended on account of redundancy, he is entitled to redundancy dues per clause 12 of the applicable collective agreement. The letter by the respondent dated 12.03.2012 states that the claimant had benefitted from pension as he had made that election and therefore he could not, as provided in the collective agreement, benefit from both the pension and the gratuity. In such circumstances, the respondent's position was that the respondent had met all its obligations to the claimant and there were no outstanding dues owed to the claimant. By the letter dated 09.07.2012, the respondent conveyed to the claimant that there were no outstanding dues whatsoever.

The court has considered the material on record. It is clear that the claimant's employment with the respondent terminated on 09.09.2011 and as at 09.07.2012 the respondent had made it clear to the claimant that the amount as demanded was altogether denied. The 3 years of limitation of action under section 90 of the Employment Act, 2007 lapsed on or about 09.09.2014. The claimant filed the suit on 14.06.2017 being over two and a half years after lapsing of the time of limitation. In the circumstances, the court returns that the suit is liable for dismissal as it was time barred. Thus, the court will not delve into the merits of the case.

In conclusion the claimant's memorandum of claim filed on 14.06.2017 is hereby dismissed with no orders on costs.

Signed, dated and delivered in court at **Nairobi** this **Friday 4th May, 2018**.

BYRAM ONGAYA

JUDGE