



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1166 OF 2014

JUDD MURIGI KIARIE.....CLAIMANT

- VERSUS -

**SBG SECURITIES LIMITED (FORMERLY CFC FINANCIAL
SERVICES LIMITED).....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26th October, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 02.07.2014 through Simba & Simba Advocates. The amended memorandum of claim was filed on 27.07.2016 and the respondent prayed for:

- a. The declaration that termination of the claimant and declaration of redundancy by the respondent was unlawful.
- b. The declaration that the termination of the claimant by the respondent on account of alleged redundancy was unfair and unreasonable.
- c. The declaration that the termination of the claimant by the respondent on account of alleged redundancy amounted to wrongful and unfair termination.
- d. The declaration that the reason and ground for termination was not valid.
- e. The Honourable Court be pleased to award the claimant the sum of Kshs.5, 376, 000.00 being 12 months' compensation for wrongful and unfair termination.
- f. The honourable Court to award the claimant general and exemplary damages.
- g. The Honourable Court be pleased to award interest on the sums claimed above from the date of filing this cause in Court.
- h. Costs of this cause.
- i. Such further orders or relief as this Court may deem just and fit to award.

The respondent filed the memorandum of reply on 30.10.2014 through Muri Mwaniki & Wamiti Advocates. The amended response was filed on 09.08.2016.

It is not in dispute that the respondent employed the claimant by a contract of service dated 12.06.2009 as the Head of Research effective 01.07.2009. The claimant was initially paid Kshs.400, 000.00 per month and the salary was reviewed to Kshs.448, 000.00 per month.

The claimant's case is that the respondent terminated the contract of employment on 07.09.2010 on account of redundancy without notice and that the respondent failed to demonstrate that the claimant's services were no longer required.

The respondent's case is that the claimant's suit is time barred because it was filed long after lapsing of 3 years of limitation prescribed in section 90 of the Employment Act, 2007. The section provides that no civil action based on or arising out of the Act or a contract of service shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof. The Court finds that the termination by redundancy

having been on 07.09.2010, the cause of action accrued on that date and the three years of limitation lapsed on or about 07.09.2013. The Court returns that as submitted for the respondent, the suit was time barred when it was filed on 02.07.2014 and is liable to dismissal. The preliminary objection filed in that regard for the respondent on 25.08.2017 had been dismissed on 25.08.2017 on the ground that the date the cause of action accrued was not a pure point of law to be determined at a preliminary stage. Having take all the evidence at the hearing, the Court returns that no other date of the cause of action has been established other than 07.09.2010 and the suit was indeed time barred. As submitted for the respondent the issue of time of limitation goes to jurisdiction and the Court will not therefore delve into the merits of the other matters in dispute.

In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the memorandum of claim as amended with costs.

Signed, dated and delivered in court at **Nairobi** this **Friday 26th October, 2018**.

BYRAM ONGAYA

JUDGE