



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 262 OF 2017

(Before Hon. Justice Mathews N. Nduma)

CHRISPINUS AMBANI MWANJE.....CLAIMANT

VERSUS

FACTORY GUARDS LIMITED.....RESPONDENT

R U L I N G

1. The suit was filed vide a Statement of Claim on 13th June, 2017.
2. The pleadings disclose clearly that the employment of the Claimant has not been terminated but he has not been paid his salary since April, 2013 after the Claimant had been arrested, remanded in custody for three weeks, later released on bond and subsequently tried and acquitted in Kisumu Criminal Case No.466 of 2013.
3. The main prayer the Claimant seeks is clarification of his employment status since no letter of termination has been given to him to date and payment of arrear salary in the sum of Kshs.688,128 not paid to him up to the date of filing suit.
4. The Respondent in the Memorandum of Response states that the Claimant deserted work and was informed of his summary dismissal on 27th May, 2013.
5. The fact of when, how and if the employment of the Claimant was terminated is in dispute.
6. The issue as to whether the suit is or is not time barred cannot be determined until this dispute of fact is resolved.
7. The Preliminary Objection raised by dint of section 90 of the Employment Act, that this suit was filed more than three (3) years from the date the cause of action arose cannot be resolved without determining the disputed facts first.
8. The point is not a pure point of Law in terms of the celebrated decision of Mukisa Biscuit Manufacturing Company Limited v West End Distributions Limited (1969) E A 696.
9. The matter shall await determination upon hearing the main suit. The Preliminary Objection is dismissed at this stage and the matter is to proceed to trial.

Dated and Signed in Kisumu this 4th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mulondo, Oundo, Muriuki & Co. Advocates for the Objector

Namatsi & Co. Advocates for Claimant

