

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1634 OF 2014

JAMES KIIO KYULE.....CLAIMANT

- VERSUS -

CROWN INDUSTRIES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 30th November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 18.09.2014 through Arati & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Terminal benefits as specified in paragraph 10 being holidays for 3 years Kshs. 4, 668.00; travelling allowance for 3 years Kshs. 29, 175.00; leave pay for 3 years Kshs.29, 175.00; compensatory damages Kshs.116, 700.00; gratuity Kshs.14, 587.00; one month in lieu of notice Kshs.9, 725.00; and total sum being Kshs.320, 730.00.
- b) Costs of the suit.
- c) Interest.
- d) Any other relief as the Court may deem just.

The memorandum of response was filed on 24.10.2014 and an amended response filed on 18.10.2018 through Makori & Karimi Advocates. The respondent prayed that the suit be dismissed with costs plus interest.

There was no dispute that the parties were in a contract of service. The respondent employed the claimant initially in 2009 and the claimant's case is that his employment was abruptly terminated on 01.11.2012 without notice or reason. The claimant served as a machine operator. The respondent's case is that as at the time of termination or separation, the claimant was serving on a 2 months' fixed term contract. The last of such contracts was running from 01.09.2012 to 31.10.2012. The claimant admitted that he signed the 2 months' fixed term contracts which were renewable. The evidence was that the last of such contract was ending on 31.10.2012. On 01.11.2012 the claimant was told that the workers were many and his contract was not renewed. The renewal clause stated, **"This contract will expire on 31.10.2012. The management will reserve the right to renew or not to renew depending on business environment and your previous work performance and conduct. This contract also serves as notice to terminate the employment contract as the expiry period mentioned above."**

The respondent's case was that after pay on 31.10.2012 the claimant never reported back to work.

The Court finds that whether the claimant was told that there was no job on 01.11.2012 or he absconded from work, the 2 months' fixed contract had lapsed. The contract had lapsed by effluxion of time. Allegations of unfair termination and compensation in that regard will fail.

The Court finds that the prayers for holiday, travelling allowance, and leave pay were continuing injuries ceasing on separation on 01.11.2012. The claims were time barred as suit was filed outside the 12 months of limitation under section 90 of the Employment Act, 2007. The claimant was a member of NSSF and in absence of any other contractual justification he is not entitled to gratuity under section 35 of the Employment Act, 2007.

In conclusion, judgment is hereby entered for the respondent for dismissal of the suit with orders each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 30th November, 2018.

BYRAM ONGAYA

JUDGE