



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1147 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 4th December, 2018)

JOYCE WANJIKU NJOROGE.....CLAIMANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed her Memorandum of Claim on 19/7/2013 through the firm of Wanyonyi and Muhia Advocates alleging unfair termination and failure by the Respondent to pay her her terminal dues.
2. The Claimant's case is that she was employed on 1.1.1991 as a Kenya Enrolled Community Nurse (KECN) by the Ministry of Health in the public service. She contends that she served her probationary basis successfully and was later promoted to Kenya Enrolled Community Nurse II (KECN II) on 3.5.2001.
3. She stated that on 21.11.2002 she was stationed at Mt. Kenya Hospital when her salary was suddenly stopped on allegations that she has absconded duty.
5. She was summoned by her supervisor and she offered her credible evidence on her absence. She stated that she had been ill on 23/10/2002 and was given sick off and sent a friend to deliver her sick sheet to hospital.
6. She returned to work on 25/11/2002 and continued working. It is then in December 2002 when her salary was stopped and on inquiry she was told it was stopped due to her absence from duty. The matter was apparently resolved and it was recommended that her salary should be reinstated less the number of days she was absent.
6. She avers that her salary was never reinstated. She continued working without salary to 2006. Later she finally learnt that she had been dismissed. This was vide a letter dated 3.8.2005 wherein the Ministry dismissed her from service with effect from 23.10.2002 the date she was alleged to have absconded duty.
7. She appealed the dismissal but it was only on 22.7.2010 that the Ministry finally wrote to her indicating that the appeal had been disallowed by the Public Service Commission (PSC).
8. She avers that at the time of dismissal her basic monthly pay was 32,320.30/=. Her claim is for payment of salary arrears for months worked to time of dismissal being 92 months = 92 x 32,320.30 = 2,973,467.60 and also 3 months' salary in lieu of notice = 9,696,090/=-.
9. She also seeks damages for wrongful termination plus costs and interest.
10. The Respondents were served with the Memorandum of Claim and Summons to enter appearance in this case but they never filed any response. The Respondents however filed submissions in this case at close of Claimant's case.
11. The Claimant also filed her submissions reiterating her evidence and seeking prayers as sought.
12. The Respondent on their part submitted that this claim is time barred and should be dismissed on that account.
13. From the Claimant's case, her salary was stopped in 2002. She however learnt that she had been dismissed in 2005, 3rd August. Though

her appeal was dismissed in 2010, the dismissal stood as at 3rd August 2005 and that is the time that the cause of action arose.

14. Under the old Repealed Employment Act Cap 236 of the Laws of Kenya, there was no provision on limitation. The Court therefore relied on Cap 22 of Laws of Kenya Section 4(1) (a) which states as follows:-

“ The following actions may not be brought after the end of six years from the date on which the cause of action accrued:-

(a) actions founded on contract”.

15. Thus, a claim on contract as this one was to be brought within 6 years. This cause of action having arisen in 2005 August, this claim should have been filed latest by August 2011. This claim was however filed on 19.7.2013, which was after the time allowable had lapsed. The Claimant did not seek time to extend time before filing this claim.

16. This claim is therefore improperly before this Court and this Court has no jurisdiction to handle it. It is not necessary therefore to get into the merits of this claim. The claim is therefore dismissed for want of limitation with no order as to costs.

Dated and delivered in open Court this **4th day of December, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kaburu holding brief Miss Wanyonyi for Claimant – Present

Motende for Respondent