



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 89 OF 2015**

**BETWEEN**

**DAVID MBALUKA MWEU..... CLAIMANT**

**VERSUS**

**NARCOL ALUMINIUM ROLLING MILLS.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, on 24<sup>th</sup> February 2015. He states he was employed by the Respondent on 5<sup>th</sup> January 1999, until 26<sup>th</sup> January 2009 when he was seriously injured in the course of duty. He was initially employed as a General Worker, and later became a Machine Operator. He was a Machine Operator at the time he lost his job. He earned Kshs. 250 per day, translating to Kshs. 6,500 per month in salary.

2. He states the Respondent terminated his contract of employment on the ground that the Claimant filed Mombasa RMCC NO. 1878 of 2009 against the Respondent, for recovery of work injury compensation.

3. He prays for:-

- a) 1 month salary in lieu of notice at Kshs. 6,500.
- b) Service pay at 1 month salary for 11 years completed in service at Kshs. 71,500.
- c) Annual leave pay for the 11 years at Kshs. 6,500 per year at Kshs. 71,500

Total.....**Kshs. 149,500**

d) Any further allowances and/or entitlements as the Court may on as the Court may on its own determine.

e) Interest.

f) Certificate of Service to issue.

g) Costs of the Suit.

4. The Respondent filed its Statement of Response on 17<sup>th</sup> April 2015. It admits having employed the Claimant as stated by the Claimant, but states employment was on casual terms. It is admitted the Claimant was injured at work, and sued the Respondent for work injury compensation.

5. The Respondent states the Claimant was injured on or about 26<sup>th</sup> January 2009. He failed, refused and/or neglected to report back after expiry of 24 days sick off. Lastly the Respondent states the Claim is time-barred under Section 90 of the Employment Act 2007.

***The Court Finds:-***

6. The Claimant left employment on 26<sup>th</sup> January 2009. He filed the Claim herein on 21<sup>st</sup> February 2015, 6 years after he claims he was unfairly and unlawfully dismissed, upon being injured at work.

7. The Claim is time-bared under Section 90 of the Employment Act.

IT IS ORDERED:-

***a) The Claim is time barred under Section 90 of the Employment Act, and is therefore improperly before the Court.***

***b) It is struck out, with no order on the costs.***

Dated and delivered at Mombasa this 31<sup>st</sup> day of March 2017.

James Rika

Judge