



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

AT NAIROBI

CAUSE NO. 952 OF 2015

ALEXANDER MBUGUA GITEHI.....CLAIMANT

VERSUS

JACARANDA HOTELS LIMITED.....RESPONDENT

RULING

1. The respondent raised as preliminary the objection that the claimant's suit is barred by virtue of section 90 of the Employment Act having been filed over three years after the cause of action.
2. The provisions of Section 90 of the Employment Act are clear and mandatory that a claim based or arising out of the Act or a contract of service in general shall lie or be instituted within three years next after the act, neglect or default complained of and in case of continuing injury within twelve months after cessation thereof.
3. The claimant pleads that he was suspended from work on 18th May, 2009 on allegations of lost funds from the respondent. He was thereafter charged with a criminal offence in Kiambu court being criminal case number 1151 of 2009. He further averred that upon being released from remand he reported to duty around 31st August, 2009 but was advised by the respondent's Human Resource Manager one Winnie Kariuki that he was to remain on suspension until conclusion of the criminal case. His case got concluded on 27th September, 2013 when he was acquitted of the charges. He reported to the office on 28th of September, 2013 to resume duties but was informed by the Human Resource Manager that his position was not available and had already been filled up.
4. Whereas the respondent suspended the claimant through its letter dated 18th May, 2009 for two weeks, there is no letter or correspondence on the fate of the claimant's employment after the expiry of the two weeks. The claimant was charged and prosecuted for the offence of theft but was acquitted of the charges. Whereas the respondent claims that the claimant was dismissed on 31st August, 2009, no dismissal letter has been exhibited. On this particular date, the claimant alleges that he reported to duty but was told to await the outcome of the criminal case.
5. Since it is not clear from the respondent when the claimant's services were terminated, the court will believe the claimant's version that he was asked to stay away pending the conclusion of the criminal case. The criminal case was concluded on 27th September, 2013 and the claim herein filed on 4th June, 2015. It cannot therefore be said to have been caught up by the provisions of section 90 of the

Employment Act.

6. The preliminary objection is therefore overruled and the case will proceed to trial on merit.

7. It is ordered.

Dated at Nairobi this 3rd day of March, 2017

Abuodha J. N.

Judge

Delivered this 3rd day of March, 2017

In the presence of:-

..... **for the Claimant and**

..... **for the Respondent.**

Abuodha J. N.

Judge