

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.100 OF 2014

KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS,

HOSPITALS AND ALLIED WORKERS.....CLAIMANT

VERSUS

CONSOLATA HOSPITAL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday, 31st May, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 02.09.2014 alleging wrongful and unfair termination of its member one Cyrus Mwihuri Njeru, the grievant. The grievant stated in his evidence that he was employed by the respondent in August 2004 in the maintenance department and his duties entailed repairing of the telephone systems. The grievant's evidence was that he was verbally terminated from employment on 02.02.2009 when the respondent's administrator one Fr. John Mbai handed to him the letter dated 16.01.2009 and told him to go away and to be recalled in future. The grievant testified that he was not recalled hence the present suit. In the memorandum of claim, judgment is prayed against the respondent for payment of the grievant's terminal dues including:

- a) One month pay in lieu of termination notice Kshs.6, 000.00.
- b) Gratuity for 5 years of service Kshs.15, 000.00.
- c) Underpayment for 3 years being Kshs.7, 698.00 for March 2006 to April, 2006; and Kshs. 171, 054.00 for May 2006 to February 2009.
- d) Underpayment for house allowance being Kshs.2, 954.00 for March 2006 to April, 2006; and Kshs. 56, 270.00 for May 2006 to February 2009.
- e) Pay for annual leave for 3 years Kshs.56, 270.00.
- f) Six months compensation for unfair termination Kshs.36, 000.00.
- g) Costs of the suit.

The claimant reported a trade dispute to the Cabinet Secretary for Labour on 04.11.2011 and said to be per section 62(1) of the Labour Relations Act, 2007. By the letter dated 12.03.2012 the dispute was accepted and the dispute having not been resolved, the certificate to refer the same to the court was issued by the letter dated 18.03.2014.

The claimant's case is that he was dismissed on 02.02.2009. The three years of limitation of actions in employment contracts as prescribed in section 90 of the Employment Act, 2007 lapsed on or about 03.09.2012. It is now the position in law that the conciliation proceedings under the Labour Relations Act, 2007 do not adjourn or stay the running of the time of limitation. Accordingly, the court returns that the suit was filed outside the time of limitation as prescribed in section 90 of the Employment Act, 2007 and the suit will therefore fail. As the respondent did not enter appearance and did not file a response or

attend any of the steps in the suit, the suit will be dismissed with no orders on costs.

In conclusion, the suit is hereby dismissed with no orders on costs.

Signed, dated and delivered in court at **Nyeri** this **Wednesday, 31st May, 2017**.

BYRAM ONGAYA

JUDGE