



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1161 OF 2016

PAMPHILIUS JUM KAMITO CLAIMANT

VERSUS

GROUP 4 SECURITY RESPONDENT

JUDGEMENT

The claim herein was filed on 15th June, 2016. Summonses were served upon the respondent on 20th June, 2016 but there was no appearance or defence filed. An Affidavit of Service to confirm service was filed on 22nd June, 2016.

The claimant was heard on his claim noting the non-attendance of the respondent. The claim was analysed on its merits.

The claim is that on 9th August, 1994 the claimant was employed by the respondent as a security guard on a temporary basis and at a daily wage of Kshs.99.10 per day. On 25th November, 1994 the claimant was issued with an employment contract commencing 1st December, 1994 with a basic wage of Kshs.1,896.00 and a house allowance of Kshs.284.40. employment was confirmed vice letter and taking effect on 1st March, 1997.

The claim is also that the claimant performed his duties diligently until 21st November, 1999 when he was arrested on the basis that he had failed to prevent the commission of a felony at his designated place of work. Upon investigations, the police released the claimant without any charges and when he reported back to work, on 23rd November, 1999 he was issued with a letter of suspension without being given the reasons.

On 4th December, 1999 the respondent issued the claimant with a letter of dismissal from his employment. The cited reason was gross negligence. That this was not the case and the dismissal was unfair as the police had already cleared the claimant. At the time the salary paid was Kshs.4, 830.00.

The claimant is seeking payment of notice pay; payment in lieu of taking leave for years worked; damages for wrongful dismissal; severance pay; issuance of a certificate of service; and costs of the suit.

The claimant also testified in support of his claim. He averred that upon employment he worked diligently until his dismissal which was unfair as there was no reason to warrant dismissal; he had no notice and was not given a reason. He was forced to seek the services of Bernard Kibet Sang to draft his pleadings at a cost of Kshs.8, 000.00 as he has now been rendered jobless and with no income.

Determination

The claim herein is premised on the alleged unfair termination of the claimant’s employment by the respondent. Employment commenced on 9th August, 1994 on casual basis and the claimant was confirmed on permanent basis with effect from 1st December, 1999. The claimant testified that he was dismissed on 4th December, 1999 on the grounds of gross negligence. Upon such dismissal, the claimant filed his Memorandum of Claim on 15th June, 2016. Such is a period of over six and a half [6 ½] years.

Section 90 of the Employment Act requires all claims based on the application, rights and provisions under the Employment Act to be filed within 3 years from the time when the cause of action arose;

90. Limitations Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

In evidence, the claimant did not set out what transpired between 4th December, 1999 to 15th June, 2016 when he was dismissed and when he filed suit. The time limitations under section 90 being mandatory and the court having not been moved within the requisite time, the claim is time barred by application of the law and the claims being based on an employment relationship between the parties and the remedies sought being based on the Employment Act, it is time barred. The suit cannot stand as set out. It is time barred.

The claimant also testified that he was assisted by Bernard Kibet Advocate to prepare his pleadings. He paid the sum of Kshs.8, 000.00 for such service. Had the advocate advised the claimant on his pleadings and the claims he helped draft, this suit would have been unnecessary. The claimant is not entitled to costs he can only recover his kshs.8, 000.00 from the advocate who drafted his pleadings.

Suit is hereby dismissed for want of time. As there was no appurtenance by the respondent, costs are not due.

Dated, signed and read in open court at Nairobi this 11th day of May, 2017.

M. MBARU

JUDGE

In the presence of:

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