

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 106 OF 2015

EVERLYN MUTHONI MBOGO.....CLAIMANT

-VERSUS-

COUNTY GOVERNMENT OF LAIKIPIA.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 5th May, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 29.06.2015 through Nderitu Komu & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) The withheld part salary from 14.08.2004 to November 2010, pay in lieu of leave, and reimbursements of money incurred in the course of employment, and salary from December 2010 at the rate of Kshs. 7, 458.00 up-to-date.
- b) A declaration that during the subsistence of the claimant's employment, the respondent is liable to pay the claimant her monthly salary.
- c) Costs of the suit.
- d) Any other or further relief that the court may deem fit and just to grant.

The respondent's statement of defence was filed on 03.12.2015 through Bwonwonga & Company Advocates and prayed that the suit be dismissed with costs.

The claimant's case is that she worked as employed by the respondent from 01.07.2006 to November 2010. Thereafter, she was not assigned duties and her last pay was on 23.03.2011. The court finds that the claimant must be deemed to have been constructively terminated from employment from 23.03.2011. Under section 90 of the Employment Act, 2007, the suit must be filed within 3 years from the date the contract of employment was terminated or within 12 months from cessation of the continuous injury in the claim. The present suit was filed on 29.06.2015; the 3 years having already lapsed on or about 22.03.14 and the 12 months for continuous injury on or about 22.03.2012. The court finds that the suit was therefore time barred.

The respondent submitted on the issue of limitation of time belatedly and in the final submissions and the court considers that the suit will be dismissed but each party shall bear own costs of the suit.

In conclusion, judgment is hereby entered for the respondent against the claimant for:

- a) The dismissal of the claimant's memorandum of claim filed on 29.06.2015.
- b) Each party to bear own costs of the suit.

Signed, dated and delivered in court at Nyeri this **Friday, 5th May, 2017.**

BYRAM ONGAYA

JUDGE