



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 24 OF 2017**

**(Formerly Meru High Court Civil Case No.78 of 2006 and Cause  
No. 144 in the Employment and Labour Relations Court at Nairobi)**

**FRANKLIN MBAE MBURIA..... CLAIMANT**

**VERSUS**

**MERU CENTRAL FARMERS CO-OPERATIVE LIMITED..... 1<sup>ST</sup> RESPONDENT**

**MERU CENTRAL COFFEE UNION.....2<sup>ND</sup> RESPONDENT**

**MERU CENTRAL SACCO SOCIETY LIMITED.....3<sup>RD</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday, 29<sup>th</sup> June, 2017)

**RULING**

The suit was initially filed in the High Court at Meru by plaintiff on 30.08.2006 through Gikunda Miriti & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) General damages for wrongful and malicious dismissal.
- b) Special damages as pleaded herein above (being unpaid salary from 06.10.1998 to date at Kshs.4, 250.00; Legal fees Kshs. 300,000.00 in defending criminal case no. 3810 of 1999; expenses for attending criminal case no. 3810 of 1999 from Nairobi at Kshs. 3,000.00 per day; and terminal benefits to be proved at the hearing).
- c) Damages for loss of earnings.
- d) Costs and interest.

The plaintiff, in part, stated as follows:

**“5. The plaintiff was at all material times an employee of the 1<sup>st</sup> defendant from the 4<sup>th</sup> May 1988 having been recruited by the 1<sup>st</sup> defendant and at all material times worked as a cashier in the defendant banking section.**

**6. On the 15<sup>th</sup> of October 1988 the 1<sup>st</sup> defendant without any cause and indeed maliciously**

**suspended the plaintiff from duty and employment on allegation of theft by servant or employee a fact the management of the defendant knew to be untrue.** (Looking at the material on record the court observes that the date must have been meant to be 04.05.1998 and not 04.05.1988)

**7. As a result of the defendant malicious allegation the plaintiff was charged in Meru Chief Magistrate Court criminal case no. 3810 of 1999, and upon the hearing of the case the plaintiff was acquitted on the 13<sup>th</sup> January 2004.**

**8. The plaintiff upon acquittal sought to be reinstated to work and be paid his dues for wrongful dismissal but the defendant failed to refund and or neglected to reinstate him or pay his dues.**

**12. Due to the malicious act of the 1<sup>st</sup> defendant the plaintiff suffered loss of earnings, special damages, general damages and costs defending criminal case no. 3810 of 1999. The pleaded particulars of malice against the 1<sup>st</sup> respondent included reporting the claimant to the police as having stolen money; influencing the police to charge the claimant; suspending the claimant; and failing to pay the claimant his dues.”**

The respondents filed the statement of defence on 13.12.2006 through Mwenda Mwarania, Akwalu & Company Advocates. The respondents pleaded that they reasonably suspected the claimant to have been dishonestly involved in the loss in the 1<sup>st</sup> respondent's banking section, the police investigated the crime within their powers and preferred charges against the claimant and the respondents were not responsible for the ensuing prosecution. Further, it was stated in the defence that the respondents were under no obligation, legal or otherwise, to retain an employee reasonably suspected to have been involved in dishonesty against the respondents. The respondents prayed that the claimant's suit against them be dismissed with costs.

The respondents filed the amended defence on 27.06.2017 and it was stated that the claimant was terminated by the letter dated 22.10.1998. At paragraph 5A it was stated that the defendants aver that the suit herein is time barred by operation of both sections 4(1) of the Limitation of Actions Act, Cap. 22 and section 90 of the Employment Act, 2007 and that the respondents shall raise a preliminary objection on limitation of time.

It is not disputed between the parties that the claimant was dismissed from employment by the letter of termination of service dated 22.10.1998. The letter filed as part of the claimant's documents refers to the claimant's suspension, appearance before the 1<sup>st</sup> respondent's management committee on show –cause proceedings, and failure by the claimant to appear as scheduled on 15.10.1998. The letter then conveys the 1<sup>st</sup> respondent's decision passed at the meeting of 21.10.1998 terminating the claimant's employment with effect from the date the claimant had been suspended from employment. Accordingly the court returns that the claimant's employment was terminated as conveyed by the letter of termination dated 22.10.1998 and the court returns that the cause of action accrued on that date, 22.10.1998.

Under section 4(1) of the Limitation of Actions Act, the six years for filing suits based on contract lapsed on or about 23.10.2004 and the suit was filed on 30.08.2006. The court returns that the suit was time barred under the section. As submitted for the claimant, at the time of the suit or the cause of action, section 90 of the Employment Act, 2007 was not in operation as it had not been enacted so that it did not apply in the present suit.

The court has considered the pleadings. It is clear that the claimant's prayers flow, evolve and revolve from the employment relationship between the parties. The remedies sought flow from the contract of service between the parties and in so far as the jurisdiction of the court is absolutely extinguished by reason of lapsing of the cited statutory time of limitation, the court returns that it lacks jurisdiction to investigate into the contractual dispute and then apportion liability and remedies in that regard. Indeed, the court returns that without the contract of employment, the claimant would not found a cause of action

against the respondents or urge any of the remedies as prayed for. Accordingly, the court returns that the suit was based upon a cause of action purely predicated upon the contract of employment and the cause being barred by the lapsing of the statutory time of limitation, the same is amenable to being struck out as submitted for the respondents.

While making the finding, the court has also followed the recent holding by the Court of Appeal in **Attorney General and Another –Versus- Andrew Maina Githinji [2016]eKLR** that the pendency of a criminal case arising from or about the contract of employment does not adjourn or stop the time of limitation from running for a cause of action accruing from that contract of employment.

The court has considered that the preliminary objection was raised and urged belatedly in the amended statement of defence filed on 27.06.2017 and served on the date fixed for hearing of the suit on 28.06.2017. In such circumstances, the court considers that each party will bear own costs of the suit.

In conclusion, the claimant's suit is hereby struck out with orders that each party shall bear own costs of the suit. A decree shall issue accordingly.

**Signed, dated and delivered** in court at **Meru** this **Thursday, 29<sup>th</sup> June, 2017.**

**BYRAM ONGAYA**

**JUDGE**