

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 17 OF 2014

ROBERT WAMBUGU MAITHO.....CLAIMANT

VERSUS

SAFARI TINGTING (K) LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 29th September, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 20.01.2014 through C.M. King'ori & Company Advocates for orders against the respondent for:

- a) Kshs. 278,594.90 being unpaid 2 days worked Kshs.1, 413.30; 3 months' salary in lieu of termination notice Kshs.63, 600.00; unpaid holidays for 9 days each year served Kshs.38, 866.60; off days for 2 years Kshs.33, 919.00; and severance pay Kshs.55, 999.00.
- b) Costs and interest.

Despite service the respondent failed to enter appearance or to file defence or to attend the hearing.

The claimant's case is that he was employed by the respondent as a supervisor from 2005 to 20.07.2010 at a monthly salary of Kshs.21, 200.00. On 02.03.2010 the claimant was charged with the offence of stealing by servant contrary to section 281 of the Penal Code in Criminal Case No.575 of 2010. The claimant was acquitted on 20.07.2010 under section 210 of the Criminal Procedure Code as the prosecution failed to establish a prima facie case and the claimant was therefore not placed on his defence.

The suit was filed on 20.01.2014 and the claimant has pleaded that he was dismissed on 20.07.2010. The three years of limitation for filing the suit as per section 90 of the Employment Act, 2007 lapsed on or about 20.07.2013. Accordingly the court returns that the suit was time barred and it will not be considered on its merits. As the respondent failed to defend the suit, the court returns that it 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 Friday, 29th September, 2017.

BYRAM ONGAYA

JUDGE