

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 74 OF 2017

CHARLES KOLIMUKERENG.....CLAIMANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 8th December, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 14.03.2017 through Mwaura Kamau & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant's dismissal from his employment was wrong, unfair and unlawful.
- b) The respondent to pay the claimant a sum of Kshs. 493, 429.78 being Kshs.145, 265.10 for underpayment, Kshs.3, 304.06 pro-rata leave, unpaid overtime Kshs.133, 372.08, Kshs. 47,577.06 overtime on normal days, Kshs.16, 617.48 pay for work on public holidays, service gratuity Kshs.11, 330.01, and Kshs.135, 961.20 compensation for unfair termination.
- c) Costs and interest.

The response was filed on 16.05.2017 through Murage Juma & Company Advocates. The respondent prayed that the suit be dismissed with costs.

Parties opted that the suit be determined on the basis of pleadings and documents filed for the parties.

There is no dispute that the respondent employed the claimant as a security guard. The employment was initially on temporary basis from June 2013 and on permanent basis effective September 2014. The claimant's case was that his services were terminated on 26.11.2015 when he was informed that there was no work for him to undertake and that he would be recalled when the work picked up.

First, the court returns that the claims for under payment, overtime and work on public holidays were of a continuing nature. The termination was alleged by the claimant to have been on 26.11.2015 and the suit was filed on 14.03.2017; long after the lapsing of 12 months as the prescribed time of limitation under section 90 of the Employment Act, 2007. The prayers in that regard will fail as the cause of action was time barred.

Second, the court returns that the prayer for gratuity will fail in view of section 35(6) of the Act and because the claimant was a member of NSSF.

Third, the court returns that the claimant has not established that the procedure for termination was unfair. On the other hand, the court returns that the respondent has filed the letter dated 25.09.2015 conveying the notice that the employment would cease on 24.10.2015 due to financial constraints. The claimant in his witness statement confirms that he was informed to go away as there was no work but he

would be recalled. Taking into account that material on record, the court returns that the contract of employment came to an end by parties' mutual agreement and with requisite respondent's notice as envisaged in section 35 of the Act.

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

Signed, dated and delivered in court at **Nyeri** this **Friday, 8th December, 2017**.

BYRAM ONGAYA

JUDGE