



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 310 OF 2015

JOSPHAT MAVONGA.....CLAIMANT

VS

K. K. SECURITY GROUP OF COMPANIES.....RESPONDENT

JUDGMENT

Introduction

1. The claimant was employed by the respondent on 20.9.2008 as a Security Guard and worked as such upto October 2011 when he and other fellow guards were given unpaid leave due to reduction of work. That when he reported back to work on 1.11.2011 as required, the HR manager told him that there was no work and directed him to continue reporting to the office daily to try his luck for an assignment. He was however not receiving any pay and after sometime he decided to go to his rural home to deal with an emergency. In April 2012 he went back to the respondent's office but he was given a dismissal letter dated 15.3.2012 and asked to explain his absence from work in writing. He did so by his letter dated 10.4.2012 but the respondent retained her earlier decision to dismiss him. The claimant then brought this suit on 11.5.2015 seeking to recover terminal dues plus compensation for wrongful termination of his employment.

2. The respondent has denied liability for wrongful termination and avers that the claimant was properly dismissed for absenteeism after he deserted without any justifiable cause. That she gave the claimant a chance to explain his absence in writing but his explanation was unsatisfactory.

3. The suit was heard on 8.10.2015 when the claimant testified as Cw1 and the respondent called Sofia Jan Mohammed as Rw1. Thereafter both parties filed written submissions.

Analysis and Determination

4. There is no dispute that the claimant was employed by the respondent as Security Guard and was summarily dismissed on 15.3.2012 for deserting work without any justifiable reason. There is also no dispute that he was only given a chance to defend himself in writing after the dismissal had already been done. The issues for determination are:

- a) Whether the suit is time barred,
- b) Whether the dismissal of the grievant was unfair

c) Whether the prayers sought should issue.

Time barred suit

5. The claimant pleaded that he worked for the respondent until November 2011 when he was dismissed. However in his testimony he stated that he never received any dismissal letter until April 2012, when he went back. On the other hand the respondent has pleaded and maintained in her evidence that the dismissal of the claimant was done on the 15.3.2015. However her counsel has submitted that whether the cause of action arose in November 2011 or 15. 3.2012, this suit is time barred and the court should not grant the reliefs sought.

6. After careful consideration of the pleadings and the evidence placed before it, this court finds no difficulty in finding and holding that this suit is time barred. Section 90 of the Employment Act (EA) limits the time within which to file a suit based on employment contract to 3 years from the time when the cause of action arose or in case of continuing breach, default or injury, 12 months from the time when the breach, default or injury ceased. In this case the 3 year window for the grievant closed on 15.3.2015. The cause of action having expired, this court lacks jurisdiction over it. Consequently the court must down its tools for lack of jurisdiction to determine the suit on merits.

Disposition

7. For the reasons stated above, the suit is struck out with no orders as to costs.

Signed, Dated and delivered this 26th day of February, 2016

ONESMUS MAKAU

JUDGE