



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1336 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 2nd February 2016)

JACKSON MWALIMU NGUNZICLAIMANT

VERSUS

TIMOTHY MUSYOKIRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his Memorandum of Claim on 20.8.2013 in person claiming wrongful and unfair termination of his services and failure by the Respondent to pay him his terminal benefits.
2. It is the Claimant's case that in 1994, he was employed by the Respondent as a Carver earning a salary of 7,500/=. He avers that he performed his services diligently until July 2007 when he served the Respondent with a one months' notice to leave work but the Respondent refused to pay him his terminal benefits being severance pay, house allowance, leave days, salary in arrears from year 2000 to 2007 being 357,530/= and rest days all totaling to 1,945,655/=.
3. The Claimant's Claim is for the above stated amount plus compensation for unlawful dismissal. The Claimant never however produced any documentary evidence as proof of relationship.
4. The Respondent filed a Preliminary Objection on 11.3.2014 alleging that the claim was time barred having been filed over 6 years after the alleged cause of action.
5. The Respondent also filed his Memorandum of defence on 29.1.2014 where he avers that the Claimant was not employed as a Carver at any salary but that his job was sand paper finishing of carvings done by others and he was not paid a salary but was paid per piece completed.
6. He also avers that the Claimant worked as per work availability and would work as he deemed fit sometimes being away for days, weeks and even months. He avers that the Claimant would also do work for other Carvers and also trade in carvings in various markets around Nairobi.
7. The Respondent avers that his licence was terminated and by then the Claimant had already stopped being a regular worker as he was engaged in his on trade and was never terminated. The Respondent denies the Claimant's claim in its entirety.
8. The Claimant gave his oral evidence and the case proceeded in absence of Respondent who was still seeking for an adjournment after several adjournments.

9. Having considered evidence of both parties, issues for determination are as follows:

1. ***Whether this matter is time barred.***
2. ***Whether the Claimant was indeed dismissed by Respondent.***
3. ***Whether the Respondent had valid reasons to terminate the Claimant.***
4. ***Whether there are any remedies to award the Claimant.***

10. On the 1st issue, the Claimant stated that he was terminated in July 2007. This was during the dispensation of the Old Labour Laws where a matter involving employment – considered as a contract was to be filed within 6 months.

11. In the case of the Claimant, his case was filed on 20.8.2013 after the expiry of the 6 years limitation period. The Claimant had insinuated that he came to court late because as late as June 2013, the Respondent was still discussing with him trying to discuss how to settle the matter. This in itself would have been a good ground to seek extension of time within which to file suit out of time.

12. However, the Claimant chose to file this claim despite the expiry of time and without seeking leave of court to file out of time. This makes the suit a non-starter having been filed out of time and is therefore time barred.

13. It is for this reason that I find the case cannot proceed beyond this point and therefore it would not be possible to consider the other issues.

14. The end result is that this case is dismissed accordingly for being time barred. Each party will bear its own costs.

Read in open Court this 2nd day of February, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Respondent – Absent

Claimant in person – Present