



**REPUBLIC OF KENYA**

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

**CAUSE NO. 115 OF 2014**

**KUDHEIHA WORKERS.....CLAIMANT**

**VERSUS**

**B.O.M KIGANJO POLICE COLLEGE.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 17<sup>th</sup> June, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 08.09.2014 on behalf of its member Charles Wachira Wangechi. The claimant prayed that the respondent pays a sum of Kshs. 219, 684.00 being terminal benefits thus one month pay in lieu of termination notice Kshs.4, 978.00; 12 days worked and not paid Kshs. 1,991.00; annual leave for 5 years Kshs. 17, 423.00; off days worked and not taken for five years being 255 days at Kshs. 165.90 making Kshs.42, 304.50; 11 holidays not paid for in 5 years Kshs. 9, 102.50 and underpayment of wages in 5 years Kshs. 143, 885.00.

Despite service the respondent did not file a statement of response or enter appearance or attend the hearing. The grievant testified to support the claimant's case.

The grievant was employed as a labourer to do cleaning effective 13.04.1999. He was later promoted as a waiter at 'A' Mess where he served until 31.08.2007. At time of the claimant's termination the respondent had decided to employ staff on fixed term contracts. The grievant objected by complaining that he would end up unfairly surrendering his accrued years of service. Instead of resolving the dispute the respondent decided to verbally terminate the grievant's employment. The parties invoked statutory conciliation but the same did not yield amicable settlement as at 22.08.2011. It is not clear if the certificate of disagreement was issued by the conciliator.

The suit was filed on 08.09.2014. If the cause of action was on the date of termination on 31.08.2007, then the suit should have been filed by 31.08.2013 under section 4 of the Limitation of Actions Act Cap. 22 since Employment Act, 2007 had been assented to on 22.10.2007 and not applicable to the suit. The dispute was reported to the Minister by the claimant belatedly on 17.03.2011. If it is taken that the conciliation process collapsed on or 30 days after 15.04.2011 when the conciliator was appointed, under section 90 of the Employment Act, 2007 as read with section 67(1) (a) of the Labour Relations Act, 2007, the three years to file suit would lapse on or about 15.05.2014. Thus the suit was time barred.

The court has considered that the respondent did not oppose the suit and there will be no orders on costs.

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

**Signed, dated and delivered** in court at Nyeri this **Friday, 17<sup>th</sup> June, 2016.**

**BYRAM ONGAYA**

**JUDGE**