



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NUMBER 805 OF 2013

SIMON MBITHI MBANE.....CLAIMANT

VERSUS

INTERSECURITY SERVICES.....RESPONDENT

RULING

1. The respondent raised a preliminary objection to this suit on the ground that the same is statute barred by virtue of section 90 of the Employment Act hence the same should be struck out.
2. Section 90 of the Act bars the filing of any claim concerning a contract of employment more than three years from the date of the accrual of the cause of action.
3. In his memorandum of claim filed on 28th May, 2013 the claimant avers that he was employed by the respondent on or about September, 1996 as Security Guard. He served the respondent until his services, were according to him, wrongfully and unlawfully terminated. He however does not plead when his services were terminated by the respondent.
4. The respondent on the other hand averred in its memorandum of response that on the night of 12th February, 2009 the claimant was stationed at Olympic House as a guard when burglary occurred leading to loss of property. The claimant and his colleague who were on duty on the material night were taken to the Police Station to assist with investigations.
5. According to the respondent, the claimant never reported to work thereafter. The respondent therefore averred that the claimant absconded duty. It is also noteworthy that the respondent did not aver that the claimant was consequently dismissed or terminated and when this occurred.
6. In reply to the memorandum of response, the claimant stated that he was consequent to the burglary charged in Court and thereafter remanded for four months. When he got released on bond on 12th June, 2009, he reported to work and he was told he could not continue working until the outcome of the criminal case was known. On 28th September, 2012 when his case ended he reported to work but was informed by the respondent that he could not be taken back.
7. In the circumstances it is not crisp clear that the claimant delayed in filing his claim. His allegations that respondent represented to him to await the outcome of the criminal case are plausible and make it unclear whether the cause action accrued at the time the claimant was arrested or when the criminal case became terminated.

8. The running of time against the accrual of cause of action would remain suspended if it can be reasonably established that the defendant by its own act or omission created a situation in which it can be reasonably deduced that the cause of action is suspended. The claimant has pleaded that he was held in custody for about four months and upon release he reported to work but was told to await the outcome of the criminal case. As stated therefore, it cannot be said with exactness when time began to run against his claim. This doubt will be resolved in favour of sustaining rather killing the dispute on account of technicality.

9. The Court therefore overrules this objection and directs that the suit proceeds on merit. The respondent shall however have the liberty to urge the issue of limitation during the trial and upon evidence.

10. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge