

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 150 OF 2015

DENNIS KINYUA GUANDARU.....CLAIMANT

VERSUS

POLY PIPES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 15th July, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 04.09.2015 through Karweru & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Salary arrears of 8 months at Kshs. 47, 000.00 making Kshs. 376, 000.00.
- b. Travel and subsistence allowance for one month Kshs. 20, 000.00.
- c. Leave days for 4 years Kshs. 150, 400.00.
- d. One year pay for unlawful termination Kshs. 564, 000.00.
- e. Total Kshs. 1, 110, 400.00.

Despite service the respondent did not file a response or attend at the hearing. The hearing proceeded ex-parte.

In the course of employment the claimant testified that he suffered serious frustrations including failure by the respondent to pay salaries and denial by the respondent for the claimant to sell respondent's goods on credit so that the claimant lost most of his clients. By February 2012 the claimant testified that he had gone without salary for 8 months. Thus, he was forced out of employment by way of resignation in view of the frustrations and the impossible job environment.

At paragraph 3 of the memorandum of claim the claimant has pleaded that the termination was in April 2012.

The court has considered the material on record that the claimant's employment was terminated in April 2012 as pleaded or February 2012 as testified. The suit was filed on 04.09.2015. The court returns that the suit was time barred under section 90 of the Employment Act, 2007 which prescribes 3 years of limitation of suits founded on the contract of employment. As the respondent never appeared, there will be no orders on costs.

In conclusion the claimant's memorandum of claim filed on 04.09.2015 is hereby dismissed with no orders on costs.

Signed, dated and delivered in court at Nyeri this Friday, 15th July, 2016.

BYRAM ONGAYA

JUDGE