



**REPUBLIC OF KENYA**

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

**CAUSE NO. 111 OF 2015**

**SAMUEL MUNYUA MWANGI.....CLAIMANT**

**VERSUS**

**K.H.E NANYUKI FARM LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 15<sup>th</sup> July, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 02.07.2015 through Kipkenei & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. General damages for injuries suffered.
- b. Kshs. 453, 508.00 being withheld salary for 44 months.
- c. Kshs.30, 921.00 being three months' salary in lieu of notice.
- d. Costs of the suit.
- e. Any other relief that the Honourable Court may deem fit to grant.

The claimant was at all material times the respondent's employee in the capacity of a motor vehicle driver. While on duty on 8.01.2011 he was involved in a road traffic accident and he sustained injuries. The claimant attended treatment and the doctor prescribed light duties. He then reported on duty for one week and thereafter the respondent's human resource officer one James told the claimant to go home and wait until when he would be recalled back to work. He was never recalled. By end of June 2011 he was not paid his monthly salary of Kshs. 10, 307.00. His further case was that after the accident he was not taken for medication and he was not compensated for the injuries sustained at the accident. It was his evidence that after the accident he worked from 17.01.2011 to 26.12.2011. During cross-examination and in a contradictory manner the claimant testified that his last day at work was on 29.03.2012 when he was asked by the human resource officer to go home until when he'd be recalled back to work.

It is the respondent's case that the claimant's suit is time barred because it was filed after the lapsing of the three years prescribed in section 90 of the Employment Act, 2007 within which to file suits based on the contract of employment. The claimant's evidence is that his last date at work was on 29.03.2012. Thus the three years of limitation lapsed on or about 29.03.2015. The suit was filed on 02.07.2015 and as submitted for the respondent, the suit founded upon dismissal on 29.03.2012 was indeed time barred. The court returns as much.

As for the claim for compensation for injuries sustained, and as submitted for the respondent, the assessment of damages is within the regime provided for under the Work Injury Benefits Act, 2007. Section 16 of the Act provides that no action shall lie by an employee or any dependant of an employee for recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer and no liability for compensation on the part of such employer shall arise save under the provisions of the Act in respect of such disablement or death. The suit was barred under that section in so far as the claims for compensation for injuries sustained while on duty were concerned. The suit will therefore fail.

In conclusion the claimant's memorandum of claim is hereby dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Friday, 15<sup>th</sup> July, 2016.**

**BYRAM ONGAYA**

**JUDGE**