

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.36 OF 2014

ROGERS MUTISYACLAIMANT

VERSUS

CHIENI PLAINS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 30th September, 2016)

RULING

The claimant filed the memorandum of claim on 06.03.2014 through Abuor & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of the claimant's employment was unlawful and contrary to provisions of the Employment Act.
- b) Damages for unlawful termination.
- c) Salary in lieu of notice and severance benefits to be determined by the court.
- d) Costs of the suit and interest on a, b, c, and d at court rates.

The amended claim was filed on 09.06.2015 introducing prayer (cc) for terminal benefits of Kshs.343, 351.40.

The respondent filed the statement of response to the claim on 08.04.2014 through J.M. Mwangi & Company Advocates. The respondent prayed for dismissal of the claimant's claim with costs. The amended response was filed on 16.06.2015.

The respondent also filed a notice of preliminary objection on 09.08.2015 that the cause of action arose on 05.01.2011 and the suit was time barred under section 90 of the Employment Act, 2007. The claimant filed the termination letter dated 5.01.2011 authored by the claimant and stating that the claimant had decided to terminate his employment. Thus the court finds that the contract of service between parties was terminated by that letter of 05.01.2011. The suit was filed on 06.03.2014 whereas the 3 years of limitation under section 90 of the Employment Act, 2007 lapsed on or about 05.01.2014. The court finds that as submitted for the respondent, the suit was indeed time barred.

In conclusion the preliminary objection filed for the respondent on 09.08.2015 is hereby upheld and the claimant's memorandum of claim as amended on 8.06.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this Friday, 30th September, 2016.

BYRAM ONGAYA

JUDGE