

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.94 OF 2015

CHARLES MAINA MAGERIA..... CLAIMANT

VERSUS

CHURCH COMMISSIONERS OF KENYA (SUED IN THEIR CAPACITY

AND ON BEHALF OF ACK EMMANUEL CHURCH KARATINA).....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 7th October, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 28.05.2015 through Muhoho Gichimu & Company Advocates. The claimant prayed for judgment against the respondent for payment of Kshs.272,828.00, costs of the suit, and interest. The respondent filed the memorandum of response on 22.06.2015 through Kinyua Kiama & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The claimant's case is that he was employed to serve as a night guard at the Anglican Church of Kenya Emmanuel Church Karatina from 10.07.2011 to the date of the termination of his contract of service on 13.02.2013. The claimant's case is that at termination of the contract of service he was willing and he desired to continue in the employment.

The claimant's further case is that during employment he was not given annual leave or paid in lieu of annual leave, he was not given one rest day every week as per statutory requirement in the Employment Act, 2007, he worked overtime but he was not paid, he was entitled to house allowance but he was not paid, and accordingly he claimed Kshs.272, 828.00. During the hearing the claimant amended the statement of claim to include unpaid salary for the period September 2012 to February 2013 during which he alleged to have worked but not paid.

The claimant has stated that he worked from 10.07.2011 to 20.02.2013 and he filed suit on 28.05.2015. The court has considered the nature of claims and injuries complained of and the court returns that they were of a continuing nature accruing during the period of employment. During the employment there appears to have been no grievances by the claimant about the alleged grievances. More important is the provision in section 90 of the Employment Act, 2007 that notwithstanding the provisions of section 4 (1) of the Limitation of Actions Act, Cap 22, no civil action or proceedings based or arising out of the Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of or in case of continuing injury or damage within twelve months next after cessation thereof. The court has found the injuries complained of to have been of a continuing nature and ceased on or about 20.02.2013 and the 12 months for filing suit lapsed on or about 20.02.2014. The court finds that the suit filed on 28.05.2015 was therefore filed outside the prescribed 12 months and was therefore time barred. The respondent did not take up that point as of preliminary objection or at all and accordingly the court returns that each party shall bear own costs of the proceedings.

In conclusion, the claimant's memorandum of claim is hereby dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 7th October, 2016.

BYRAM ONGAYA

JUDGE