



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 109 OF 2013**

**BETWEEN**

**MICHAEL WANDERI KARIUKI.....CLAIMANT**

**VERSUS**

**BROOKSIDE DAIRY LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mr. Otwere Advocate instructed by Osoro Omwoyo & Company Advocates for the Claimant*

*Mr. Odera Advocate instructed by Timamy & Company Advocates for the Respondent*

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**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL**

**AWARD**

**[Rule 27 [1] [a] of the Industrial Court Procedure Rules 2010]**

1. Milk Maker Brookside Dairy Limited has been brought before the Court by its former Salesman Michael Wanderi Kariuki. He alleges, in the Statement of Claim filed on 13<sup>th</sup> May 2013, and subsequently amended and filed on 3<sup>rd</sup> May 2014 that he employed on 1<sup>st</sup> July 2011; and was unfairly and unlawfully dismissed by the Respondent. He seeks an Award against the Respondent for:-

- a. 1 Month salary in lieu of notice at Kshs. 25,233.
- b. Salary for June 2008 at Kshs. 25,233.
- c. Pro-rata leave of 15.32 days at Kshs. 704 amounting to Kshs. 10,790.64
- d. Unlawful salary deduction of July 2008 salary at Kshs. 11,625.
- e. Gratuity at Kshs. 12,617 for every of the 7 years completed in employment at Kshs. 88,319.
- f. Damages for unlawful, unfair and wrongful termination of employment.
- g. The Respondent be ordered to issue the Claimant with the Certificate of Service and a

- Recommendation Letter or in the alternative, the Claimant be returned to service.
- h. Payment of overtime, leave and house allowances.
  - i. Damages for unlawful confinement and defamation.
  - j. Costs, Interest and any other suitable relief.

2. The Respondent filed its Statement of Response on 7<sup>th</sup> June 2013. It is agreed the Claimant was summarily dismissed by the Respondent, through a letter dated 15<sup>th</sup> July 2013. At the time of dismissal, he earned a gross monthly salary of Kshs. 21,835. He could not account for a sum of Kshs. 373,227 in sales due to the Respondent and was bonded by the Police at Makupa Police Station, to attend Court to answer a charge of theft by servant. His dismissal was on acts amounting to gross misconduct. He is not entitled to the prayers sought. The Respondent asks the Court to dismiss the Claim in its totality, or if minded to find in favour of the Claimant to grant him:-

- a. Leave days at Kshs. 10,790.
- b. Salary for July 2008 at Kshs. 2,817

In total, the Claimant should be paid Kshs. 12,787, net.

3. The Claimant gave evidence on 27<sup>th</sup> July 2014 and on 9<sup>th</sup> July 2014. The Respondent gave evidence through its Human Resources Manager Grace Manugu on 9<sup>th</sup> July 2014 and its Security Manager Daniel Muriuki on 9<sup>th</sup> July 2014 and 14<sup>th</sup> October 2014 when the hearing closed.

*The Court Finds:-*

4. The Claimant was summarily dismissed by the Respondent through a letter dated 15<sup>th</sup> July 2008. Dismissal was effective from 5<sup>th</sup> July 2008. It was not until 13<sup>th</sup> May 2013 that this Claim was filed. It was filed about 5 years, from the date of dismissal. The Claim is governed by the Employment Act 2007. These facts are not contested. The Court finds the Claim is statute- barred under Section 90 of the Employment Act 2007, as submitted by the Respondent in its Final Submissions. The law places a 3 year time limit for the filing of Claims such as filed herein. The Claimant does not explain the delay in his Evidence, Pleadings or Submissions. He did not make any movement of any nature, aimed at validating the Claim. He completely ignored to address this fundamental legal point. It would have been in the interest of the Parties and Judicial Economy, if the point was taken up at the outset.

5. In view of this, the Court has no jurisdiction to evaluate the merits of the Claim. Parties however, are not prevented by this finding, from further negotiations, in light of the offers made by the Respondent to the Claimant in the proceedings. The law is clear the Court lacks temporal jurisdiction. IT IS ORDERED:-

***[a] The Claim was filed outside the statutory time limit under Section 90 of the Employment Act 2007, and is not validly in Court.***

***[b] It is hereby struck out with no order on the costs***

Dated and delivered at Mombasa this 13th day of March 2015

**James Rika**

**Judge**