



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 56 OF 2014

JOSEPH KAMAU & 468 OTHERSCLAIMANTS

VERSUS

G4S SECURITY SERVICES (KENYA) LIMITEDRESPONDENT

M/S KIRIMI for the Objector

Mr. Okonyo for the Claimants

RULING

1. The Respondent filed a Preliminary Objection to the suit dated 11th November 2014 on the same day to the effect that the suit is time barred by dint of **Section 90** of the Employment Act, 2007 the cause of action having arisen between 2008 and 2010 and the suit was filed on 22nd January 2014, more than three years since the cause of action arose.

2. **Section 90** reads;

“Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this 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 or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

(emphasis mine)

3. The objection, excludes claims by Claimants No. 14, 65, 136, 287 and 33 34 which were filed in the years 2011 and 2012.

4. It is submitted that the rest of the claims became time barred in 2011 and 2014 respectively exactly three years after the cause of action arose.

5. **Not in dispute**

It is common cause the subject matter of the claim is the unpaid terminal benefits accrued over time by each of the Claimants separately in terms of the terms and conditions of employment between each one of them and the Armor Group International PLC and later on taken over by the Respondent G4S

Security Services (Kenya) Limited upon the Respondent acquisition of the previous employer.

6. Upon conclusion of the acquisition process all the Claimants received a staff Memorandum dated 12th June 2008 signed by Managing Director of both companies assuring them that;

“the individual employment terms and government laws pertaining to employment will be applied to staff who may decide to leave the company.”

All Claimants’ services were terminated on various dates and time thereafter.

7. The terminal benefits sought to be paid include;

- i. pending salary Kshs.2,852,648;
- ii. accrued leave in Kshs.2,570,256;
- iii. overtime Kshs.29,697,289.00; and
- iv. service gratuity 146, 691.

8. It is the Court’s considered view that termination of employment does not extinguish payment of work emoluments and terminal benefits due and owing to the employees by fact of service rendered and so long as the emoluments and benefits remain unpaid, the same constitute *“continuing injury or damage within the meaning of Section 90 of the Employment Act, 2007.”*

It follows that the injury and damage the subject of the suit will abate upon resolution of this dispute.

9. The Claims for compensation arising from the termination itself are caught by the three years limitation in terms of **Section 90** aforesaid as the same do not constitute ‘*continuing injury or damage*’ within the meaning of **Section 90** of the Employment Act, 2007.

The concise Oxford English Dictionary define ‘continuing’ interalia as to *“remain in existence, operation, or a specified state.”*

10. The terminal benefits claimed constitute basic minimum conditions of employment provided under part V of the Employment Act, 2007, and enhanced in the contracts of employment. Once earned and accrued, the benefits remain due and owing to the employees continuously until paid in full.

The preliminary objection is accordingly dismissed in respect of the enumerated terminal benefits, subject of the claims.

11. It is important to note that the Claimants did not sleep on their rights and reported the dispute to the Minister of Labour upon which a statutory conciliation process was embarked on till the end of 2011, when the suit was filed in Court.

12. It is worth noting also that the Claimant had filed Nairobi **Civil Suit No. 54(N) of 2008** to forestall the impending acquisition and retrenchments but the Industrial Court declared the suit filed then as premature.

Dated and Delivered at Nairobi this 15th day of May 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE