

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 41 OF 2014

ISACK MWANGI KIMOTO..... CLAIMANT

VERSUS

**THE BOARD OF GOVERNORS, KIAMBUGI BOYS HIGH
SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 31st July, 2015)

JUDGMENT

The claimant filed the statement of claim on 14.03.2014 through Macharia Gakaria Advocates. The amended statement of claim was filed on 16.12.2014. The claimant prayed for judgment against the respondent for:

- a. Terminal dues of Kshs. 1, 066, 950.75 comprising underpayments, pay for overtime, pay for public holidays worked and not paid, and interests deducted from dividends for co-operative savings.
- b. Costs of the suit.
- c. Interest.

The memorandum of response was filed on 7.04.2014 through learned state counsel F.O. Makori for the Attorney General for the respondent. The amended memorandum of response was filed on 24.02.2015. The respondent prayed that the claimant's claim be dismissed with costs.

The claimant was employed by the respondent on 27.10.1992 as an artisan grade III. The respondent accepted the claimant's voluntary early retirement on 30.04.2012. At employment the claimant was paid Kshs. 1,470 per month and at termination the claimant was paid Kshs. 6, 440.00 per month.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for.

The claimant prayed for unpaid overtime, public holidays, and underpayment of wages. The court finds that the claims were of a continuing nature having taken place throughout the claimant's employment. Under section 90 of the Employment Act, 2007 a suit with respect to such continuing injury or damage must be filed within twelve months next after cessation thereof. In this case the cessation of the injuries or damage was on 30.04.2012 when the claimant voluntarily retired. The suit was filed on 14.03.2014 long after the lapsing of the twelve months period of limitation as prescribed in section 90 of the Act. Accordingly, the court finds that the prayers will therefore fail.

The claimant also prayed for interest on the late remission of dues he was deducted for co-operative savings. The claimant's evidence was that the late payment of the deductions to the co-operative was sometimes on a date he could not recall in 2010. The suit was filed on 14.03.2014 outside the 3 years period of limitation under section 90 of the Act. The court finds that the claimant failed to provide sufficient evidence to establish the claim and in any event the claim was similarly time barred.

In conclusion, the claimant's suit is dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 31st July, 2015.**

BYRAM ONGAYA

JUDGE