

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 111 OF 2015

SAMUEL MUNYUA MWANGI..... CLAIMANT

VERSUS

KHE NANYUKI FARM LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 15th October, 2015)

RULING

The claimant filed the memorandum of claim on 02/07/2015 through Kipkenei & Company Advocates. The claimant has pleaded as follows:

- a. He was employed by the respondent as a driver when on 08.01.2011 the vehicle he was assigned developed mechanical problems and he was seriously injured
- b. The claimant has not been compensated for the injuries suffered as provided for in the Workman Injury Compensation Act.
- c. That from June 2011 the respondent stopped the salary of the claimant without notice being Kshs.10, 392.00 per month.
- d. The claimant prayed for withheld salary for 40 months from July 2011 to April 2015 Kshs.453, 508.00; 3 months' salary in lieu of termination notice Kshs.30,921.00; general damages; costs of the suit; and any other relief that this honourable court may deem fit to grant.

The response to the memorandum of claim was filed on 17.09.2015 through Munene Wambugu & Kiplagat Advocates. The respondent prayed that the claim be dismissed with costs. The respondent also filed the notice of preliminary objection on 17.09.2015 that the suit was time barred under section 90 of the Employment Act, 2007.

The respondent has submitted that the suit was filed outside the 3 years as prescribed in section 90 of the Act because the claimant has pleaded that the accident was on 08.01.2011 and withheld salary is claimed from July 2011.

For claimant it was submitted that the claim for withheld salaries is premised on the fact that the employment has not lapsed and the claim for injuries is for a prayer of general damages.

The court has considered the submissions and makes a finding as follows:

1. Whether the employment has lapsed or not is a question of fact to be resolved at full hearing by way of evidence. Thus the court finds that in view of the issues of fact that are to be resolved by evidence, it cannot be said that the preliminary objection was valid. The matters of facts being disputed render a full hearing necessary.
2. The claim of injuries arising from the accident is well a claim in negligence as it might secondarily be related to the contract of employment. That is an issue to be resolved at full hearing and final submission as to whether the claim is time barred.

In conclusion the preliminary objection is dismissed with costs and parties are invited to take directions on further steps in the suit.

Signed, dated and delivered in court at Nyeri this Thursday, 15th October, 2015.

BYRAM ONGAYA

JUDGE