



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 572 OF 2015

JOSEPH OWAGA ONGWEYA.....CLAIMANT

VS

JOMO KENYATTA UNIVERSITY OF

AGRICULTURE & TECHNOLOGY.....RESPONDENT

JUDGMENT

Introduction

1. The claimant was employed by the respondent as a driver and retired on 30.6.2011 after reaching 60 years. That as at the time of retirement, the claimant had accumulated overtime of 7400/= (925 days) which was not paid for as part of his terminal dues. He now brings this suit claiming kshs. 2,093,460/= as pay for the 7400 hours of overtime work.

2. The respondent admits that as at August 2009, the claimant had accumulated overtime equal to 815 leave days. That the claimant utilized 45 of the said leave days and the balance was paid for kshs 84,456 in December 2009. She therefore denied the claim for ksh 2,009,004 in respect of the alleged outstanding 7400 overtime worked (925 leave days).

3. The suit was heard on 20.7.2015 and 27.7.2015 when the claimant testified as Cw1, while the respondent called Beatrice Nadia Kamonjo as Rw1. Thereafter both parties filed written submissions whereby the respondent objected to the suit for being time barred.

Claimant's case

4. Cw1 was employed by the respondent as a driver from 1996 until 30.6.2011 when he retired. That there after he was employed on 2 years contract which was extended by another one year till September 2014. That he had accumulated overtime of 7400 hours by December 2009. That in December 2009, he was paid ksh 84,456 for the accrued leave days but he protested by letter dated 29.3.2010 but no response was given by the respondent. That when he retired in June 2011, he was paid all his terminal dues less the overtime worked. That under the CBA, his overtime of 7400 hours was equal to ksh. 2,093,460.

Defence case

5. Rw1 is the Assistant Registrar of the respondent. She confirmed that Cw1 employed by the respondent as a driver and left after his contract lapsed. She contended that Cw1 had accumulated overtime which

was converted to 815 leave days. That Cw1 utilized 45 leave days and he was paid kshs. 84,456 for the remaining leave days in December 2009.

Analysis for Determination

6 There is no dispute that Cw1 was employed by the respondent from 1996 to June 2011 when he retired at the age of 60 years. There is also no dispute that by December 2009, Cw1 had worked over time equal to 815 leave days of which he utilized 45 days and the respondent paid him ksh. 84,456. There is further no dispute that Cw1 disputed the payment of kshs 84,456 for being less than what was lawfully due to him. The issues for determination are whether the suit is time barred and whether the reliefs sought ought to issue.

Time bar

7. Cw1 retired on 30.6.2011 and he was paid all his terminal dues except overtime. He filed this suit on 10.11.2014 which is more than 3 years after his retirement. Even without going to the details of when the right to sue accrued, it is obvious even from the date of retirement, that is, 30.6.2011 that the 3 year period within which to sue under section 90 of the Employment Act (EA) lapsed on 29.6.2014. Section 90 of the Act provides that no suit founded on employment contract may be brought after 3 years from the date when the right to sue accrued or if the dispute involves a continuing injury, default or breach, 12 months from the time the breach, injury or default ceased. Whichever way one looks at this suit, there is no doubt that it is time barred. Consequently the window for claimant to bring this suit was closed on 30.6.2014 and as such this court must down its tools for lack of jurisdiction to entertain the suit.

Disposition

8 For the reasons stated above the suit is struck out for being time barred. No orders as to costs.

Signed, Dated and Delivered on 4th day of December 2015

ONESMUS MAKAU

JUDGE