



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 334 OF 2013

FRANCIS SOMONI KAMASIA.....CLAIMANT

- VERSUS -

UNILEVER TEA KENYA LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 16th May, 2014)

JUDGMENT

The Claimant **Francis Somoni Kamasia** filed the memorandum of claim on 11.10.2013 through Omwoyo Masese & Company Advocates.

The claimant prayed for judgment against the respondent for orders as follows:

- a. **A declaration that the claimant's dismissal was wrongful.**
- b. **The claimant be paid terminal benefits as set out in paragraph 11(i-vii) of the memorandum of claim totalling to Kshs.1,548,017.20.**
- c. **The respondent to be ordered to compensate the claimant for wrongful dismissal at the equivalent of twelve (12) months gross salary.**
- d. **General damages.**
- e. **Reinstatement to employment.**
- f. **Costs of the claim.**
- g. **Interest on the above at court rates.**
- h. **The honourable court do issue such orders and give such directions as it may deem fit to meet ends of justice.**

The respondent **Unilever Tea Kenya Limited** filed the Notice of Preliminary Objection on 28.10.2013 through Murimi, Ndumia, Mbago & Muchela Advocates. The notice stated that at or during the hearing of the claim, the respondent shall raise a preliminary objection on the ground that the claim is statute barred and should be struck out with costs to the respondent.

The preliminary objection was fixed for hearing on 8.05.2014 in presence of the Advocates for both parties.

The claimant and the claimant's counsel were not present on the hearing date. The respondent's counsel was allowed to prosecute the preliminary objection.

It was submitted that the case was time barred under section 90 of the Employment Act 2007. The section provides as follows:

“90. 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.”

It was submitted that the claimant’s case in paragraph 4 of the memorandum of claim was that he was summarily dismissed on 1.7.2009 and the suit was filed on 11.10.2013 long after lapsing (on 1.7.2012) of the 3 years as prescribed in section 90 of the Act.

The court has considered the submissions and in absence of any opposition by the claimant, the court finds that the preliminary objection is valid.

In conclusion, the preliminary objection is upheld with orders that the memorandum of claim is struck out with costs.

Signed, dated and delivered in court at Nakuru this Friday 16th May, 2014.

BYRAM ONGAYA

JUDGE