



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 1111 OF 2011

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....**CLAIMANT**

versus

JOJAS USALAMA SECURITY LIMITED.....**RESPONDENT**

RULING

1. The Claimant Union brought the claim before the Court seeking reliefs against the Respondent for the dismissal of Kivuva Mulalya and Sammy M. Mwatu. These were salary for March and April 2005, annual leave, public holidays (off duty) overtime and rest days, underpayment of housing allowance, uniform refund, maintenance fee and gratuity.
2. The Respondent was opposed to the suit and filed Grounds of Opposition stating that the suit was an abuse of the Court process and time barred under the provisions of Section 90 of the Employment Act 2007, that the grievants had voluntarily left the Respondent's employment and that the suit was *res judicata*.
3. The Court directed that the dispute be referred to the Ministry of Labour and a report prepared. The Ministry of Labour prepared a Report on 11th July 2011 and in the Report the findings of the Ministry were as follows:-

Investigations revealed that Mr. Sammy Mwatu and Mr. Mulalya Kivuva were employed as security guards on 10th July 1997 and 4th May 1999 respectively. Both grievants were earning a monthly salary of Kshs. 5165/-. Investigations established that on 30th April 2005 the grievants resigned from duty without giving the management one month's notice in writing. It was revealed that the grievants tendered their resignation due to the non-payment of March and April, 2005 salary.

Investigations further established that during the course of their employment the grievant were not paid or granted the following benefits:

- Annual leave days
- Public holidays, rest days and overtime
- Underpayment of housing allowance by Kshs. 171/- per month
- That they were being deducted uniform money and maintenance fee which was not refunded.

Finally, investigations established that the grievants were not paid their terminal benefits after they tendered their resignation.

4. The Ministry made certain recommendations contained in the Report submitted to Court. The recommendation was that the 2 grievants be paid their salary for March and April 2005 including the following terminal benefits.
 - Annual leave days for 2 years
 - Public holidays for 2 years
 - Underpayment of housing allowance in arrears
 - Refund of uniform account and maintenance fee
 - Be issued with certificate of service
5. The Respondent's asserts in its Grounds of Opposition that the matter is *res judicata* and that the cause is time barred and thus an abuse of the Court process. No evidence was tendered that the dispute was determined previously by any tribunal or Court. The plea of *res judicata* thus stands on very thin ice. The Respondent states that the suit is time barred in terms of Section 90 of the Employment Act. I would refer the parties to the decision of Radido J. in **Mombasa Cause No. 125 of 2013 (originally Nairobi Cause No. 2031 of 2011 Michael Gitari Karanja v. G4S Security Services (K) Ltd (unreported)** and Maria Machocho v Total Kenya Limited [2013] eKLR and **Cause No. 1418 of 2010 – Charles Kiruthi Mwangi v. G4S Security** as well as my decision in **Cause 1632 of 2012 Herbert Godeka v Middle Town Forex Bureau Limited (unreported)**. Limitation is set at 6 years for matters that accrued prior to 2008 while it is limited to 3 years after the effective date. In the premises any challenge on the time bar would fail if the threshold in the cases cited is applied.
6. As the matter was referred to the Ministry and a report filed. The Court adopts the findings of the Ministry. The grievants are entitled to the following reliefs:-
 - a. Annual leave days for 2 years
 - b. Public holidays for 2 years
 - c. Underpayment of housing allowance in arrears for 2 years @ rate of 171/- per month
 - d. Refund of uniform account and maintenance fee
 - e. Be issued with certificate of service
 - f. Costs of this suit
7. A certificate of service is not a favour to be doled out by employers when they wish. Section 51 of the Employment Act 2007 is crystal clear. The document must be issued to the grievants in compliance with the law. That is mandatory.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of June 2014

Nzioki wa Makau

JUDGE