



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 292 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 31<sup>st</sup> October, 2014)

SULMAN OGINGA MARIKO ..... CLAIMANT

**-VERSUS-**

RILEY FALCON SECURITY SERVICES ..... RESPONDENTS

**JUDGMENT**

The claimant herein Sulman Oginga Mariko filed his memo of claim on 25.10.2013 through the firm of Duke Onyari & Co. Advocates. The claimant avers that he was employed by the respondents at its Kisumu branch as a security guard from April 2006. He attached his payslip as proof that he worked for respondents (**App 1**) at a salary of Ksh 5,000/=. He also attached his employment contract letter to show he worked on a three months contract with respondents from 6.8.2008. In April 2008, he avers that he caught a thief who had stolen iron sheets. The manager of respondents then alleged that the claimant was part of the thieves. The claimant was then arrested and charged in court. The case went on upto 2012. He was found innocent and acquitted. The proceedings are part of the court record (**App 3**). The claimant was however dismissed on 8.11.2008 as per the dismissal letter following the theft on the day he was charged in court which letter he contends was served on him in 2012 when he went to ask for his job back after the acquittal.

The respondents on the other hand filed their response on 18.12.2013 through the firm of Otieno Ragot & Co. Advocates. The respondents also called 1 witness, its Assistant Operations Manager who stated that the claimant worked for the respondents on a 3 months contract with effect from 6.8.2008 to 6.11.2008. He was then terminated on 8.11.2008 and this was communicated to him through a letter (**App 2**). It is further the respondents case that on 7.10.2008, while on duty, the claimant failed to execute his duties and there was loss of iron sheets. He was then terminated on 8.11.2008. The respondents position is that had he returned the company property, he would have been paid his dues.

Upon hearing the parties herein and upon considering their submissions, the issues for termination are as follows:-

1. **Whether the claim by the claimant is time barred.**
2. **Whether the decision by the respondents to terminate the claimant was justified.**
3. **Whether the claimant is entitled to the remedies sought.**

In relation to the 1st issue, the evidence on record and even from the claimant's claim at paragraph 4, the claimant's services were terminated on 8.11.2008. The claimant did not file this case until 25.10.2013 and even so without seeking leave of the court to do so.

S. 90 of Employment Act states as follows:-

**“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), 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 is clear that by virtue of S. 90 of Employment Act, this claim ought to have been filed within 3 years from the date the cause of action arose which is by 7.11.2011. The claimant failed to do so and he does not explain his omission. I therefore find that this claim is time barred and cannot be sustained nor be salvaged.

I therefore find that this case fails on account of limitation and the court need not delve into any other issue. Each party will bear its costs.

**HELLEN S. WASILWA**

**JUDGE**

**31/10/2014**

**Appearances:-**

Omondi for claimant present

Owino for respondents

CC. Wamache