



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 2418 OF 2012

BETWEEN

JARED MIEN MAYI.....CLAIMANT

VERSUS

G4S SECURITY SERVICES (K) LIMITED..... RESPONDENT

RULING

1. The Respondent in this cause has raised in limine the objection that the Court lacks jurisdiction to hear this claim for the reason that the same is statute barred. That is to say, the Claimants having been terminated from the Respondents' employment in September, 2009 is prevented by section 90 of the Employment act from filing a claim more than 3 years thereafter. This claim was filed on 29th November, 2012.
2. As was held by Nyarangi JA (as he then was) in the famous case of Lilian S, jurisdiction is everything. Once a Court is found to lack jurisdiction, it must down its tools. No amount of judicial innovation can confer jurisdiction when it is clearly lacking.
3. The purpose of the law on limitation is to exert diligence on the Claimants to bring their disputes to Courts expeditiously while shielding defendants from having to defend stale claims. However in order not to occasion injustice, the Courts may be moved in appropriate cases to extend the limitation period.
4. A suit filed outside the time prescribed by the limitation law without leave is therefore incompetent and the Courts lacks jurisdiction to entertain such a suit.
5. It is not in dispute that the Claimants herein was issued with a termination letter in September, 2009. It therefore means that any action in connection with the termination of his services ought to have been brought within 3 years thereafter. That is to say by September 2012. The suit herein was filed on 29th November, 2012 which was more than 3 years prescribed by section 90 of the Employment Act. From the record, no leave was first sought and possibly obtained prior to its commencement. In any event a plain reading of section 90 gives the impression that unlike the Limitation of Action Act, which govern civil claims generally, it seems impermissible to extend the limitation period with regard to claims based on the Employment Act.
6. The Claimant was arrested and charged with a criminal offence related to his work. He was prosecuted and later acquitted of the charges on 2nd November, 2011. He however states that he was out on bond as from September, 2009. No explanation was given why the Claimant did not

contest the termination of his services when he received the termination letter in September, 2009.

7. The argument that he was awaiting the outcome of the criminal prosecution is flawed since he ceased to be an employee of the Respondent the moment he was issued with the termination letter and failed to challenge it.

8. In any event an acquittal from criminal charges has no relationship with a dismissal of an employee based on employers' internal disciplinary processes. The standard of proof in criminal cases is higher than disciplinary process where strict rules of evidence are rarely observed.

9. To this extent the Court **up holds** the preliminary objection by the Respondent and declares the suit a filed incompetent and the same is hereby struck out with costs.

10. It is so ordered.

Dated at Nairobi this 16th day of October, 2014

Abuodha J. N.

Judge

Delivered this 16th day of October, 2014

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge