



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 69 OF 2013

PETER KARIUKI NJENGACLAIMANT

VERSUS

TRANSNICK TRANSPORTERS LTDRESPONDENT

JUDGMENT

BACKGROUND

The claimant filed this suit on 19/3/2013 alleging that he was unfairly dismissed from work by the respondent in November 2009. He prayed for ksh.440,000/ as terminal benefits plus a further compensation for unfair dismissal.

The respondent did not file any defence to the suit despite several adjournments for that purposes being granted to her. The matter was heard on 3/9/2013 when the claimant testified as CW1 while the respondent called no witness to testify.

CLAIMANTS CASE

CW1 was employed by the respondent in February 2006 as a driver. His salary was kshs. 20,000 per month. He was a member of NSSF. In addition to the said salary he used to earn bonuses ranging between ksh.2000 and ksh.5000 depending on the performance. He worked for the respondent upto September 2009 when he was terminated without notice for alleged poor performance of work. He denied the alleged offence and blamed the respondent for failing to repair the lorry when it broke down while at work.

He was dismissed by a letter and paid only the days worked in the month but no benefits including leave. He never went for any leave during his service and as such he prayed for payment in lieu of leave and notice plus terminal benefits. He also prayed for compensation for unfair termination.

On cross examination, he confirmed that he was dismissed by a letter dated 26/11/2009 for poor performance of duty. He denied being given any hearing before dismissal. After the close of the hearing both parties filed written submissions.

ANALYSIS AND DETERMINATION

The issues for determination arising from the pleadings, evidence and submissions are:

1. **whether the court has jurisdiction over the dispute**
2. **whether the summary dismissal of the claimant from employment was unfair.**
3. **Whether the reliefs sought should be granted.**

In answer to the first issue, the court appreciates that jurisdiction is determined by the several factors including but not limited to the nature of the cause of action and limitation of actions.

The court has jurisdiction with respect of the nature of the dispute before it but drastically loses it with respect to the limitation period of the dispute concerned. Although not pleaded or raised anywhere in evidence or submissions as a ground to the suit this court has noted that the cause of action arose on 26/11/2009 while the suit was filed on 19/3/2013. Doubtless to say, the suit was filed more than 3 years from the time the cause of action arose.

Section 90 of the Employment Act provides that no civil action or proceedings founded on the said Act or contract of service in general shall lie or be instituted unless it is commenced within 3 years next after the act, neglect or default complained of. The wording of the foregoing provisions of Section 90 *supra* is in mandatory terms and renders null and void any suit filed in contravention thereof. Consequently whether or not any objection was raise,, the suit remains a nullity for being filed out of time.

It follows therefore that the jurisdiction of the court to entertain the suit is extinguished by the lapse of the statutory limitation period of the respective cause of action. As jurisdiction is everything to a court, this court cannot proceed to determine on merits the remaining issues for determination.

DISPOSITION

For the above stated reasons the suit is struck out for being time bared. Each party shall bear his or her own coast.

Signed, dated and delivered this 6th day of December 2013

O.N. MAKAU

JUDGE