



**Amuhanda v Rose Murithi t/a Azuri Café & Restraunt (Cause 100 of 2018) [2025] KEELRC 221 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 221 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 100 OF 2018  
DKN MARETE, J  
JANUARY 29, 2025**

**BETWEEN**

**NELSON AMUHANDA ..... CLAIMANT**

**AND**

**ROSE MURITHI T/A AZURI CAFÉ & RESTAUNT ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated January 16, 2018. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's Response claim dated 5th March, 2018 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that on or about October, 2015, the Respondent engaged his services as a Steward at the Restaurant at a monthly salary of Ksh.15,000.00.
4. The Claimant's further case is that he was not issued with a written contract of service and would work from 6:00am to 1500 hours or thereafter as directed by the management. He worked dedicatedly for 31 months.
5. The Claimant's other case is hat on or abut 14th October, 2017, the Respondent without notice or justifiable reasons terminated the Claimant's employment and did not pay his terminal dues.

Again,

That claimant was neither housed nor given house allowance.The Respondent failed to register or even contribute to social schemes like NSSF and NHIF.He worked from 600 hours to 1500 hour with any extra pay.

6. He claims as follows;



- i. One month's salary in lieu of notice .....Kshs.15,000.00
  - ii. Annual leave 2 years (67days x 15 x 20).....Kshs.38,653.85  
26 working days
  - iii. House allowance (15,000 x 15 x 31).....Kshs.69,750.00  
100
  - iv. X-gratia (2yrs x 15,000 x 16 days).....Kshs.18,461.00  
26 working days
  - v. 12 months compensation 12 x 15,000 .....Kshs.180,000.00
  - vi. Certificate of service  
Total.....Kshs.321,864.00
7. He prays thus;
- i. A declaration that the termination of the Claimant was illegal and unlawful.
  - ii. The Respondents to pay to the Claimant amount of Kshs.321,864.00 stated in paragraph 14 above.
  - iii. The Respondents do pay the Claimant compensation of Kshs.180,000.00.
  - iv. Costs of this suit.
8. The Respondent's case is an admission of paragraphs 3, 4, 5 and 6 of the claims save that the Claimant was issued with an employment contract.
9. The Respondent's further case is that on 14th October, 2017, the claimant involved in a verbal and physical altercation with a director of the Respondent and even thereafter showed no remorse and was therefore summarily dismissed from employment. This was in writing and all his dues were paid for which he accepted, was paid and left.
10. The Respondent in the penultimate avers that this suit is malicious and ambiguous and does not sufficiently disclose proper particulars of the claim or cause of action and may be dismissed with costs. It is only filed with the intent of embarrassing and coercing the Respondent.
11. The issues for determination therefore are;
- 1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  - 2. Whether the Claimant is entitled to the relief sought.
  - 3. Who bears the costs of the claim.
12. The Claimant in his written submission dated 24th November, 2023 posits that in October, he demanded for extra pay for hours worked and was terminated without due process.
13. It is his further submission that this was contrary to Section 43(1) and Section 45(1) of the [Employment Act](#), 2007 which provide for reasons and fairness in the art of termination of employment.



14. The Respondent's witness statement is candid and a testimony of the Respondent's case. It is illustrative of the claimant's misconduct at the work place. This is as follows;

As a steward at the restaurant, the Claimant's duty was to ensure that the premises were clean. On or about the 14<sup>th</sup> of October 2017, I instructed the Claimant to re-do the cleaning as it had not been done satisfactorily. To my bemusement, the Claimant went into a fury and rampage and engaged me in a verbal altercation that almost turned physical, as to how I cannot tell him how to do his work.

I called him into my office later in an attempt to decipher the reason behind his actions in the hope that he would apologize, but he did not show any remorse whatsoever, I informed the rest of the Directors and a decision was made to relive him off his duties for gross misconduct.

I informed him of the same, paid him for the days worked for and issued him with a termination letter on the same date. (The letter of termination dated 14<sup>th</sup> October, 2017 and requisite cash voucher are listed as documents 2 & 3 on the respondent's list of documents.)

15. The Respondent bundle of document is self-telling and displays the following document.
1. Employment Contracts for the period of 1st May 2015 to 30th April 2016 & 1st January 2017 to 31st December 2017. 1-4
  2. Letter for Termination of Employment dated 14th October 2017 5
  3. Cash voucher dated 14th October, 2017 6
  4. Leave Request Forms for the period of employment 7-14
  5. NHIF member contributions for the period of employment 15-19
  6. NSSF Member contributions for the period of employment 20
  7. Sample signatures of Rose Marete Muriithi during the Period in question 21-24
16. The Respondent's case overwhelms that of the Claimant. On a test of a preponderance of evidence, the Respondent's case outweighs that of the Claimant. The Claimant in toto has fails to demonstrate a case of unlawful termination of employment as required of section 47(5) of the Employment Act, 2007.
17. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.
18. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he become disentitled to the relief sought.
19. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Mr. Khalwale instructed by Khalwale & Company Advocates for the Claimant.



2. Mr. Mwaniki instructed by Humprey & Company, LLP for the Respondent.

