



Ondieki & 10 others v Laico Regency Hotel Nairobi (Cause E446 of 2021) [2025] KEELRC 871 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 871 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E446 OF 2021
MN NDUMA, J
MARCH 13, 2025**

BETWEEN

- BEATRICE ONDIEKI 1ST CLAIMANT**
- MARIA NJOROGE 2ND CLAIMANT**
- RACHEL LAGAT 3RD CLAIMANT**
- JAMES MWANIKI 4TH CLAIMANT**
- SYLVESTER OKENO 5TH CLAIMANT**
- JOSEPHINE KINYALI 6TH CLAIMANT**
- HARRIET NGONYO 7TH CLAIMANT**
- VICTORY MUTEGI 8TH CLAIMANT**
- SALLY CHEBOI 9TH CLAIMANT**
- JEMIMA MUEMA 10TH CLAIMANT**
- JOSHUA NDAMBUKI 11TH CLAIMANT**

AND

LAICO REGENCY HOTEL NAIROBI RESPONDENT

JUDGMENT

1. The eleven (11) Claimants filed a suit on 4/6/2021 against the Respondent. The claim was amended on 31/5/2021 and the Claimants seek the following reliefs:-
 - a. A declaration that the Mutual Separation Agreement dated April 7, 2021 is unlawful because it contravenes the provisions of the Employment Act, 2007 as well as the provisions of the



subsisting CBAs between the Respondent and the Claimants' union and consequently, it is therefore unenforceable.

- b. An order be issued directing the Respondent to pay the Claimants their arrears in terms of salaries, unremitted deductions as well as compensation for unpaid leave as particularized in paragraph 29 above as follows:
 - i. Kshs. 1,121,427.81 to the 1st Claimant
 - ii. Kshs. 3,171,676.23 to the 2nd Claimant
 - iii. Kshs. 1,587,639.52 to the 3rd Claimant
 - iv. Kshs. 1,490,719.11 to the 4th Claimant
 - v. Kshs. 829,648.69 to the 5th Claimant
 - vi. Kshs. 1,012,952.58 to the 6th Claimant
 - vii. Kshs. 838,235.25 to the 7th Claimant
 - viii. Kshs. 1,349,106.88 to the 8th Claimant
 - ix. Kshs. 1,426,866.62 to the 9th Claimant
 - x. Kshs. 1,335,692.59 to the 10th Claimant
 - xi. Kshs. 663,253.72 to the 11th Claimant
- c. An order be issued directing the Respondent to pay to the Claimants' interest on prayer (b) above at court rates from October 2017 (being the date of default) till payment in full.
- d. An order be issued directing the Respondent to recall the Claimants from the unlawful mandatory leave
- e. In the alternative to prayer (d) above, an order be issued directing the Respondent to pay the Claimants their terminal benefits in accordance to the existing CBAs and the provisions of the [Employment Act](#) as particularized in paragraph 38 above as follows:-
 - i. Kshs. 752,666.99 to the 1st Claimant
 - ii. Kshs. 2,431,871.19 to the 2nd Claimant
 - iii. Kshs. 1,066,976.07 to the 3rd Claimant
 - iv. Kshs. 898,958.61 to the 4th Claimant
 - v. Kshs. 752,902.31 to the 5th Claimant
 - vi. Kshs. 752,669.31 to the 6th Claimant
 - vii. Kshs. 927,503.39 to the 7th Claimant
 - viii. Kshs. 646,922.05 to the 8th Claimant
 - ix. Kshs. 927,503.39 to the 9th Claimant
 - x. Kshs. 738,441.15 to the 10th Claimant
 - xi. Kshs. 849,542.54 to the 11th Claimant



- f. An order be issued directing the Respondent to pay to the Claimants interest on prayer (c) above at court rates from the date of filing this claim till payment in full.
- g. An order be issued directing the Respondent to pay the Claimants' unremitted statutory deductions to the relevant authorities together with interests from the date of filing this suit till payment in full.
- h. An order be issued directing the Respondent to pay the Claimants' any other arrears that may accrue during the pendency of this claim.
- i. Costs of this claim together with interest at court rates from the date of filing this claim till payment in full.

Facts of the claim

2. CW1, Beatrice Ondieki, testified for the Claimants.
3. The Claimants worked for the Respondent and were employed on diverse dates set out in the claim. The Respondent was previously known as Grand Regency Hotel. The said hotel was in November 2008 placed under receivership by the Central Bank of Kenya and it was purchased by an investor in 2008 becoming LAICO Regency Hotel, the Respondent.
4. The case by the Claimants is that they were promised to be retained by the new owner of the hotel in their respective positions and that they would be paid their redundancy dues by Grand Regency Hotel except gratuity pay which would be paid to them by LAICO Regency upon retirement or resignation.
5. The Claimants state that they were duly paid their redundancy dues by Grand Regency Hotel in 2008 except the gratuity.
6. That the Claimants continued working diligently and variously in their respective position and were members of Kenya Union of Domestic, Hotels Educational Institution, Hospital and Allied Workers (KUDHEIHA) who negotiated their terms and condition of service.
7. That in this respect the Respondent signed Collective Bargaining Agreements (CBAs) with the union from:
 - i. 2017/2018 CBA
Gross salary of Claimants were increased by 10% effective 1st January 2017 and
 - ii. 2019/2020 CBA
Gross salary of the Claimants were increased by 100% and 8.5% for 2019 and 2020 respectively effective 1st January 2019.
8. That pursuant to the 2017/2018 CBA, the Respondent remitted the salaries inclusive of the increment. The Respondent then stopped including the said increments citing financial challenges and so the Respondent owes the Claimants arrears salaries arising out of the 2017/2018 CBA.
9. The Respondent also failed to honour the increment made under 2019/2020 CBA.
10. That sometimes in March 26th 2020, the Respondent issued an internal memo to all employees informing them that the Respondent had decided to temporarily close its operation due to COVID – 19 global pandemic which had affected the business adversely.



11. The Claimants were required to go on a mandatory discretionary leave without pay for an interim period of 30 days effective April 1st 2020. That by a memo dated 28/5/2020 the mandatory leave was extended to 1st June 2020. The leave was then on 6th September, 2020, extended for an indefinite period. That since 6th September 2020, to date of filing suit, the Respondent did not communicate to the Claimants again.
12. The Claimants state that they have suffered immense financial hardship while on indefinite unpaid leave. That monthly retirement benefits to ICEA were also stopped.
13. That as a result, the Respondent owes Claimants arrear salaries and unremitted deductions as set out in paragraph 29 of this claim. That the amounts are summarized under prayer (b) which include the pay to be awarded to each one of them plus interest at court rates from October 2017 being the date of default till payment in full and the Respondent be ordered to recall the Claimants from unlawful mandatory leave and in the alternative to prayer (d) an order be issued directing the Respondent to pay the Claimant their terminal benefits in accordance with the existing CBAs and the provisions of the Employment Act particularized under paragraph 38 of the claim and set out in prayer (e) with interest at court rates to date of filing suit till payment in full.
14. Furthermore, the Claimants seek remittance of statutory dues to relevant authorities together with interest from date of filing suit till payment in full. The Claimants also seek costs of the suit.

Respondent's case

15. The Respondent filed statement of amended defence dated 12/2/2024 and RW1, Jamal Abdullahi testified:
 - i. That the 1st to 11th Claimants were employees of the Respondent until the closure of the hotel.
 - ii. That the Claimants were members of KUDHEIHA with whom it had recognition.
 - iii. That the hotel was doing well until United Nations Security Council imposed sanctions against the Respondent's parent company Libyan Arab Africa Investment Company Limited (LAAICO) and other Libyan entities and persons prompting the Respondents to suffer financial constraints.
16. That banks closed all accounts of the Respondent as a result. That also COVID-19 pandemic impacted negatively the business of the hotel causing the hotel business to collapse and Respondent suspended its operations and closed the hotel. All the employees of the Respondent were sent home on unpaid leave. A dispute was initiated by KUDHEIHA against the Respondent with the Ministry of Labour as a result. Dispute was dealt with by the Ministry and the conciliator made findings and recommendations on 4/2/2021. That parties continued to dialogue and the parties eventually retired on mutual separation agreement on 7/4/2021 as set out under paragraph 15 of the defence as follows: -
17. The Respondent would pay salary increment arrears that were not implemented as per the Collective Bargain Agreement (CBA) due to financial difficulties as follows:
 - a. 10% salary increment as from October 2017 to December 2018
 - b. 10% salary increment from January 2019 to December 2019
 - c. 8.5% salary increment from January 2020 to March 2020
18. In addition to the salary increment as per the CBA, the employees are to be paid ex-gratia payment as per individual grades as follows:



- a. Employees in Job grade 1 to 3 be paid Kshs. 5,000.00
- b. Employees in Job grade 4 to 5 be paid Kshs. 6,000.00
- c. Employees in Job grade 6 to 9 be paid Kshs. 7,000.00

Pending leave and public holidays if any Travelling allowance where applicable Service charge for the month of March 2020 being Kshs. 3,100.00

Uniform allowance where due Night shift allowance where applicable

19. The Respondent also agreed to pay the employees incentive packages determined by the number of years each employee had worked at the hotel as follows:
 - a. For employees who had worked for over 10 years, they would be paid 4.75 months' salary.
 - b. Those who had worked for 9 years, they will be paid 3 months' salary
 - c. For those who worked for 8 years, they would be paid 2.67 months' salary
 - d. For those who worked for 6 years of service, they would be paid 2 months' salary
 - e. Employees who had worked in the hotel for 5 years would be paid 1.67 months' salary.
 - f. Finally, employees who had worked for a period of 2 years would be paid 1 month salary
20. All the employees who worked at the Respondent's hotel before its closure were paid their dues as per the terms of the mutual separation agreement dated 21st April 2021 and their resignation letter accepted by the hotel's management.
21. The Respondent therefore denies the claim as set out and prays the suit be dismissed with costs.
22. Under cross-examination RW1 said he is the caretaker manager of the Respondent hotel which was under renovation under the Libyan government. That there are no tenants in the building. That the mutual separation agreement is before court. That pensions were handed over to ICEA Lion. That all benefits due to the employees were paid to employees, SACCOs and Insurance. That the Ministry in the conciliation report confirmed that the Respondent had complied with all issues.
23. RW1 denied that the separation agreement was not mutual. That some of the Claimants resigned and were paid. That CW1 resigned but did not receive her money. That CW1 will be paid once she goes forward. That Harriet and Sally withdrew from the case.
24. RW1 said that funds payable under the mutual separation agreement are still available and are held in trust. That employees who come forward will collect their money and sign the necessary documents. That pension is with ICEA, Lion and those who resigned have confirmed receipt of pension.
25. That the suit be dismissed with costs.

Determination

26. The court notes that the 9th Claimant Sally Cheboi filed a notice of withdrawal from the suit dated 4/5/2023. Her claim is marked as withdrawn.
27. The 7th Claimant Harriet Ngonyo also filed a notice of withdrawal dated 4th September 2023. Her claim is marked as withdrawn.
28. The issues for determination with regard to the remaining nine (9) Claimants are as follows:



- i. Whether the mutual separation agreement entered into between the Respondent and KUDHEIHA is binding upon the Claimants.
 - ii. Whether the claim for payment of unpaid gratuity by the defunct Grand Regency Hotel is tenable.
 - iii. Whether the Claimants are entitled to salaries, unpaid leave dues; unremitted deductions and compensation claimed.
 - iv. Whether the Respondent owes unremitted contribution to ICEA.
20. The court at the start finds that the Claimants were members of KUDHEIHA and had mandate to participate in the resolution of the dispute on behalf of the Claimants. That the union reported a dispute to the Ministry of Labour by a letter dated 28/10/2021 in terms of section 62 of the [Labour Relations Act](#), 2007.
30. The Chief Industrial Relations Officer, by a letter dated 11/11/2020, accepted the dispute reported and requested the union and the Respondent to submit their proposals to Ms. Hellen Maneno, a conciliator appointed by the Ministry to resolve the dispute.
31. The conciliator upon considering submissions by the parties noted that the Respondent had experienced great financial difficulties as a result of the UN Sanctions and the effects of COVID 19. The conciliator noted that the Respondent was bound by the CBA between KUDHEIHA and the Respondent. The conciliator noted that the Respondent had resolved most of the disputes reported by KUDHEIHA and recommended parties to continue negotiating to resolve pending issues failing which to go to court.
32. The court finds that the mutual separation agreement dated 7/4/2021 was entered into by KUDHEIHA on behalf of all unionisable workers including the Claimants and the Respondent. That in terms of the agreement, management agreed to pay the benefits set out therein provided the employees affected tender their resignation. In terms thereof, the respondent was to pay:-
1. Salary increment arrears that were not implemented due to financial difficulties
 - a. 10% from October 2017 to December 2018
 - b. 10% from January 2019 to December 2019
 - c. 8.5% from January 2020 to March 2020
 2. Ex-gratia as per individual grade
 - a. Grade 1 to 3 be paid Kshs. 5,000.00
 - b. Grade 4 to 5 be paid Kshs. 6,000.00
 - c. Grade 6 to 9 be paid Kshs. 7,000.00
 3. Any pending leave and public holidays
 4. Leave Travelling allowance where applicable
 5. Service charge for the month of March 2020 being Kshs. 3,100.00
 6. Uniform allowance where due
 7. Acting allowance where due



8. Night shift allowance where applicable
9. Incentive package as follows:
 - a. For those over 10 years of service to be paid 4.75 months' salary.
 - b. For those worked for 9 years of service 3 months' salary.
 - c. For those worked for 8 years, 2.07 months' salary
 - d. For those worked for 6 years of service to be paid 2 months' salary
 - e. For those worked in the hotel for 5 years to be paid 1.67 months' salary.
 - f. For those who worked for a period of 2 years would be paid 1 month salary.
33. The mutual separation agreement was signed by the representative of the Respondent, and the Chairman works committee, the Shop steward and Secretary works committee, Laico Regency Hotel on behalf of the union.
34. The court finds that many of the employees accepted the settlement negotiated on their behalf by the union, tendered their resignation and received their dues.
35. The court finds that the Respondent was forced by circumstances beyond its control being UN sanctions and COVID-19 pandemic to close the hotel which had not resumed its operation even as at the time of hearing this suit. The circumstances that faced the hotel constitutes a *Force Majeure*, which in simple language means unforeseeable circumstance that prevent a person legal or human to perform a contract.
36. Under the circumstances, the court finds that the Respondent acted in the best interest of its employees to enter into a separation agreement with the union on behalf of their members.
37. The Respondent cannot be held responsible to pay salaries and other benefits when it was not in operation for reasons beyond its control.
38. The court finds that the mutual separation agreement was negotiated in good faith by the union on behalf of its members in the circumstances of the case.
39. Consequently, the court holds that the mutual separation agreement bound both parties to it on behalf of all the employees including the remaining nine (9) Claimants.
40. Accordingly, the Claimants are entitled to be paid in terms of the separation agreement and no more.
41. The court finds that the Claimants failed to prove that they were entitled to payment of gratuity accrued before the Respondent took over the hotel in the absence of any written agreements before court to that effect.
42. The court finds that the claims for arrear salaries during the period the Respondent hotel was closed are untenable since the hotel was not and has not been in operation since the closure and sending of employees on compulsory leave.
43. The court finds that the Claimants are entitled to all their dues computed in terms of each of heads set out in the mutual separation agreement. The court directs that the Respondent to place before court the computation in respect of each Claimant as per the terms of separation agreement within 30 days of this judgment. The Claimants are to confirm the computation in respect of each head within 14 days of filing and service of the computation by the Respondent.



44. In the final analysis the court enters judgment in favour of the Claimants against the Respondent as follows: -
- a. The Respondent is to compute and pay to each Claimant terminal benefits captured in terms of the mutual separation agreement without the Claimant tendering their resignation since their employment with the Respondent came to an end for reasons beyond the control of the Respondent.
 - b. The computation to be placed before court within 30 days of this judgment and to be confirmed by the Claimants within 14 days of filing by the Respondent.
 - c. Payment of the terminal benefits to be made forthwith upon expiry of the 45 days aforesaid and upon confirmation of the computation by the court.
 - d. The court finds that the requirement for the Claimants to tender resignation before payment was unfair to them and so are entitled to costs of the suit.
45. For the avoidance of doubt all claims outside the mutual separation agreement are found to be without merit and are dismissed.

DATED AT NAIROBI THIS 13TH DAY OF MARCH 2025

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Omoke for Claimants

Ms. Chebet for Respondent

Mr. Kemboi – Court Assistant

