



Dias & another v Afkoluck Investments Limited t/a Lucky 8 Casino (Cause E526 & E527 of 2021 (Consolidated)) [2025] KEELRC 2280 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2280 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E526 & E527 OF 2021 (CONSOLIDATED)**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

MICHAEL DIAS 1ST CLAIMANT

SERGIO BOSCO ANTAO 2ND CLAIMANT

AND

**AFKOLUCK INVESTMENTS LIMITED T/A LUCKY 8
CASINO RESPONDENT**

JUDGMENT

1. This consolidated claim is brought by Michael Dias as the 1st Claimant and Sergio Bosco Antao as the 2nd Claimant, against their former employer, Afkoluck Investments Limited t/a Lucky 8 Casino.
2. The Claimants state their case in separate Statements of Claim, both dated 30th June 2021. The Respondent filed a Response and Counterclaim dated 13th August 2021, to which the Claimants responded on 15th October 2021.
3. At the trial, the Claimants testified on their own behalf but the Respondent chose not to call any witness.

The Claimants' Case

- 4 The 1st Claimant, Michael Dias and the 2nd Claimant, Sergio Bosco Antao were employed by the Respondent on 17th May 2017 as Cashiers. Upon serving probation, they were confirmed in their appointment on 29th September 2017. Each Claimant earned an entry level monthly salary of Kshs. 125,000, which was subsequently increased to Kshs. 180,000.



5. On 5th January 2020, the Respondent informed the Claimants that the casino business premises would be shut down for renovations. All employees were required to be off duty until completion of the renovations, upon which they would be notified to report back to work.
6. The Claimants state that in December 2020, they got information from a network of friends that the casino had been re-opened and was operational. They add that they reported to work upon getting this information, only to find that they had been replaced by other persons.
7. The Claimants aver that the Respondent did not inform them about re-opening of the casino and they were not issued with termination notices. They state that upon reporting to work, they were informed by the manager at the casino to await further communication, but none was forthcoming.
8. The Claimants accuse the Respondent of breaching their employment contracts and now claim the following:
 - a. A declaration that their dismissal was wrongful and unfair;
 - b. Kshs. 2,160,000 being 12 months' salary in compensation;
 - c. Kshs. 2,880,000 in salary arrears;
 - d. Kshs. 276,000 as accrued leave pay;
 - e. General damages for discrimination and unfair labour practices;
 - f. Costs plus interest.

The Respondent's Case

9. In its Response and Counterclaim dated 13th August 2021, the Respondent admits having employed the Claimants as pleaded in the Statements of Claim.
10. The Respondent further admits having informed the Claimants that the casino would undergo renovations but denies it was to notify the Claimants when the renovations were completed.
11. The Respondent states that all employees were contacted to report back to work, but the Claimants were unreachable on the contact information provided by them.
12. According to the Respondent, the Claimants absconded work, placing the Respondent in a precarious situation and causing it damage and loss. The Respondent adds that the Claimants reported to work on a day suitable to their schedule, in breach of their employment contracts. The Respondent denies terminating the Claimant's employment.
13. By way of counterclaim, the Respondent claims from the Claimants costs incurred during their absence, payment in lieu of notice and costs of recruitment of new employees.

Findings and Determination

14. There are three (3) issues for determination in this case:
 - a. Whether the Claimants have proved a case of unlawful termination;
 - b. Whether the Claimants are entitled to the remedies sought;
 - c. Whether the Respondent has proved its counterclaim against the Claimants.



Unlawful Termination?

15. It is common cause that the casino in which the Claimants worked as Cashiers was closed for renovations in January 2020. The Respondent undertook to recall the Claimants alongside other employees back to work, upon completion of the renovations.
16. The Claimants complain that the Respondent left them out when other employees were recalled back to work. They add that they learnt from alternative sources that the casino had re-opened for business in December 2020 and when they showed up, they found they had been replaced.
17. On its part, the Respondent makes a general statement that the Claimants could not be reached on the contact details provided by them. The Respondent goes further to accuse the Claimants of absconding duty. Apart from this averment, which was not supported by any evidence, the Respondents did not demonstrate any real efforts made to reach the Claimants to resume work or even inquire why they had deserted duty.
18. In the written submissions filed on behalf of the Claimant, reference was made to the decision in [*Javan Kisoi Mulwa v S.A.A Interstate Traders \(K\) Ltd*](#) [2018] eKLR where this Court stated the following:

“By definition, desertion implies an intention on the part of an employee not to resume work. In this regard, my brother Radido J in *Philomena Kiprotich Kirui v Lessos Veterinary Suppliers Ltd* [2016] eKLR stated the following:

“an employer who terminates the services of an employee on grounds of abscondment or desertion has to demonstrate and/or prove that the employee has no intention of resuming work.”

In order to discharge this burden, the employer must demonstrate efforts made to reach out to the deserting employee.”
19. Having failed to show any efforts made to reach out to the Claimants, the Respondent cannot use the shield of desertion to ward off the Claimants’ claim. The Claimants’ testimony regarding how they found themselves out of employment was consistent and unshaken. I therefore find that a case of unlawful termination has been proved by the Claimants against the Respondent.

Remedies in Favour of the Claimant

20. As a result, I award each of the Claimants six (6) months’ salary in compensation. In making these awards, I have considered the Claimants’ length of service and the fact that they did not in any way contribute to the termination. I have further considered the clandestine means employed by the Respondent to ease the Claimants out of employment. Because the Claimants’ employment was terminated without notice, I will award them one (1) month’s salary in lieu of notice.
21. In its submissions dated 5th May 2025, the Respondent admits the claim for salary arrears for the period between January and March 2020. I will therefore allow this claim to the extent of the admission.
22. The Respondent did not produce any leave records to counter the claim for leave pay. This claim was therefore uncontroverted and is allowed.



The Respondent's Counterclaim

23. Regarding the Respondent's counterclaim against the Claimants I will say two things; first, the claim was unsubstantiated and second, with the finding that the Claimants did not desert duty, the claim is without basis.
24. The counterclaim therefore fails and is dismissed.

Final orders

25. Finally, I enter judgment in favour of the Claimants against the Respondent as follows:

1st Claimant: Michael Dias

- a. 6 months' salary in compensation.....Kshs. 1,080,000
 - b. 1 month's salary in lieu of notice.....180,000
 - c. Salary for January to March 2020.....540,000
- Total.....1,800,000

2nd Claimant: Sergio Bosco Antao

- a. 6 months' salary in compensation.....Kshs.1,080,000
 - b. 1 month's salary in lieu of notice.....180,000
 - c. Salary for January to March 2020.....540,000
- Total.....1,800,000

26. These amounts will attract interest at court rates from the date of judgment until payment in full.
27. The Claimants will have the costs of the case.
28. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Lumallas for the Claimants

Ms. Macharia for the Respondent

