



**Masha v Boma Hotels (Cause 2510 of 2017)
[2024] KEELRC 2435 (KLR) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2435 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2510 OF 2017
J RIKA, J
OCTOBER 4, 2024**

BETWEEN

KITSAO KALAMA MASHA CLAIMANT

AND

BOMA HOTELS RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 22nd December 2017.
2. He states that he was employed by the Respondent, on 1st April 2012, as the Reservation Manager.
3. His gross monthly salary was Kshs 134,600.
4. He states that he was coerced to resign by the Respondent, on 3rd April 2017.
5. He had been summoned by the Respondent on the previous day, 3rd April 2017, to discuss alleged overbooking of the Respondent Hotel.
6. The Respondent blamed him, and advised him that a decision had been taken against him, and that he ought to resign.
7. He was told that he would paid notice on resignation. This was not paid. He was not paid other terminal benefits. He urges the Court to grant him Judgment against the Respondent as follows: -
 - a. 3 months' salary in lieu of notice, at Kshs 403,800.
 - b. 12 months' salary in compensation for unfair termination at Kshs 1,615,200.
 - c. Gratuity over a period of 5 years worked, at Kshs 673,000.
 - d. Certificate of Service.



- e. Costs.
8. The Respondent filed a Statement of Response dated 25th September 2018, amended on 29th November 2021. It is true that the Claimant, was employed by the Respondent as a Reservation Manager, on 1st April 2012. He resigned voluntarily, on 4th April 2017. He was facing disciplinary proceedings when he resigned. Contrary to his contract, he resigned without giving notice to the Respondent.
 9. The Respondent nonetheless paid to the Claimant notice of 1 month, by inadvertence. The Respondent did not terminate the Claimant's contract unlawfully and unfairly, or at all; he left voluntarily. His contract did not confer on him gratuity. It is not justifiable under the law. He mismanaged hotel bookings, leading to losses sustained by the Respondent. He agreed to prepare a report on the incident, during a meeting held between him and Management, on 3rd April 2017. When he was informed on 4th April 2017, that the Respondent was going to initiate disciplinary action against him, he chose to resign. His Certificate of Service is ready for collection. The Respondent urges the Court to dismiss the Claim.
 10. The Claimant filed a Reply to the Statement of Response, reiterating the contents of his Claim, and denying those made by the Respondent. He states that the Respondent was "itching" to dismiss him, and never investigated the allegation relating to hotel overbooking.
 11. The Claimant gave evidence and closed his case, on 28th July 2022. The Respondent's Human Resource Manager, Doris Ambani, gave evidence on 21st February 2024, closing the hearing. The Claim was last mentioned before the Court on 26th June 2024, when the Parties confirmed filing and exchange of their Submissions.
 12. The Claimant adopted his Witness Statement and Documents on record, as his evidence-in-chief. He explained that overbooking of customers to a hotel, is not unusual in the hotel industry. The Claimant informed the Accounts Manager about the occurrence. The excess customers were rebooked in another suitable hotel nearby. They were happy and did not complain. Overbooking was in March 2017. The Claimant was summoned by the Management on 3rd April 2017. He offered to resign, rather be dismissed. He was advised that if he left quietly, he would be paid notice.
 13. Cross-examined, he told the Court that his performance was good. His contract was terminated by the Respondent. He did not have any letter of termination. He wrote a letter of resignation. It did not mention overbooking of customers. It did not make reference to duress. It did not state that the Claimant was compelled to resign. There was no provision for gratuity in his contract. There was a memo, suggesting notice period was 1 month, not 3. He resigned with immediate effect. He agreed that he could have issued notice to the Respondent. He was paid 1-month salary as notice. He did not say who forced him to resign.
 14. On redirection, the Claimant told the Court that he was compelled to resign, in the meeting held on 3rd April 2017. He complied, so as not to antagonize the Respondent. The notice period under contract was 3 months.
 15. Ambani relied on her Witness Statement, and Documents filed by the Respondent, in her evidence-in-chief. Cross-examined, she confirmed that the Claimant was Respondent's Employee. There were no minutes recording the meeting of 3rd April 2017. The excess guests were booked in alternative accommodation. There was no disciplinary hearing following the incident. The Claimant was not forced to resign. He was paid notice of 1 month. The contract provided for a notice period of 3 months.



16. Redirected, Ambani told the Court that the Claimant resigned voluntarily. Disciplinary action was intended. He chose to resign, rather than face the disciplinary action. He thanked the Respondent in his letter of resignation. There was no hint of coercion. He agreed to clear. The Respondent accepted his decision. He was paid salary for April 2017, pending leave, and notice. There was an addendum to the contract, revising the notice period to 1-month. The Claimant was aware about this variation.
17. The issues are whether the Respondent terminated the Claimant's contract unfairly, unlawfully or at all; whether he resigned voluntarily; and whether he merits the prayers sought.

The Court Finds: -

18. The Claimant was employed by the Respondent Hotel as its Reservation Manager, on 1st April 2012. He left employment through his letter of resignation, dated 4th April 2017. His gross monthly salary was Kshs 134,600. These facts are not contested.
19. The Court has found no evidence, to establish that the Claimant, was forced out of employment by the Respondent.
20. Evidence on record suggests that there was overbooking of customers at the Respondent's Hotel. The Claimant was the Reservation Manager. A meeting was held between him and the Management concerning overbooking, on 3rd April 2017. The Claimant prepared a report explaining the incident and was advised that the Respondent contemplated taking disciplinary action against him.
21. Rather than face the accusation at a disciplinary platform, he wrote the letter of resignation dated 4th April 2017.
22. Without the hearing, it is not possible for the Court to know if the Claimant was blameworthy, or know if overbooking is commonplace in the hotel industry, as argued by the Claimant. He resigned abruptly, foreclosing the trial of the issue about overbooking, and trial of other relevant facts.
23. There is no reason to hold that resignation was anything but voluntary. It was accepted by the Respondent, in its letter dated 4th April 2017.
24. The Claimant's letter did not allude to duress, or overbooking. He was not able to name the Officer who coerced him. He wrote a grateful letter. He thanked the Respondent for the opportunity afforded to him to serve, over the past 5 years. He reassured the Respondent that he had enjoyed working for the Respondent, and was appreciative of the professional and personal development extended to him, by the Respondent. He even offered to help the Respondent in any way, "during this transition." He did not have any axes to grind.
25. His claim for unfair and unlawful termination is farfetched. It is without foundation. He initiated termination through his letter of resignation. His prayer for compensation for unfair termination is declined.
26. The Respondent did not only accept resignation, but offered to pay to the Claimant notice. He was offered also, salary up to 5th April 2017, and 21 days of pending leave.
27. The offer by the Respondent to pay notice to the Claimant, converted termination through resignation, to regular, consensual termination of the contract, through notice.
28. The Respondent has not counterclaimed any notice pay, and there is no merit to the submission, that the Claimant ought to have paid notice to the Respondent. The Respondent offered notice to the Claimant voluntarily, once it was agreed that he resigns.



29. The Claimant does not pursue salary up to 5th April 2017 or pending leave, as offered by the Respondent. These benefits are shown to have been paid, in the Claimant's last pay slip, dated April 2017.
30. His prayer for gratuity is not founded on the law, or his contract and is declined.
31. He was paid 1-month salary in lieu of notice. His contract, under clause 3, provided for 3 months' notice period, or salary in lieu of notice. 1-month salary in lieu of notice, was payable during probation. The Claimant served probation of 6 at the beginning of his service.
32. The Respondent did not establish that the Claimant's contract was varied, altering the notice period from 3 months to 1 month. There is no letter of variation, signed by the Claimant, accepting change of the notice period. Terms and conditions of service are not varied through unilateral memos placed on Employers' notice boards. The notice or memo, dated 1st September 2016, was not shown to have been received, or signed by the Claimant. He told the Court that he was not aware about variation of his contract. The Claimant signed his contract on 13th February 2012, and any variation ought to have been similarly executed. It was the Respondent's evidential burden, to establish variation of the contract.
33. Having offered to pay notice, and in the absence of evidence on variation of the contract, the Respondent was bound to follow clause 3 of the contract, by paying the full 3 months' salary in lieu of notice, instead of the probationary 1- month salary in lieu of notice.
34. The Respondent shall pay to the Claimant the balance of his notice of 2 months, at Kshs 269,200.
35. Certificate of Service to issue.
36. Costs to the Claimant.

It is ordered: -

- a. It is declared that termination was consensual.
- b. The Respondent shall pay to the Claimant the balance of notice of 2 months, at Kshs 269,200.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 4TH DAY OF OCTOBER 2024.

JAMES RIKA

JUDGE

