



REPUBLIC OF KENYA



KENYA LAW
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**Kamande v County Park Hotel (Cause 456 of 2015)
[2023] KEELRC 179 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 456 OF 2015
J RIKA, J
JANUARY 31, 2023**

BETWEEN

CHARLES KINUTHIA KAMANDE CLAIMANT

AND

COUNTY PARK HOTEL RESPONDENT

JUDGMENT

1. The claimant filed his statement of claim on March 24, 2015.
2. He states that he was employed by the respondent on or about November 1, 2012, as a supervisor, on a monthly salary of Kshs 17,500.
3. He was assigned work of a manager, and was not compensated for the additional role.
4. On April 15, 2013, the respondent terminated the claimant's contract without notice. He was not paid terminal dues.
5. He prays for: -
 - a. Unpaid salaries,
 - b. 2 months' salary in lieu of notice.
 - c. Unpaid leave.
 - d. Overtime and public holiday pay.
 - e. Terminal dues.
 - f. Unremitted NSSF and NHIF dues.
 - g. General damages for unlawful dismissal.



- h. Costs.
6. The respondent filed its statement of response on April 17, 2015. It is true that the claimant was employed by the respondent from November 1, 2012 to April 13, 2013. He was employed as a supervisor, not manager. He was dismissed for misappropriating respondent's funds, on April 13, 2013. He was advised to liaise with the management for computation of terminal dues if any, and for collection of his certificate of service. He did not do so. Termination was fair and lawful.
 7. The claimant Charles Kamande, and the businesswoman who operated the respondent, Loise Mwangi, both gave evidence on July 29, 2022, when the hearing closed. The claim was last mentioned on October 4, 2022, when parties confirmed filing and exchange, of their submissions.
 8. The claimant adopted his statements of claim and witness, and the 4 documents on record. He was employed as a supervisor, but was assigned managerial work. He was given a name tag indicating he was supervisor and manager. He was not compensated for the manager's role. He saw the letter of dismissal in court for the first time. He was not involved in loss of funds. He was verbally dismissed. Ann Njuguna was the General Manager. Patrick Macharia was just a customer. The business was owned by Anne Njeri. The claimant was not paid salary of Kshs 17,500 for the last month. He was not paid notice. His salary as manager should have been Kshs 30,000.
 9. Cross-examined, the claimant told the court that he worked for 5 months, not 8 months. The letter of appointment shows that the claimant could perform supervisory and managerial roles. He was designated as supervisor in the appointment letter. He was issued badge showing he was a manager. He received Kshs 900 from a customer. It was the cashier who issued ETR receipts. The claimant gave the money to the cashier. He did not receive the letter of dismissal. He was verbally dismissed. Leave was payable on completion of 12 consecutive months of service. He did not have evidence of overtime work. He did not have NSSF documents. He did not have a letter appointing him as manager. The letter of appointment provided for notice period of 1 month. Redirected, the claimant told the court that he handed the Kshs 900 to the cashier. There was no complaint about shortfall on his account.
 10. Loise Njeri adopted her statements of claim and witness, and respondent's documents on record. Cross-examined, she told the court that her business employed the claimant between November 2012 and April 2013. He was dismissed for misconduct. The bar was closed on his account. Patrick Macharia was the manager, while Anne was the general manager. The claimant left on April 13, 2013. He did not come back. The letter of summary dismissal issued on May 17, 2013. The letter and the pleadings filed by the respondent do not mention that the claimant absconded. He was given a hearing at the hotel. There is no record of the hearing. Redirected, Anne told the court that dismissal was on account of misconduct, not opening the bar and selling food and keeping the money. He was not dismissed for desertion. The respondent did not issue business cards. The claimant was under probation on termination.
 11. The issues are whether termination was fair in substance and procedure; and whether the claimant merits the remedies pleaded.

The Court Finds: -

12. The claimant was employed by the respondent through a written contract, dated October 31, 2012.
13. He was employed from November 1, 2012. He states that he was summarily dismissed by the respondent on or about April 15, 2013. The respondent gives the date of dismissal to be April 13, 2013, while the letter of dismissal is dated May 17, 2013. The certificate of service exhibited by the respondent indicates the period of service was November 1, 2012 to April 13, 2012. On or about



April 15, 2013 pleaded by the claimant, would permit the court to adopt the date appearing in the respondent's pleadings, and the certificate of service, April 13, 2012, as the date of termination.

14. The respondent alleges that the claimant was dismissed for failing to open the bar, and misappropriating the respondent's funds. There is no clear evidence establishing such failure and misappropriation. The reason or reasons justifying termination were imprecise. The respondent alluded to desertion, and in the letter of dismissal, to other noted malpractices. The respondent also stated that the claimant no longer represented its interest and could no longer be trusted. These are generalized, shifting grounds, which cannot be sustained, in justifying termination.
15. There was no disciplinary process put in place, to establish any accusation. There was no letter calling on the claimant to show cause why he should not be disciplined. There were no specific charges which he was called upon to answer. There is no record of a disciplinary hearing.
16. Termination was unfair.
17. The respondent testified that the claimant was on probation, at the time of termination. The letter of appointment does not contain a probation clause. Probation is not legally mandated, and if required, must be stated in the contract of employment. The letter of appointment states that the claimant would commence employment on November 1, 2012. There was no requirement for probation.
18. He pleads unpaid salaries as well as salary for April 2013. He does not say and gave no evidence to establish which these other unpaid salaries are. He worked for 13 days in April 2013, and is granted salary for 13 days at Kshs 5,915.
19. He has not established that he is entitled to annual leave, which is unspecified in his claim.
20. He conceded on cross-examination that he did not have any material to support the prayers for overtime, holiday pay, and refund of statutory contributions.
21. His prayer for blanket terminal dues is unclear. What is the nature of terminal dues sought, and in what amount? The court is not able to discern what terminal dues are sought.
22. The claimant was paid a consolidated monthly salary of Kshs 17,500. The contract provided for termination notice of 1 month, or payment of 1-month salary in lieu of notice. The claimant is awarded 1-month salary in lieu of notice at Kshs 17,500.
23. He worked for a short period of 5 months, during which the respondent had raised complaint about his failure to open the bar. There is a letter dated January 2, 2013 to this effect. The warning letter dated May 6, 2013 from Anne to the claimant, alleging mismanagement is irrelevant, the claimant having left employment earlier, on April 13, 2013. The contract executed by the parties was term-indefinite, and it can be assumed that the claimant expected to go on working for the foreseeable future. He is awarded 2 ½ months' salary at Kshs 35,000 in compensation for unfair termination.
24. His contract designated him a supervisor. He was not a manager. A badge could describe him to be anything, but the significant record is the contract, which designated the claimant as a supervisor. In any event a supervisor performs, like a manager, a leadership role in a business, and he would not be entitled to extra remuneration, simply because he has discharged a leadership role. Supervisors are the first contact persons, in the management of a business. The claimant agreed he would discharge his leadership role, at a monthly salary of Kshs 17,500. He does not merit any top-up.
25. No order on the costs.

In sum, it is ordered: -



- a. Termination was unfair.
- b. The respondent to pay the claimant, salary for 13 days at Kshs 5,915; notice at Kshs 17,500; and compensation for unfair termination equivalent of 2 ½ months' salary at Kshs 35,000 – total Kshs 58,415.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono Kiarie Njuguna &

Company Advocates for the claimant

Wanyoike & Macharia, Advocates for the respondent

