



**Rattos v Sun Africa Hotels Limited (Cause E575 of 2021)
[2023] KEELRC 725 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E575 OF 2021**

**J RIKA, J
MARCH 24, 2023**

BETWEEN

JAMES RATTOS CLAIMANT

AND

SUN AFRICA HOTELS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim dated July 9, 2021.
2. He avers that he was employed by the Respondent as Group General Manager on April 1, 2018. He resigned on April 3, 2020. He handed over to Wajira K Perera, who took over as Group General Manager.
3. The Respondent correctly computed the Claimant 's terminal dues at Kshs 1,427,635.61. The Respondent however, has failed to pay the said amount to the Claimant, warranting the filing of the Claim, through which the Claimant prays for Judgment, for: -
 - a. Declaration that withholding of terminal dues is unlawful and unfair.
 - b. Payment of terminal dues at Kshs 1,427, 635.61.
 - c. Interest at court rate from April 3, 2020.
 - d. Costs.
 - e. Any other relief.
4. The Respondent filed its Statement of Response dated September 6, 2021. The computation of terminal dues alleged to have been made by the Respondent, was not an admission of liability. It was not approved and verified, or signed by the Claimant. The Claimant was subscribed to NSSF and not eligible for service pay. The Respondent prays the Court to dismiss the Claim with costs.



5. The Claimant filed Reply to the Statement of Response, dated September 27, 2021. He states that it was the Respondent's policy to pay service. The Claimant himself, and other Management Staff approved service pay, notwithstanding the subscription of Employees to NSSF. The Computation of dues was availed to the Claimant by the Respondent upon his resignation. The Respondent cannot dispute the finality of the computation.
6. The Claimant gave evidence as did Respondent's Human Resource Manager Henry Odhiambo, on December 1, 2022, closing the hearing. The matter was last mentioned before the Court on February 23, 2023, when Parties confirmed filing and exchange of their Closing Arguments.
7. The Claimant adopted his Witness Statement and Documents in his evidence-in-chief. On cross-examination, he told the Court that he worked for the Respondent for about 2 years. He left 2 weeks before the notice period. The Respondent had business challenges, owing to Covid-19 pandemic. Most staff left employment. He was issued computation of terminal dues by the Human Resource Manager, Hildah Karimi. She was junior to the Claimant. She reported to the Claimant. When she issued him the computation and clearance form, she was not reporting to him. There was a new supervisor. Computation form is not signed. It was to go through other authorization. It was a final document. The claimant was entitled to annual leave of 21 days. He did not take leave during the period of 2 years. He was actively subscribed to NSSF. It was the practice of the Respondent to pay gratuity. He did not know if it was payable to Unionisable Employees only. He was not familiar with other Employees' contracts. It was alright to exhibit their contracts.
8. Redirected, the Claimant told the Court he was not in employment, when Hildah availed to him the computation of dues. There was no computation from the Respondent which was signed. Another Employee who left employment was paid gratuity. There was no reason given by the Respondent, why there was no authorization of what the Respondent computed.
9. Henry Odhiambo adopted his Witness Statement and Documents filed by the Respondent, except for the Annual Leave Forms, which were filed irregularly and expunged from the record, prior to the hearing on December 1, 2022.
10. He confirmed that the Claimant was a Senior Employee. Computation of final dues was done by the Human Resource Manager, Hildah. She had the Claimant's complete personnel record at the time she did the computation. Odhiambo did not have evidence of an alternative computation. The Claimant issued demand letter before filing the Claim. Odhiambo did not know if there was a response. It does not take long to have computation of terminal dues approved. The Claimant wrote to the Managing Director Rahul, 4 months after he left, asking to be paid his terminal dues. Approval would not take long. Other Employees who left had payment of terminal dues made, within 2 months of their exit. Redirected, the Witness told the Court that the Claimant was subscribed to the NSSF and not entitled to service pay.
11. The main issue in this dispute is whether the computation of the Claimant's terminal dues, at Kshs 1,427,635.61, is payable to the Claimant. Peripheral issues are whether, interest should be paid from April 3, 2020 at court rate, and who should bear the costs of the Claim?

The Court Finds

12. The Claimant was employed by the Respondent Hotel as a Group General Manager on April 1, 2018. He resigned on April 3, 2020.
13. He handed over to new Group General Manager Wajira Perera. An e-mail from Perera to the Claimant thanking the Claimant for smooth handover, is dated April 2, 2020.



14. Upon resignation, the Human Resource Manager prepared Final Dues Calculation Sheet. The net sum found due to the Claimant by the Human Resource Manager was Kshs 1,427,635.61.
15. It is not disputed by the Parties that this computation originated from the Respondent's Human Resource Manager Hildah. It was conceded by the Respondent, that Hildah had the Claimant's complete personnel file, when she computed the Claimant's final dues. There was no alternative computation by the Respondent. And, there is no evidence that the computation was in any way influenced by the Claimant.
16. Having computed the terminal dues payable, the Respondent did not pay. Other Employees who left employment were paid their terminal dues, within 2 months. Payment included gratuity. There was no evidence that any of the Employee who was paid gratuity, was a member of any trade union. The Respondent just brought up unnecessary arguments after it had computed the Claimant's terminal dues, with respect to what items were payable. The items included by Hildah were not inserted in the computation sheet by the Claimant. They bind the Respondent. The Human Resource Manager signed the computation. It was wrong for the Respondent not to pay what was computed, or at the very least, suggest an alternative amount. It was not even shown that payment was subject to approval by other departments or Managers, and if it was, no suggestion has been proffered by the Respondent, why approval was withheld. Hildah's authority, as the Human Resource Manager, to compute the final dues, is not contested.
17. The Court is satisfied that the Respondent computed what is due to the Claimant, and is bound to honour its computation. It is further noted that computation was ready at the time the Claimant left employment. It was not right to withhold what was ascertained due to him by the Respondent, and continue to withhold the amount even after he had made demands for payment, months after resignation. The prayer for interest at court rate, from the date of default, April 3, 2020 is merited and allowed.

It Is Ordered

- a. The Claim is allowed.
- b. The Respondent shall pay to the Claimant terminal dues as computed by Respondent's Human Resource Manager, at a net sum of Kshs 1,427,635.61.
- c. Interest granted at court rate from the date of default, April 3, 2020, till payment is made in full.
- d. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 24TH DAY OF MARCH 2023.

JAMES RIKA

JUDGE

