



**Njiru v Odyssey Hotels Limited (Cause 1031 of 2017)  
[2023] KEELRC 1304 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1304 (KLR)

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

**CAUSE 1031 OF 2017**

**B ONGAYA, J**

**MAY 25, 2023**

**(BEFORE HON. JUSTICE BYRAM ONGAYA ON THURSDAY 25TH MAY,  
2023)**

**BETWEEN**

**CATHERINE MUTHONI NJIRU ..... CLAIMANT**

**AND**

**ODYSSEY HOTELS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed a statement of claim on June 05, 2017 in person. Her case vis pleaded as follows. The respondent employed her on April 08, 2002 as a room steward at initial salary of Kshs 6, 000.00 per month. It was without house allowance. She reported at work from 7.00 am to 3.00pm with one day off duty per week. She worked on public holidays and she was not paid. She was later promoted to a storekeeper at a salary of Kshs 15, 000.00 per month without a house allowance. The statutory minimum wage for a storekeeper was Kshs 16, 872.40 plus 15% as house allowance making a gross of Kshs 19, 403.30 per month. As storekeeper she reported at work at 8.00am to 5.00pm a total 8 hours per day for 6days a week.
2. Further, she was terminated on February 27, 2017 after resuming from her annual leave and when the respondent's Manager told her the director had given instructions that she stays out of employment until contacted by phone. On further inquiry she was told work was less and it seemed there was no work for her. While on leave in February 2017 she was not paid and she had 42 accrued and not taken or paid leave days. As at termination she had served for 15 years with a clean record free from warnings. She claimed for:
  - a. 1-month notice Kshs 19, 403.30.
  - b. 63 days of leave Kshs 40, 746.90.



- c. Severance pay Kshs 145, 524.75.
  - d. Underpayment 36 months @4403.3 = Kshs 158, 518.80.
  - e. Total Kshs 364, 193.75.
3. The claimant prayed for judgment against the respondent for:
- a. Payment of Kshs 364, 193.75.
  - b. Payment of Kshs 232, 889.60 compensation for unfair and unlawful termination.
  - c. Certificate of service.
  - d. Costs of the suit plus interest.
  - e. Any other relief the Court deems fit to grant.
4. The respondent filed the statement of response dated July 18, 2017 through M/s N K Mugo & Company Advocates. The respondent pleaded as follows. It denied entering a contract of service with the claimant in 2002 or at all. She never reported to work from 7am to 3.00pm as alleged and was always late in reporting at work. The check-in record under her own hand showed she rarely reported at 7.00am. She was always late and tried to falsify arrival times but failed because the check-in register was written in sequence of time of arrival of employees. In September 2016 the claimant reported at work for only 14 days and remainder of days were falsified or she never reported at all. In October 2016 she reported at work only 9 days. The claimant was never promoted to a storekeeper because she was not academically qualified for such promotion. She worked as a cleaner or sweeper throughout her service. She was implicated in falsifying the respondent's documents and thereafter absconded duty. Her contract of service was not terminated by the respondent. She had no pending leave days and the respondent did not owe her any money. Her case be dismissed with costs.
5. Despite service of a hearing notice, the respondent failed to attend at the hearing of the suit. The claimant testified and adopted her witness statement for her evidence in Court. The Court has considered all the material on record and returns as follows.
6. To the 1<sup>st</sup> issue, the Court returns that the parties were in a contract of service. The respondent has pleaded alluding to the alleged contact of the claimant during the period of employment relationship. In absence of any other material, the Court returns that the respondent employed the claimant as a house keeper from April 08, 2002 to February 27, 2017 (14 complete years of service). She has exhibited her payslip for September 2013 showing a monthly pay of Kshs 13, 000.00 and the Court finds that to have been her last monthly pay and in absence of any other material on her last pay. There is no material on record to suggest that the claimant worked as a storekeeper upon a promotion and on a balance of probability, she was not so promoted.
7. To answer the 2<sup>nd</sup> issue the Court returns that the respondent's alleged absconding of duty by the claimant cannot be trusted. No date of alleged absconding was pleaded and no evidence was provided as required in sections 43 and 47 of the [employment act](#) as to the reason of termination or separation. In the response the respondent appears to refer to the claimant taking leave in denial that the claimant is not entitled to leave days as claimed. The Court returns that the claimant's account of termination will be upheld. In January she took her annual leave and when she resumed on 01.02.2017 she was asked to take another 21 days. Upon resuming on February 27, 2017 she was told to go home until recalled but later upon not being recalled, here inquiry was met with the answer that there was no work for her. It appears to the Court that unavailability of work amounted to a redundancy situation but the



respondent never invoked the redundancy provisions in section 40 of the Employment Act, 2007. In such circumstances, it was unfair and unlawful as the relevant statutory procedure was not followed at all.

8. To answer the 3<sup>rd</sup> issue on prayers made the Court returns as follows:
  - a. She is awarded one-month pay in lieu of notice Kshs 13, 000.00 per exhibited pay slip.
  - b. If she took annual leave in January and a further 21 days in February 2017, the issue is over what period of service did the 63 days accrue? The particulars of the 42 leave days alleged to be pending is not provided at all. The claim for such special damages needed strict pleading of the particulars leading to the claim. The same is declined for want of particulars. However, there is no reason to doubt that she was not paid February 2017 salary while she was on the further leave and she is awarded Kshs 13, 000.00.
  - c. Under section 40 of the Employment Act she was entitled to half monthly salary for each completed year of service making 14 complete years by Kshs 7, 500.00 thus Kshs 105, 000.00.
  - d. Underpayment is based on alleged promotion to a storekeeper. The Court has found that the claimant failed to establish such promotion. Further the wage order relied on was not specifically pleaded and referred to. The claim and prayer will be declined.
  - e. The claimant has significantly succeeded in her case. The Court has considered that she acted in person. She is awarded part of the costs of the suit fixed at Kshs 30,000.00 only. She is also entitled to a certificate of service.
  - f. The Court has considered factors for award of compensation in section 49 of the Employment Act. The claimant did not contribute to her termination. Despite her long service of 14 complete years, the aggravating factor is that the termination was abrupt without notice, without due preparation of the claimant and the area labour officer was not notified per section 40 of the Act. The further aggravating factors were that the respondent failed to pay the claimant's February 2017 salary and further failed to pay the prescribed redundancy and other dues prescribed in section 40 of the Act. Thus the claimant has established a good case for award of 12 months' salaries at Kshs 13, 000.00 making Kshs 156, 000.00 for the unfair and unlawful termination.
9. In conclusion, judgment is hereby entered for the claimant against the respondent for:
  1. Payment of the sum of Kshs. 317,000.00 by 01.08.2023 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
  2. Delivery to the claimant by the respondent the certificate of service by 01.07.2023.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 25<sup>TH</sup> MAY, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

