



**Kenya Union of Domestic Hotels, Educational Institutions and Hospitals
Workers (KUDHEIHA) v NSLH Mombasa Beach Hotel (Cause E028 of 2023)
[2023] KEELRC 2262 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2262 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E028 OF 2023
M MBARŪ, J
SEPTEMBER 21, 2023**

BETWEEN

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITALS WORKERS (KUDHEIHA) CLAIMANT**

AND

NSLH MOMBASA BEACH HOTEL RESPONDENT

JUDGMENT

1. The claimant is a trade union and filed this claim on behalf of Edward Karisa, the grievant. The respondent is a business carrying out hospitality, hotel and catering services.
2. In December 2001 the respondent employed the grievant on causal terms and issued him with a written contract of service in the year 2010 and worked until 16 April 2022.
3. The claim is that the grievant was unfairly summarily dismissed without good cause. At the time, he was earning a wage of Ksh. 32,407.51 per month.
4. The claim is that on 22 March 2022 the grievant was assigned duties of a waiter and he served a guest at room 360 but on 29 March 2022 he was suspended from duty on allegations that he had received Ksh.350 through his personal phone from a guest for food instead of the guest paying directly to the hotel for the food bill.
5. On 4 April 2022 the grievant was issued with a show cause notice and invited to attend disciplinary hearing on 7 April 2022 and despite giving his explanation that the guest had gifted him, on 16 April 2023 he was issued with notice of summary dismissal. He lodged an appeal which was rejected and for the unfair termination of employment, the claimant is seeking the following terminal dues;
 - a. Compensation for 12 months Ksh. 388,884;



- b. 4 months' notice pay Ksh. 129,628;
 - c. Service gratuity Ksh. 324,060;
 - d. Compensation for shoes for 10 years Ksh. 84,000; and
 - e. Costs of the suit.
6. The grievant testified that on 22 March 2022 he was on night duty when the reception called him to serve a guest in room 360 and he did as direct but on 29 March 2022 he was shocked when he was served with a suspension notice on the grounds that he had received Ksh.350 on his personal phone meant for the food he had served the guest.
7. The grievant testified that his duties required that upon serving a guest, he was to issue the bill and the same be paid through the Pay Bill number for the hotel and not to receive cash or give his personal phone number. He was required to ensure that all company cash was fully paid and the respondent had different ways of taking money, the Pay bill, till number of card money.
8. The guest in room 360 paid the food bill because this was on half board, bed and breakfast only. For dinner, the guest was supposed to pay and for room service, this was an additional cost. For payment, the grievant gave his personal phone number instead of the Till Number in use which was a mistake to receive the Ksh.350 contrary to the policy.
9. The food served was not paid for. There is no record of payment. The room service charge is not on record.
10. The grievant testified that he knew, stealing from the respondent was against the code of conduct and he apologised and for this, his employment was unfairly terminated on 16 April 2022. He has had problems and made several requests to the respondent for school fees for his children and payment of rent. The respondent has since made several payments to him;
- On 25 July 2022 the respondent paid him through a cheque Ksh. 25,000;
 - On 22 February 2023 the respondent paid Ksh. 40,000;
 - On 19 January 2023 he was paid Kshs. 40,000;
 - On 28 December 2022 he was paid Ksh. 25,000;
 - On 14 November 2022 he was paid Ksh. 25,000;
 - On 19 October 2022 he was paid Ksh. 25,000; and
 - On 25 July 2022 he was paid Ksh. 40,000.
- Total payment of Ksh. 232,274.
11. In response, the respondent's case is that the grievant was employed as a food and beverage waiter earning a gross wage of Ksh. 28,160.76. On 16 April 2022 the grievant was summarily dismissed for gross misconduct.
12. On 22 March 2022 at 9.58pm, a hotel guest in room 360 requested for room service through a call at the reception and the grievant was informed to serve the guest in the room. When the guest requested for payment method to settle the food bill, the grievant indicated that this should be done in cash but the guest did not have cash and asked for a Pay Bill number but the grievant lied that there was no such number. The grievant gave the guest his personal phone number 0748304918 to use for



- payment and the guest used this phone number and paid Ksh.350. The Mpesa message provided was QCM54TLGMD sent to the grievant's personal phone number.
13. The grievant was aware at all material times that the available modes of payment for guest was through card payment, and Pay bill number 530200 but contrary to policy and code of conduct received money meant for the respondent through his phone number. This was a grave breach of the policy and led to the loss of room service charge which is payable when a guest is served meals in the room. Clause 6 and 7 of the policy provide that stealing and dishonest conduct is gross misconduct.
 14. The guest reported the matter to the front desk manager Mr Solomon Langa't on 26 March 2022 and upon investigations and providing the Mpesa payment, the grievant was suspended and issued with a show cause notice and a disciplinary hearing in the presence of a shop steward and due to the gross misconduct, on 16 April 2022 he was summarily dismissed.
 15. The respondent has since paid the grievant 232,274 and the claims made should be dismissed with costs.
 16. In evidence, the respondent called Eunice Nzilani the human resource manager who testified that the grievant was found to be of gross misconduct for receiving money from a guest for room service on 22 March 2022 instead of ensuring such monies were paid to the respondent through the available payment channels. He admitted to receiving the sum of Ksh.350 for room service through his personal phone which was in breach of policy and the summary dismissal was justified.
 17. The grievant has since made several applications seeking payment and the respondent has issued him with cheques for a total sum of Ksh.232,274 and the claims made should be dismissed with costs.
 18. Solomon Langa't testified that as the front desk manager, a guest made a report to him on 26 March 2022 that the grievant asked for payment of room service charge to him through his personal phone number instead of such payment being made to the respondent. The guest had the Mpesa transaction with the grievant for Ksh.350 and when the grievant was called to show cause, he admitted to receiving such monies but stated that he had been gifted by the guest which was not true since the guest had been served in room 350 and should have been charged for room service which the grievant failed to do. This was theft of company funds contrary to policy and the summary dismissal was justified.
 19. At the close of the hearing, both parties filed written submissions which are analysed and the issues for determination are whether there was unfair termination of employment and whether the remedies sought should issue.
 20. The grievant does not deny that on 22 March 2022 he was the night duty waiter and he got a call from reception to serve the guest in room 360 and who allegedly gifted him Ksh.350.
 21. However, the same guest who allegedly gifted the grievant on 22 March 2022 lodged a compliant with the front desk manager, Solomon Langa't to the effect that the grievant had indicated that there was no other mode of payment for room service charge other than through his personal phone number and a payment of Ksh.350 was done through Mpesa.
 22. In evidence, the grievant did not deny the fact and that it was a mistake for him to receive room service charge on his personal phone. He apologised for his conduct and his case was that he had worked for the respondent for many years and the sanction of summary dismissal was not justified.
 23. The grievant had indeed been in the service of he respondent for over 20 years. Part of his employment terms and conditions were his contract, the policy and code of conduct. These required that any dishonesty, any theft and conduct contrary to what the employer had directed that all monies for the respondent be paid through card money or Pay bill number but he went ahead and received room



service charge on his personal phone number without declaring the same to the employer. Save for the policy and code of conduct for the employer, Section 44(4) (c), (e) and (g) of the *Employment Act, 2007* for an employer, where the employee willfully neglects to do his duties properly and causes the employer to incur losses and where the employee fails to carry out his duties as directed by the employer and is also found to have engaged in what amounts to criminal conduct, to summarily dismiss the employee. Such is good cause.

(c) an employee willfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;

...

(e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;

...

(g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

24. Taking money from guests, money meant for room service charge is conduct that negated defined theft from the employer and justified the summary dismissal. The case that there was unfair termination of employment cannot hold. The grievant was issued with notice to show cause and invited to a disciplinary process. He does not deny that he received Ksh.350 thorough his Mpesa phone number, the subject guest in room 350 was served in the room and no room service charge was paid.

The claim in this regard is not justified.

25. On the remedies sought, the claimant is seeking notice pay and compensation. Summary dismissal is found justified and these reliefs cannot issue.

26. On the claim for service gratuity, such is not available under the CBA or contract of service upon a summary dismissal.

27. On the claim for compensation for shoes allowance, such is provided over the years and is not denied as being due.

28. Upon the generous payment of various amounts through cheques of Kshs. 232,274 the payment of Kshs. 84,000 for shoes compensation is well addressed.

29. Accordingly, the claim herein is found without merit and is hereby dismissed. Each party to bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 21ST DAY OF SEPTEMBER 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

