



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals  
Workers (KUDHEIHA) v Hanos (K) Limited t/a Papillion Garden Bar Villa  
(Cause E001 of 2023) [2023] KEELRC 2475 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2475 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E001 OF 2023  
M MBARŪ, J  
OCTOBER 12, 2023**

**BETWEEN**  
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITALS WORKERS (KUDHEIHA) ..... CLAIMANT**  
**AND**  
**HANOS (K) LIMITED T/A PAPHILLION GARDEN BAR VILLA .. RESPONDENT**

**JUDGMENT**

1. The claimant filed the claim herein on 6 January 2023 and served the respondent with summons but there was no appearance or response. The matter proceeded for hearing by way of formal proof.
2. The claimant is a registered trade union and filed the claim for its members and grievants herein;
  - a. Hezron Kiluma;
  - b. Kambua Muteme;
  - c. Juma Muye Chidzodi;
  - d. Khamis Yamba;
  - e. Francis Mueni; and
  - f. Gladys Kitumbui.
3. The claim is that the respondent is a hospitality business and has recognised the claimant and there is a Collective Agreement (CBA) on terms and conditions of employment. The grievants were all employed by the respondent.



4. The claim is that the respondent employed the grievants on oral contracts in different positions. Through a memo dated 19 March 2020 the respondent directed all employees to proceed on leave until April 2020 and on 14 April 2021 the grievants were asked by the respondent extended their unpaid leave until 1<sup>st</sup> May until further notice.
5. On 17 July 2020 the grievants were directed to report at Obonyo Legal Advocates where they were required to write letters to the respondent with regard to voluntary resignation. They asked to consult the claimant, their Trade Union who wrote letter dated 18 July 2020 seeking clarification of the matters addressed by the Advocates. Parties met on 12 and 21<sup>st</sup> August 2020 without a resolution. There was no agreement with regard to tabulation of terminal dues on account of redundancy in accordance with the CBA.
6. The grievants were not allowed back to work and the respondent indicated that the business was not able to pay wages.
7. The claim is for payment of the following terminal dues;
  - a. Notice pay;
  - b. Termination gratuity;
  - c. Severance pay;
  - d. Annual leave pay for the year 2020.
8. Hezron Mbeta was employed from January 2013 to August 2020 a period of 7 years last earning Kshs. 18,642 and claim the following terminal dues;
  - a. Two months' notice pay Kshs. 37,284;
  - b. Annual leave Kshs. 18,642;
  - c. Termination gratuity for 7 years at 25 days Kshs. 108,745;
  - d. Severance pay for 7 years at 25 days Kshs. 108,745;Total being Kshs. 237,416
9. Muthui Kiluma was employed from January 2000 to August 2020 a total of 20 years and last salary was Kshs. 18,642 and is claiming the following dues;
  - a. Three months' notice pay Kshs. 55,926;
  - b. Annual leave for 2020 Kshs. 18,642;
  - c. Termination gratuity for 20 years at 25 days per year Kshs. 310,700;
  - d. Severance pay for 20 years at 25 days Kshs. 310,700;Total being Kshs. 695,968
10. Khamis Yamba was employed from January 2004 to August 2020 for 16 years at a wage of Kshs. 17,748 and claims the following dues;
  - a. 3 months' notice pay Kshs. 53,292;
  - b. Annual leave for 2020 Kshs. 17,764;
  - c. Termination gratuity for 16 years for 25 days Kshs. 236,800;



- d. Severance pay for 16 years at 25 days Kshs. 236,800;  
Total Kshs. 544,656.
11. Kambua Muteme was employed in June 2012 to August 2020 for 7 years and last wage was Kshs. 17,764 and claims the following dues;
- a. 3 months' notice pay Kshs. 35,528;
- b. Annual leave for 2020 Kshs. 17,764;
- c. Termination gratuity for 7 years at 25 days per year Kshs.103,6000;
- d. Severance pay for 7 years at 25 days Kshs.103,6000;  
Total Kshs. 260,492.
12. Gladys Kitumbui was employed in December 2012 to August 2020 for 7 years earning Kshs. 17,764 and claims the following dues;
- a. 3 months' notice pay Kshs. 35,528;
- b. Annual leave for 2020 Kshs. 17,764;
- c. Termination gratuity for 7 years at 25 days per year Kshs.103,6000;
- d. Severance pay for 7 years at 25 days Kshs.103,6000;  
Total Kshs. 260,492.
13. In evidence, the claimant called Hezron Okwemba who testified for all the grievants that on 19 March 2020 the respondent called all of them and issued letters sending them on compulsory unpaid leave on the grounds that due to Covid pandemic work had reduced. On 14 April 2020 the respondent called the grievants and extended their leave to May 1, 2020 and before the due date, they were directed to go before the Respondent's Advocates and directed to tender termination letters since there was no work.
14. The grievants, being unionised under the claimant asked to consult and several meetings were held without agreement on the terminal dues.
15. The claimant has attached a CBA governing employment between the parties.
16. The claimant filed letters dated 9 February 2020 where the respondent directed the grievants to proceed on break on the basis that the company is not in a position to cater for the pending dues and as a matter of concern you requested to oblige.
17. On 19 March 2020, the respondent issued notice on closure of some departments of the hotel due to low season. The grievants were directed to go for unpaid leave because of the low business the company is facing due to the disaster the country is facing until 15 April.
18. Further, through notices dated 16 December 2020, the respondent through its advocates issued notices to the grievants on the grounds of Restructuring at Papillon Beer Garden and on the grounds that due to Covid pandemic, the hotel remained without operations, it was not a redundancy and there would be communication.
19. The claimant reported a dispute with the minister for payment of terminal dues but there was no resolution.



20. Indeed, in the year 2020/2021 Covid pandemic affected many sectors and this can be confirmed from notices issued to the grievants by the respondent on 19 March 2020 and May 1, 2020. The indication was that the directors through management have come to this agreement and not that you can be called any time.
21. Such call never came.
22. The grievants remained on unpaid leave and leading to this claim which the respondent opted not to defend.
23. Where an employer is forced to close business due to operational reasons, being unable to pay wages or such other matters resulting in the layoff of its employees, under Section 2 and 40 of the [Employment Act](#), 2007 (the Act) such is defined as a redundancy. Where the employer continues to keep employees at bay without any word as to employment status, such results in distress, agony and resulting in unfair labour practices.
24. Faced with operational requirements to justify laying off employees or sending them on unpaid leave, to reduce on costs, under Section 40 of the [Act](#), the employer is allowed to lawfully terminate employment and upon recovery of business to recall the same employees or give them priority to reapply for their positions.
25. The respondent opted to go silent.
26. The matter was reported to the Minister without any resolution.
27. On the claims made, there being an apparent redundancy, the CBA between the parties apply.
28. Under clause 15 of the CBA, upon a redundancy, notice pay and severance pay are due.
29. Notice pay is due at one month's wage for an employee who had served for up to 5 years and an employee who had served for over 5 years but less than 10 years, notice pay of 2 months and above 10 years' service, notice pay of 3 months.
30. For severance pay, for employees employed for up to 5 years, a severance pay of 20 days for every full year worked and for employees employed for over 5 years, severance pay at 25 days for every full year worked.
31. In this regard, the grievants are all entitled to notice pay.
32. With regard to gratuity pay, clauses 12 and 15 of the CBA relate to termination of employment for good cause and a redundancy respectively. Gratuity is payable upon termination of employment while severance pay is due following a redundancy resulting from operational reasons.
33. In this case, it was a redundancy that resulted in termination of employment and severance pay is due.
34. Accordingly, the grievants are entitled to notice pay, leave pay for the year 2020 and severance pay.
35. Hezron Mbeta worked for 7 years last earning Kshs. 18,642 and is awarded as follows;
  - a. Two months' notice pay Kshs. 37,284;
  - b. Annual leave Kshs. 18,642;
  - c. Severance pay for 7 years Kshs. 108,745;
36. Muthui Kiluma worked for 20 years and last salary was Kshs. 18,642 and is awarded as follows;



- a. Three months' notice pay Kshs. 55,926;
  - b. Annual leave for 2020 Kshs. 18,642;
  - c. Severance pay for 20 years Kshs. 310,700;
37. Khamis Yamba worked for 16 years and last wage was Kshs. 17,748 and is awarded as follows;
- a. 3 months' notice pay Kshs. 53,292;
  - b. Annual leave for 2020 Kshs. 17,764;
  - c. Severance pay for 16 years Kshs. 236,800;
38. Kambua Muteme worked for 7 years last wage was Kshs. 17,764 and is awarded as follows;
- a. 3 months' notice pay Kshs. 35,528;
  - b. Annual leave for 2020 Kshs. 17,764;
  - c. Severance pay for 7 years ksh.103,6000;
39. Gladys Kitumbui worked for 7 years earning Kshs. 17,764 and is awarded as follows;
- a. 3 months' notice pay Kshs. 35,528;
  - b. Annual leave for 2020 Kshs. 17,764;
  - c. Severance pay for 7 years Kshs.103,6000;
40. The claim successful, the claimant is hereby awarded costs assessed at Kshs. 300,0000

**DELIVERED IN OPEN COURT AT MOMBASA THIS 12 DAY OF OCTOBER, 2023.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

