



**Kenya Hotels & Allied Workers Union v Sun Developers t/a Golden Tulip Hotels
(Cause E409 of 2021) [2023] KEELRC 3088 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3088 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E409 OF 2021
NZIOKI WA MAKAU, J
NOVEMBER 30, 2023**

**BETWEEN
KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT
AND
SUN DEVELOPERS T/A GOLDEN TULIP HOTELS RESPONDENT**

JUDGMENT

1. The Claimant sought relief on behalf of a Grievant Jackson Muthui Maluki who it averred was subjected to unfair redundancy and refusal to pay terminal dues. It was averred that the employee was engaged on 23rd January 2019 and was unfairly terminated on 21st June 2019. The Claimant averred the Grievant was employed as a room steward and that he earned Kshs. 12,000/- at the time of his employ and was dismissed after it was alleged he had stolen money from a client's safe. The Claimant averred there was no proof of this and that the Grievant was stripped naked and searched but nothing was found on him. The Claimant averred the Grievant reported the incident to Parklands Police Station. The Claimant averred that the Grievant was subsequently issued with a termination letter on 21st July 2019 indicating the decision to terminate was on account of low business. The Claimant thus sought 1 month's salary in lieu of notice, 21 days worked in June 2019, 12 days pro rated leave, service charge of Kshs. 11,350/- for June 2019, wage underpayments for 6 months – Kshs. 28,320/-, 10 days pro rated severance pay and maximum compensation.
2. The Respondent on its part did not file any defence despite putting up some effort towards having the matter referred to the Magistrates Court allegedly on account of pecuniary limits but was unsuccessful as indicated on the Ruling of the Court on 8th June 2023.
3. The Claimant submits that the Respondent was accorded an opportunity to comply with pre-trial procedures by filing a defence, statements and documents in support of the defence but declined to



do so. The Claimant submitted that relying on the decision of Mbogholi J. (as he then was) in *Yatin Vinubhai Kotak v Tucha Adventures & another [2000]* eKLR where the learned Judge held:

" The court should not be astute to find excuses for such failure since obedience to peremptory orders of the court is the foundation of its authority, but, if the non-complying party can clearly demonstrate that there was no intention to ignore or flout the order and that the failure to obey was due to extraneous circumstances, the failure ought not to be treated as contumacious and ought not to disentitle him to rights which he would otherwise have enjoyed."

4. The Claimant submitted that despite the Court ensuring the Respondent gets a fair trial and in accordance with Article 50(1)(k) of *the Constitution* by giving the Respondent opportunity to cross-examine the Grievant and failed, neglected or refused to do so, the evidence of the Grievant remains uncontroverted. The Claimant submitted that the Respondent had not adduced any evidence to rebut the evidence it had for the Grievant. It cited the case of Janet Kaphiphe Ouma & another v Marie Stopes International (Kenya) HCCC No. 68 of 2007 (unreported) where Ali-Aroni J. (as she then was) stated that the party that does not adduce evidence though having a defence on the matter, the defence remains as mere allegations. The Claimant urged the Court to find in favour of the Grievant as the burden of proof he discharged was sufficient to succeed in the claim. The Claimant cited a series of cases on the same holding as that in the case of Janet Kaphiphe Ouma & another v Marie Stopes International (Kenya) (*supra*). The Claimant urged the court to grant the Grievant the amounts pleaded being Kshs. 282,582.90 together with costs and interest.
5. No submissions were filed by the Respondent.
6. The Respondent had indicated on the letter of termination that the company would recall the Grievant should business improve. The letter on the reverse tabulated the dues as leave days – Kshs. 5,917.81, notice – Kshs. 12,000/-, service charge for June Kshs. 11,350/-, severance pay 10 days – Kshs. 4,000/-. There were no deductions indicated. In my considered view, the Grievant was entitled to receive the payment and no evidence was adduced that this was paid. At Conciliation, the Conciliator Mercy Mangi determined that the dispute could not be resolved as the employer had lost interest and referred the matter to this Court in terms of section 69 of the *Labour Relations Act* 2007. The Respondent did not accord the Grievant the safeguards under section 40 of the *Employment Act* if indeed there was redundancy due. Nevertheless it computed the sums due and these are what the Grievant will get in addition to some amount for compensation. In the final analysis, I enter judgment for the Claimant as follows:-
 - i. The Grievant be paid his terminal dues of Kshs. 33,267.81
 - ii. Compensation for Grievant – 2 months salary – Kshs. 24,000/-
 - iii. Costs of the suit.
 - iv. Interest at court rates on the sum in (i) above from the date of filing suit till payment in full.
 - v. Interest at court rates on the sum in (ii) above from the date of judgment till payment in full.
 - vi. A certificate of service for the Grievant.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023

NZIOKI WA MAKAU



JUDGE

