



**Kenya Hotels and Allied Workers Union v Panari Hotel (Cause
1751 of 2016) [2023] KEELRC 3179 (KLR) (4 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1751 OF 2016
JK GAKERI, J
DECEMBER 4, 2023**

**BETWEEN
KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT
AND
PANARI HOTEL RESPONDENT**

JUDGMENT

1. The Claimant commenced this suit by a Memorandum of Claim filed on 30th August, 2016 alleging unfair termination of Victor Ochieng Omuga, Apollo Nyamongo Opondo, Jane Kathure Munyua and Stephen Njugi Thoronjo and non-payment of accrued rights to Praxides S. Aluta.
2. It is the Claimant's case that the grievants were employees of the Respondent and were terminated from employment on diverse dated in 2014 except Praxides S. Aluta who resigned on 9th March, 2015 by giving a one month's notice.
3. As regards Victor Ochieng Omuga, it is averred that he was a Kitchen Steward Supervisor earning Kshs.16,800/= per month and was falsely accused of having given one Nathan Kigame intoxicant on the morning of 1st March, 2014. He prays for notice pay, service charge for March, 29 days salary in March, night allowance for 5 days in February and March 2014, 15 days leave balance, leave travelling allowance, service gratuity, 12 months compensation and unprocedurally deducted agency fees, total Kshs.520,795/=.
4. In the case of Apollo Nyamongo Opondo, the Claimant avers that as at the date of termination, the grievant who was public area cleaner earned Kshs.10,605/= and a house allowance of Kshs.5,665/=.
5. That he was falsely accused of having fought with one David Kariuki and reported to work late on 29th March, 2014. The Claimant alleges that Mr. David Kariuki insulted the grievant and reported to one Edward Webale and was referred to the Head of the House Department, Mr. Hannington Kasengi where it is alleged that the story changed.



6. The grievant prays for similar reliefs as Mr. Victor Ochieng Omuga save for pro rata service charge, a total of Kshs.335,050.8
7. As regards Jane Kathure Munyua, the Claimant avers that she was accused of being rude and mishandling of a guest on 13th August, 2014. That the hotel was fully booked and the guest was impatient and refused to await check-out of other guests.
8. The grievant claims for maximum compensation, pay in lieu of notice and unprocedurally deducted agency fee, totalling Kshs.384,885.00.
9. In relation to Mr. Stephen Njugi Thoronjo, the Claimant avers that he was employed as a Barman at a gross salary of over 29,000/= per month and was falsely accused of defrauding the Respondent Kshs.500/= on 17th September, 2014 at the Amber Coffee Shop and was absolved of any misconduct but summarily dismissed and prays for pay in lieu of notice, maximum compensation and unprocedurally deducted agency fee.
10. Lastly, as regards Praxides S. Alusa, the Claimant avers that the grievant gave a one (1) month notice on 9th March, 2014 but contested the terminal dues offered and claims overtime October 2014 – March 2015, pending leave days or pro rata 8 months, salary for March 2015, acting allowance from 1st May, 2014 to 30th March, 2015 (24,000 – 18,024) x 11 months, service charge for March 2015 and April 2015 pro rata for 9 days, 9 days worked in April 2015, leave travelling allowance, termination gratuity and unprocedurally deducted Agency fee from 2012.
11. The Claimant prays for;
 - i. A finding that termination of the grievants’ employment by the Respondent was unfair.
 - ii. Payment of accrued rights, terminal benefits and maximum compensation.
 - iii. Costs of this suit.
 - iv. Any other order the court deems fit to issue.

Respondent’s case

12. By its Memorandum of Response filed on 28th May, 2019, the Respondent states that Mr. Victor Ochieng Omuga who was a supervisor failed to report that one of his supervisees had reported to work while intoxicated to the extent of being incapable of performing his duties and investigations revealed that the employee obtained the intoxicant from the Mr. Victor Ochieng Omuga and was subjected to a hearing and subsequently dismissed on 3rd March, 2014. That he apologized in writing and the letter was received by the Respondent on 6th March, 2014.
13. That he appealed the dismissal on 30th April, 2014 which was out of time but was paid all his dues.
14. As regards Apollo Opondo Nyamongo, the Respondent’s evidence is that on 29th March, 2014, he assaulted a colleague, one David Kariuki at the work place.
15. The Respondent states that the grievant was invited for a disciplinary hearing, attended, sought forgiveness, was issued with a final warning and summarily dismissed as he had prior warning letters.
16. That the grievant declined to collect his dues and the same were submitted to the Labour Office.
17. On Jane Kathure Kinyua, the Respondent’s evidence is that on 24th August, 2014, a report was made that the grievant had mishandled a guest, was invited for a hearing, attended and was dismissed from



- employment for gross misconduct. The grievant appealed, hearing was postponed at her request and finally took place on 18th November, 2014 and the dismissal was upheld.
18. That her dues were paid and she acknowledged the same.
 19. As regards Stephen Njugi Thoronjo, the Respondent testified that on 17th September, 2014, he went to the Coffee Shop, opened Bill No. 2984 (Physical Bill – 788229) took Kshs.500/= using his micro card as he was stationed at the Crystal Bar but omitted the bill in his days summary and did not submit and record the cash in the controls book as he was required to.
 20. That when asked about the cash, he stated that he had submitted the same to the coffee shop attendant through an unnamed trainee but the amount was missing, a notice to show cause was issued, the grievant attended a hearing and the disciplinary committee recommended dismissal.
 21. That the grievant appealed and the decision was upheld and all his dues were paid.
 22. On cross-examination, Mr. Apollo Opondo admitted that he recalled the incident on 29th March, 2014 between him and Mr. Kariuki and was invited to the Office of the Executive House Keeper but denied having been invited for a hearing on 31st May, 2014.
 23. According to the grievant, he is the one who reported Mr. Kariuki and Mr. Kariuki changed the explanation at the meeting. It is unclear as to when and to whom he reported the alleged abuse or Mr. Kariuki's previous story on what had transpired. He admitted that he signed the Disciplinary Action Discussion Form and an apology.
 24. He admitted that he was paid his final dues in 2019 and appealed but did not clear with the Respondent.
 25. That he received the certificate of service and was currently employed.
 26. Victor Ochieng Omuga confirmed that he was aware of the events that led to his dismissal but was not invited to a disciplinary hearing but appealed the dismissal.
 27. The witness denied that he was paid and termed the documents availed by the Respondent as false.
 28. Jane Kathure Kinyua confirmed that she recalled the incident on 13th August, 2014 when a guest who needed a room at the hotel arrived and as there was no room available, he walked to another hotel before the supervisor was notified and no notice to show cause was issued, the grievant's employment was terminated.
 29. The witness confirmed that she did not attend the appeal hearing even after applying for and obtaining a postponement of the hearing.
 30. The grievant admitted that she cleared with the Respondent, was paid final dues and signed the 'Final Dues Declaration Form' on 9th January, 2014.
 31. The witness admitted that she had been subjected to an earlier disciplinary hearing for using the guest escalator.
 32. Mr. Stephen Njugi Thoronjo confirmed that he served the Respondent in the same capacity as a Barman from 2008 to the date of termination of employment.
 33. The witness testified that he could not recall having received the warning letters on record.



34. The witness confirmed that he opened the bill in question and closed it after he received cash from the customer as he had the password to the system and he did the returns and was responsible for ensuring that the cash was received.
35. Ms. Praxides Alusa neither testified nor participated in the proceedings at all. Her case remains unprosecuted.

Respondent's evidence

36. RWI, M/s Catherine Mwikali John confirmed that she joined the Respondent in July 2022 and did not know the Claimants and thus relied on the records at her disposal.
37. In relation to Victor Ochieng, the witness testified that investigations showed that Victor was the supervisor and the intoxicated employee was Mr. Kigame but was unaware of the evidence adduced at the hearing or whether he was informed of his right to be accompanied by a colleague and adduce evidence.
38. That the apology letter was undated and made no reference to the alleged activities.
39. As regards Stephen Njugi, the witness confirmed that she had no proof of a notice to show cause or minutes of the hearing and was unaware of the Collective Bargaining Agreement (CBA) with the Claimant's Union.
40. The witness confirmed that Mr. Stephen Njugi was dismissed on account of a bill of Kshs.500/= and the money was not received by the Hotel.
41. The witness confirmed that the Barman could sell at the restaurant.
42. As regards Jane Kathure, the witness confirmed that the appeal was heard on 18th November, 2023 but no minutes were filed.
43. That the alleged guest had booked and paid for a room at the hotel but the room was unavailable though the booking was not attached.
44. As regards Mr. Apollo Opondo, RWI confirmed that the alleged insults by Mr. Kariuki were undisclosed but he reported the assault and the Respondent had CCTV coverage on the corridors.
45. That hearing took place on 31st March, 2014 but no minutes were availed.
46. That Apollo's dues were sent to the Labour Office.
47. That there was no show cause letter or statement by Mr. Kariuki.

Claimant's submissions

48. Counsel for the grievants isolated one issue for determination as to whether termination of the grievants' employment was unfair and unlawful.
49. Counsel submitted that the termination of the grievants employment was unfair in that the evidence against Victor Ochieng was insufficient and the dismissal was malicious, no notice to show cause was issued and minutes of the disciplinary hearing were not availed.
50. As regards Mr. Apollo Opondo, counsel submitted that contrary to the contents of the dismissal letter, Mr. David Kariuki accosted Mr. Apollo Opondo and insulted him.



51. That record showed that Mr. Apollo Opondo had been provoked by Mr. David Kariuki and there was no witness or report of the injuries afflicted on Mr. Kariuki.
52. Counsel submitted that no notice to show cause was issued or hearing conducted.
53. In the case of Stephen Thoronjo, counsel urged that since he had authority to sell food and drinks as a Barman, he could do so as evidenced by the email from Josiah Nyakundi to one Gift Wakesho dated 29th September, 2014.
54. Counsel submitted that neither the notice to show cause nor minutes of the hearing were availed in court and the Respondent did not lose the Kshs.500/=.
55. Finally, as regards Jane Kathure, counsel submitted that no evidence was availed on the incident on 13th September, 2014, no notice to show cause was issued and the one made reference to related to another incident and minutes of a disciplinary hearing were not availed and no appeal hearing took place.
56. Counsel submitted that the Respondent did not demonstrate that the alleged guest had booked at the hotel or that the Respondent had to refund the amount paid to the other hotel.
57. That the grievant signed the Final Dues Declaration Form “without prejudice” and could therefore not be relied upon by the Respondent.
58. Counsel urged that the grievants were not given an opportunity to be heard as ordained by the provisions of Article 50 of *the Constitution* of Kenya, 2010 and Section 42(1) of the *Employment Act*, 2007.
59. That the provisions of Section 43 and 45 of the *Employment Act*, 2007 were not complied with.
60. Reliance was made on the Supreme Court decision in Kenfreight (EA) Ltd V Benson Nguti (2019) eKLR to urge that the summary dismissal of the grievants was unfair and they were thus entitled to the relief under Section 49(1)(c) of the *Employment Act*, 2007.

Respondent’s submissions

61. As to whether termination of the grievants employment was unfair, counsel submitted that in the case of Victor Omuga, it was fair as investigation revealed that he had given one Nathan Kigame the intoxicant and did not report him as he would have implicated him as well and the grievant apologised.
62. That the union also wrote to the Respondent seeking a meeting on the issue. That all dues were paid.
63. As regards Apollo Opondo, counsel submitted that he assaulted one David Kariuki and admitted the same and attended a hearing and attempts to resolve the matter through the union failed.
64. That his dues were sent to the Labour Office.
65. On Jane Munyua, counsel submitted that investigations revealed that the grievant had mishandled a guest of the Respondent, was invited for a hearing, did not attend, appealed, she sought more time and it later took place on 18th November, 2014.
66. That the grievant cleared and was paid all her dues.
67. As regards Stephen Njugi Thoronjo, counsel submitted that even after opening Bill No. 2984 at the shop, the grievant’s days summary omitted the Kshs.500/= and did not submit and record the cash.
68. That the grievant had previous warning letters and all dues were paid.



Findings and determination

69. As the Claimant's counsel correctly submits, it is common ground that the grievants were employees of the Respondent having been employed on diverse dates as follows;

Victor Ochieng Omuga 5th July, 2005

Apollo Opondo 26th September, 2005

Jane Munyua 16th December, 2008

Stephen N. Thoronjo 1st November, 2008

Praxides S. Alusa 6th August, 2007

and were serving the Respondent in different capacities.

70. Equally, it is not in contest that all the grievants were summarily dismissed from employment on diverse dates between March and September 2014.

71. As regards the summary dismissal, the Claimant submitted that the same amounted to an unfair termination as the provisions of the *Employment Act*, 2007 were not complied with.

72. The Respondent's counsel on the other hand submitted that the Respondent had good reasons to terminate the grievants' employment and did so in accordance with the law.

73. The issues that commend themselves for determination are;

i. Whether termination of the grievants' employment by the Respondent was unfair.

ii. Whether the grievants are entitled to the reliefs sought.

74. As to whether termination of the grievants' employment was unfair, counsels adopted contrasting positions.

75. Needless to emphasize, both the provisions of the *Employment Act*, 2007 and case law are consistent that for a termination of employment to pass the fairness test, the employer must prove that it had not only a valid and fair reason for termination but also that it conducted the termination in accordance with a fair procedure as aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR and by the Court of Appeal in *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR.

Reason(s) for termination

76. Victor Ochieng Omuga was accused of failing to report that one of the Kitchen Stewards was intoxicated during working hours and the steward had implicated him.

77. An undated letter allegedly by the Kitchen Steward, Mr. Kigame indicates that the grievant gave him the intoxicant while the two were on first floor.

78. Similarly, an undated letter allegedly by the grievant admits the allegation and apologies for what had happened. He requested for a transfer to another department or be given normal kitchen stewarding.

79. Other than stating that he was falsely accused of giving Nathan Kigame the intoxicant, the grievant was not categorical that he did not do so and the apology letter on record contradicts the written witness statement.



80. Mr. Kigame's letter states that the intoxicant was handed over to him after 6.15 am, thus after the grievant and the shop steward had seen him in the main kitchen.
81. Finally, the grievant dismissed the documents on record as false without establishing their falsity by evidence.
82. Guided by the provisions of Section 43(2) of the *Employment Act*, 2007 and the Court of Appeal decision in Kenya Revenue Authority V Reuvel Waithaka Gitahi & 2 others (2019) eKLR, on the employer's burden of proof as well the sentiments of the Court in Judicial Service Commission V Gladys Boss Shollei (2014) eKLR, on applicability of the 'band of reasonableness test' in British Leyland Ltd V Swift (1981) ILRI at page 93, the court is satisfied and finds that the Respondent has on a preponderance of probabilities demonstrated that it had a substantive justification to terminate the grievants' employment.
83. Apollo Opondo was accused of assaulting Mr. David Kariuki on 29th March, 2014, an allegation he denied alleging that the said David Kariuki insulted him and he reported the matter to one Edward Webale who referred him to Hannington Kasengi.
84. Strangely, on cross-examination, the grievant admitted that he was summoned to the office of the Executive House Keeper.
85. He testified that he wrote the statement as instructed by the Executive House Keeper admitting that he assaulted one David Kariuki on 29th March, 2014 after being provoked and signed the form on record on 2nd March, 2014.
86. Puzzlingly, the grievant did not report the fact that he was insulted even after being advised to do so by one Edward Webale.
87. The witness admitted that he had previous warning letters.
88. Based on the grievant's testimony and the Disciplinary Action Discussions Form, the court is satisfied and finds that the Respondent had a valid and fair reason to terminate the grievant's employment.
89. Jane Wanyua was accused of having mishandled a guest on 24th August, 2014, while at the reception. It was alleged that the guest opted to book at another hotel and the Respondent lost revenue.
90. The alleged formal complaint was made by the guest.
91. The grievant admitted that on the material day, a guest walked in enquiring about hotel services and she explained the check-in procedures which agitated the guest who appeared to be in a hurry and declined to wait for his room reservation.
92. On cross-examination, the witness confirmed that there was no room and the guest walked away which contradicted the earlier statement.
93. That the grievant notified the Supervisor later by word of mouth.
94. The allegation that the grievant was alone at the reception and only instructed the guest to wait appears unpersuasive as it was contradicted in court.
95. Records reveal that after dismissal, the Claimant requested for and was supplied with various documents including the formal complaint by the guest dated 24th August, 2014, reports by the supervisor dated 16th September, 2014 and written statement among others requested for by letter dated 6th November, 2014 and a response was received on 10th November, 2014 on the basis of which



the grievant sought for the postponement of the hearing from 11th November, 2014 to 13th November, 2014, which the Respondent granted.

96. Although the Respondent did not avail documentary evidence of the complaint by the guest and the reports and statements requested for by the grievant in her letter dated 6th November, 2014, her contradictory evidence on what transpired on the material date would appear to suggest the grievant was less than candid.
97. It is unclear as to whether the guest was agitated by the absence of a room at the hotel or the check-in procedures as allegedly explained by the grievant.
98. From the foregoing analysis, the court is persuaded that the Respondent has on a balance of probabilities shown that it had a valid and fair reason to terminate the grievant's employment.
99. Finally, Mr. Stephen Njugi Thoronjo was accused of opening Bill No. 2984 (Physical Bill 788229) of Kshs.500/= at the Amber Coffee Shop but did not submit the cash nor record it in the control book and was missing from the days sales and had allegedly given the cash to an unnamed trainee after being questioned.
100. Although the grievant was authorised to open the bill at the Amber Coffee, he closed the same without handing over the physical cash received from the guest. He did not ensure its inclusion in the day's sales or that it was reflected anywhere after handing it over to the unnamed trainee.
101. On cross-examination, the grievant confirmed that having received the cash from the guest, it was his responsibility to ensure that it was received, a duty he failed to discharge until prompted on 26th September, 2017.
102. Copies of the email from Josiah Nyakundi to Gift Wakesho and copied to other persons regarding Bill No. 2984 does not vindicate the grievant.
103. While it establishes that the grievant gave the cash to an unnamed trainee, he closed the bill without the cash being handed in on 17th November, 2014 and it remained outstanding until 26th September, 2014 when he was directed to deposit the same "the normal way."
104. Although the grievant had no intention of retaining the cash, as he had already handed it over to the unnamed trainee, it was his duty to ensure that the cash was received by the Respondent, which he did not do.
105. From the foregoing, it is the finding of the court that the grievant failed to account for the sum of Kshs.500.00 received from a guest, having opened and closed the bill in question, which gave the Respondent a valid reason to terminate his employment and the court so finds.
106. In sum, it is the court's finding that the Respondent had a substantive justification to terminate the grievants' employment.

Procedure

107. It requires no gainsaying that the provisions of Section 41 of the *Employment Act*, 2007 are mandatory as held in *Pius Machafu Isindu V Lavington Security Guards Ltd* (2017) eKLR.
108. To ensure procedural propriety in termination of employment, the law requires the employer to comply with the procedural precepts prescribed by Section 41 of the *Employment Act*, 2007.



109. Similarly, courts have in legions of decisions itemised the procedural steps to be complied with as highlighted by the Court of Appeal in *Andrew K. Tanui V Postal Corporation of Kenya (2019) eKLR*, where the court enumerated the four elements of procedural fairness and stated as follows;

“In this case, the letter inviting the Respondent to appear before the Board was only two lines containing the date and venue. It said nothing about the reasons for such invitation. It said nothing about the Respondent appearing with another employee of his choice. The retort that an employer has no obligation to ask the employee to be accompanied does not avail the appellant because the law requires that such other person be present to hear the grounds of termination and if so inclined, make representations thereon. A hearing not so conducted is irregular.

110. The court is guided by these sentiments.

111. In the instant case, the Respondent adduced no evidence of having given the grievants a notice to show cause or invite them for a disciplinary hearing.

112. Mr. Victor Ochieng Omuga was emphatic that he was not invited for a disciplinary hearing.

113. Although Apollo Opondo admitted that he made a statement and signed the Disciplinary Action Discussion Form on record, the form is neither an invitation to a hearing nor evidence of the minutes of the hearing.

114. The witness denied having been taken through a disciplinary hearing.

115. Similarly, Jane Kinyua confirmed that she was neither issued with a notice to show cause nor taken through a hearing.

116. On appeal, however, the Respondent scheduled a hearing on 11th November, 2014 but the grievant requested for its postponement as she had received the documents she had requested for and needed more time to peruse them.

117. Strangely, no new date was provided to the grievant but the letter dated 10th December, 2014 notified the grievant that the meeting was held on 18th November, 2014 and the earlier decision was upheld.

118. In sum, the grievant was not heard in the presence of a representative of her choice nor were the charges explained to her in a language she understood.

119. The Respondent tendered no evidence of an invitation letter nor minutes of the alleged appellate meeting.

120. Finally, as regards Mr. Stephen Njugi Thoronjo, the Respondent tendered no evidence of a notice to show cause, invitation to a disciplinary hearing or minutes of the disciplinary committee hearing.

121. The alleged meeting held on 30th September, 2014 made reference to the summary dismissal letter communicating the summary dismissal.

122. From the evidence on record, all the grievants appealed but none was successful.

123. It is unclear, if any appeal hearing took place.

124. However, Apollo Opondo availed no evidence of the appeal alleged.

125. Although RWI alleged that Victor Ochieng Omuga, Stephen Thoronjo, Apollo Opondo and Jane Kathure were all invited to a disciplinary hearing, the witness did not avail a signed copy of the



alleged invitation letters or other evidence of the invitation or minutes of what transpired and the recommendations.

126. In the absence of evidence of the notices to show cause to the grievants, invitation to the alleged disciplinary hearings and minutes of the proceedings, the court lacks a basis on which to make a finding that the Claimants were accorded an opportunity to be heard in consonance with the provisions of Section 41 of the *Employment Act*, 2007.
127. In the circumstances, it is the finding of the court that termination of the grievants' employment was procedurally flawed and thus unfair.

Reliefs

128. As regards the grievants' membership of the Claimant union, the grievants availed no evidence of membership save for the single pay slip on record of one Praxides Alusa which shows that she was a member of the union. However, her claim was not based on unlawful termination of employment and was not prosecuted.
129. Evidence to show that the Claimant union was a registered trade union attaching an undated Constitution is not sufficient evidence of the grievants' membership.
130. More significantly, the Claimant did not avail a copy of the Collective Bargaining Agreement (CBA) to demonstrate the terms of engagement other than those set out in the letter of appointment.

a. Claim for 3 months salary in lieu of notice

131. This claim lacks a basis as the individual contracts provide for one month's notice or 2 months' salary or one (1) month salary in lieu or summary dismissal without notice.
132. Similarly, having found that the Respondent had valid and fair reason(s) to dismiss the grievants from employment, the prayer for notice pay is unsustainable and is declined.

b. Service charge

133. None of the grievants availed evidence of the alleged service charge or how it was computed. Moreover, the termination notices reveal that the service charge due to the grievants was part of the final dues
- The prayer for service charge is declined.

c. Leave Balance

134. This claim was also included in the respective computations and none of the parties availed evidence on the actual number of days pending or when they accrued.
- This prayer is declined.

d. Leave travel allowance

135. The amount due was also factored in the computation of the final dues.
- The prayer is declined.

e. Night Allowance

136. The Respondent factored in this prayer in the computation of final dues and no contrary evidence was adduced.



The prayer for night allowance is disallowed.

f. Service gratuity

137. The Respondent factored in this prayer in its computation of final dues $\frac{1}{3}$ of the gross salary multiplied by the completed years of service.

The prayer is declined.

g. Unprocedural deduction of Agency fee

138. None of the grievants adduced evidence to prove this prayer. It is unclear to the court as to when the amounts were deducted and in respect of which CBA or union.

The claim lacks particulars and is dismissed.

h. Payment for days worked

1. Victor Ochieng 3 days in March 2014

2. Apollo Opondo 11 days in April 2014

139. Victor Ochieng was dismissed on 3rd April, 2014 and his dismissal letter makes no reference to payment for the 3 days. The prayer for 3 days salary in April 2014 is merited and is awarded.

140. In the case of Apollo Opondo, he adduced no evidence to show that he rendered services to the Respondent after dismissal on 2nd April, 2014.

The prayer is unsustainable and is dismissed.

i. 12 months compensation

141. Having found that the summary dismissal of the grievants by the Respondent was unfair for want of procedural propriety, the grievants are entitled to compensation under Section 49(1)(c) of the *Employment Act*, 2007 subject to the provisions of Section 49(4) of the Act.

142. The court has considered the following matters;

- i. All the grievants substantially contributed to their dismissal from employment either by commission or omission.
- ii. The grievants served the Respondent as follows;
Victor Ochieng 8 years 8 months
Apollo Opondo 8 years 6 months
Jane Munyua 5 years 9 months
Stephen Thoronjo 5 years 10 months
- iii. The Claimants wished to continue in the Respondent's employment as exemplified by their appeals against the dismissal save for Apollo Opondo.
- iv. The Respondent was ready and willing and paid those grievants who accepted the payments tabulated on the dismissal letter.



- v. Other than Victor Ochieng Omuga who had no recorded warning or cautionary letter, all the others had. In total, Mr. Apollo Opondo had two warnings dated November 2011 and September 2013 and a letter of disobedience dated 9th July, 2013. He apologised for the latter in writing. The letter was also a warning.

Jane Munyua had a notice to show cause dated 20th December, 2013 for having disobeyed employer's instructions which led to a cautionary letter dated 23rd December, 2013.

Mr. Stephen Thoronjo had a total of three warnings on failure to do stocktake, failure to bill a guest and sneaking out of the work place. In addition, the grievant had two non-conformities with standards in billing in 2013 and 2014 and a surcharge of Kshs.2,500/= in July 2014.

143. In light of the foregoing, the court is satisfied that the equivalent of 2 months' salary is fair.

j. The claim by Praxides Alusa is dismissed for want of prosecution.

144. In the upshot, judgement is entered in favour of the Claimant against the Respondent as follows;

- a. Finding that termination of the grievants' employment by the Respondent was unprocedural and thus unfair.
- b. Equivalent of two months' salary.
- c. Respondent to pay any unpaid terminal dues as computed in the respective dismissal letters for grievants who did not receive payment.
- d. Salary for 3 days worked in April 2014 for Victor Ochieng Omuga.
- e. Costs of this suit.
- f. Interest from the date hereof till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 4TH DAY OF DECEMBER 2023

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE



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