



**Kamanga v Venus Inn (Cause 371 of 2017) [2022] KEELRC 1760 (KLR) (9 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1760 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**  
**CAUSE 371 OF 2017**  
**NJ ABUODHA, J**  
**MAY 9, 2022**

**BETWEEN**

**JACKLINE JARENGA KAMANGA ..... CLAIMANT**

**AND**

**VENUS INN ..... DEFENDANT**

**JUDGMENT**

1. The claimant averred that she was verbally employed by the respondent's manager, one Grace Muthoni in her hotel known as Mahindi hotel and later transferred to Venus Inn, the respondent herein. In both institutions the claimant worked as a house keeper/room attendant from July 22, 2009. Her starting salary was Ksh 5000/= which was later in 2015 increased to Ksh 7,500 and remained so until termination on July 7, 2017.
2. According to the claimant, the respondent informed her that it was inappropriate for her to place toiletries in the store where the same was found raising malice that she was hiding the same for her use.
3. The claimant however responded by a letter dated July 6, 2017 stating that she had no malice but was safely keeping the items in the hotel's store since they were for day to day use and the hotel management had never given directions on how to dispose of the same. The claimant believed that this was not a valid reason for termination of her service.
4. The claimant further submitted that the respondent terminated her service without following the right procedure laid down in the *Employment Act*, 2007 and failed to prove that the reason for termination was a fair reason.
5. The claimant further alleged that the respondent never gave her notice before termination and further that during her service she never went on leave. The respondent also did not pay her terminal dues upon terminating her service.



6. The respondent on its part pleaded that if the claimant was employed by Grace Mutheru then she was an employee of Mahindi hotel and not Venus inn. The respondent averred that Mahindi hotel and the respondent were distinct entities and she could not have been transferred from one entity to the other.
7. The respondent further denied the claimants services were terminated unlawfully on July 7, 2017 and without giving her a valid reason.
8. The respondent further averred that the claimant was culpable for reasons among other that she sneaked her own customers into the hotel rooms and receiving payments therefrom. The claimant further failed to account for the unused condoms, toilet paper and soap by surrendering the same to the manager.
9. At the oral hearing, the claimant adopted her witness statement and documents filed with the claim. according to her, she was employed on July 22, 2009 by Mahindi hotel and further that Mahindi Inn and Venus Inn were owned by the same person. In 2012, she was transferred from Mahindi hotel to Venus inn.
10. It was her evidence that she worked as a housekeeper and that upon employment, she was not issued with a formal contract. Her starting salary was Ksh 5000 which was later increased to Ksh 7,500/= in 2017. She stated that she was terminated on allegations of theft. According to her the toilet items found in her possession were for work and that she never intended to steal them. She was asked to write an apology letter which she did explaining why she had the items.
11. Upon dismissal, she reported the same to her union which wrote a letter to the respondent asking for an explanation. It was her evidence that the place where the items were found was where they were usually kept including her personal items.
12. Prior to termination, she was not taken through any disciplinary hearing and that during the period she worked, she never went on leave. She asked for leave and was always told it would be arranged but this was never done. The respondent never paid her house allowance and that it initially contributed NSSF but later defaulted.
13. In cross-examination she stated that she was initially employed by the Mahindi hotel and later transferred to Venus inn. She only knew the wife to the owner Ms Grace Gitonga and that she was brought to work by one Albert who was in court. Albert was the manager for both Mahindi and Venus inn.
14. Regarding the items allegedly stolen, they were found in the room where they were usually kept with other items for work. Everyone had a place for storing their work items and it was only her place that was opened for inspection. It was her evidence that the items were not kept at the reception because it was very small and that they used to collect toilet paper and soap from the reception. The room was for dirty bedsheets and extra-soap. She denied selling the rooms privately and that customers had to pass through the reception.
15. It was her evidence that she was asked to write an explanation which she did and after that she was told to leave and never to come back.
16. The respondents witness Mr Albert Chege Ndungu stated that he was employed by the respondent as an accountant. He adopted his statement record on October 18, 2019 as his evidence in chief. It was his evidence that he worked for Venus inn and that Mahindi hotel was a different outfit. According to him Mahindi hotel was owned by Jackson Mahindi who had since died and that Grace Muthoni was only concerned with Venus inn. He denied employing the claimant and that she applied for a job at Mahindi hotel and was hired.



17. It was his evidence that on July 6, 2017 he went supervise the room and found the claimant had sneaked out. The other employees were around. He checked the lockers in their stores but could not access the claimant's locker. He asked for spare keys and opened it and found unused condoms, soap and tissue. According to him, the staff were supposed to return unused items to the reception and later taken to the manager. It was wrong for the claimant to keep the items. When the claimant came back, she was informed the items were found in her locker and was informed it was wrong and was required to write an apology or explanation but the claimant refused and left. The next day she came back and demanded to be paid her salary and was paid. It was his evidence that he wanted the claimant to write the apology in his presence but she refused. He denied receiving any letter from the union or from the claimant.
18. Concerning leave, he stated all staff used to go on leave and were also entitled to two days off in a week. Concerning house allowance stated this was never paid and that staff were paid only agreed salary.
19. On cross-examination he stated that he had authority letter to give evidence on behalf of the respondents. He started working in 1998 and that he knew the claimant. The two hotels were owned by one person and both were running. He conceded that the claimant was transferred from Mahindi hotel to Venus inn.
20. Prior to termination, the claimant was not issued with a show clause letter and that the claimant was verbally asked to explain and report to the management over the incident. It was his evidence that the claimant had no previous disciplinary issues. Concerning leave he stated that the respondents had no leave schedule. According to him, the claimant absconded duty and that they never followed up why the claimant never came back to work.
21. In re-examination he stated that the claimant was never terminated, she was supposed to write an apology letter, then be issue with a warning letter before termination but she just left.
22. The respondent's witness Mr Albert Chege Ndugu stated that the claimant was not issued with a notice of termination. Termination of employment without notice and without giving an employee a chance to respond to the grounds upon which termination is being considered is contrary to section 45 of the [Employment Act](#). The claimant is therefore in that respect awarded one month's salary *in lieu* of notice.
23. The claimant was further not taken through any disciplinary hearing before termination. She had worked for the respondent for approximately 8 years. The duties she performed were menial and required no special skills to perform. The claimant did not state she had any special training towards her work. She could therefore perform any work. For this reason, an award of six months salary for unfair termination would be reasonable.
24. Regarding leave, the claimant stated she never went on leave for the period she worked and that whenever she asked for leave, she was informed it would be arranged however this never happened. Under section 28 of the [Employment Act](#) an employee is entitled to at least 21 days of leave after twelve months of continuous service. However, where an employee does not take annual leave, what remains is only due for the last 18 months. In this regard the claimant will be awarded one and half months (18 months) salary on account of accrued leave but not taken.
25. The claimant made a claim for public holidays to totally to 64 days for the period between 2009 and 2017 without giving the details of such holidays and which on their face appeared too numerous to be correct number of public holidays during the period she worked. This claim is therefore respected.
26. The claimant further claimed house allowance. The respondent stated they never paid house allowance and that employees were paid agreed salaries. Section 31 of the [Employment Act](#) require an employer to either house an employee or provide a housing allowance. In this regard this claim succeeds and the



claimant is hereby awarded 15% of his monthly salary as housing allowance for the period he worked for the respondent.

27. In conclusion the court awards the claimant as follows:

Ksh.

- (a) One month salary *in lieu* of notice for termination 7,500
- (b) 15% monthly salary as house allowance for 96 months 108,000
- (c) Payment *in lieu* of leave at one and half months' salary. 11,250
- (d) Six months salary as compensation for unfair termination of service. 45,000  
171,750
- (d) Costs of the suit

28. This award shall where applicable be subject to taxes and statutory deductions.

29. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 9<sup>TH</sup> DAY OF MAY, 2022**

**Abuodha Nelson Jorum**

**Judge ELRC**

