



**Samoei v Klique Hotel Ltd (Cause 225 of 2018)
[2022] KEELRC 1356 (KLR) (9 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1356 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 225 OF 2018**

NJ ABUODHA, J

MAY 9, 2022

BETWEEN

JOSEPH KIBET SAMOEI CLAIMANT

AND

KLIQUE HOTEL LTD DEFENDANT

JUDGMENT

1. The claimant through a memorandum of claim filed on 28th June, 2018, alleged that he was employed by the respondent on 1st October, 2002 as the Head of Security. On 1st April, 2016 he issued a three month's resignation notice which lapsed on 30th June, 2016 however upon termination, the respondent never paid the claimant his terminal dues.
2. The claimant therefore claimed service pay for 14 years, overtime for similar period, public holidays worked and house allowance not paid for the period he served.
3. The respondent on its part pleaded that it never terminated the claimant's service and that the claimant voluntarily resigned in April, 2016. The respondent further averred that there was nothing owing to the claimant as of the date he left employment as all his dues were paid.
4. In his oral evidence, the claimant stated he worked for Lavington Security and that he was employed by the respondent on 1st October, 2002 as a guard. He used to report to work at 6.00pm and leave at 6.00am. His starting salary was Ksh.5,500/= and that he used to go on leave.
5. It was his evidence that in 2013 he started experiencing problems at work. He used to get harassed and his salary started delaying and was paid in bits. He further stated that he resigned because of the problems at work. It was not his wish to resign. He was not paid his terminal dues when he resigned. He was only paid his last salary.



6. In cross-examination he stated that he was assigned at Klique Hotel. He resigned on 1st April, 2016 and stated in the letter that he was resigning because of family issues. No one forced him to resign.
7. While at work, he had a desk from where he was working and other staff used to register at his desk. He further stated that he never went back to his place of work after resigning and that he left in June. He was asked to hand over to Mr. Patrice Omwanga who was his colleague. He denied leaving with any documents and further denied deleting the register.
8. Mr. Samoei further testified that he was not paid for holidays worked nor house allowance. He denied working up to 3.00pm only and stated that he used to work overtime.
9. In re-examination he stated that he never wanted to embarrass his employer by saying he was resigning because he was not being paid. The claimant's witness Mr. Joshua Koech stated that they used to work together with the claimant and that he (the claimant) was honest and a good worker.
10. In cross-examination he stated that he was employed in 2000 as a janitor and an assistant pool attendant. The claimant was a security officer. He left employment in 2012. He stated that he did not know when the claimant left and why he left employment.
11. The respondent's witness Mr. Edwin Kiprop Cheptoo stated that he was the director of the respondent and that he recorded a stamen on 21st December, 2018 which he adopted as his evidence in chief.
12. In cross-examination he stated he knew the claimant and that he used to work as internal head of security. According to him, the respondent had five internal security guards and they worked in shifts from 6.00am to 3.00pm and the next shift was from 3.00pm to 6.00am. his work was to ensure all purchases were correct and ensure employees report and clock in on time. The claimant was subject to same procedure. It was however possible that he could have covered up for someone who did not come to work or was late.
13. Concerning when the claimant was hired, it was his evidence that he joined in 2006 and that the respondent never operated before incorporation. The claimant's appointment was verbal.
14. Mr. Cheptoo further stated that he could not remember if the claimant started to work prior to incorporation and could not remember the claimant's exit salary. The salary could have been around Ksh.10,000/= he further stated that the claimant used to work for six days and got one day off. It was his evidence that the claimant took away records. According to him the salary included house allowance and that they never allowed overtime. those who worked during public holidays were either paid or given a day off.
15. Mr. Cheptoo denied knowledge of any difference between the claimant and one of the Managers. According to him the claimant resigned out of his own accord. He was surprised he resigned because he was a good worker. According to him the claimant said he found greener pastures. The claimant had worked for about ten years when he testified. He was asked to handover the company's property before he could be cleared with but he never handed over the documents in his possession. According to him the claimant has not been cleared with because he has not handed over. He stated that the claimant was paid all his dues before he left. He however did not have evidence of payment to the claimant.
16. The matter before me does not concern termination on account of misconduct but a termination triggered by the resignation of the claimant.
17. The claimant issued the respondent with a three months' notice of resignation which he served however the respondent failed and or ignored to pay the claimant his terminal dues.



18. The terminal dues claimed by the claimant consists of service pay, overtime dues, public holidays worked and house allowance.
19. Concerning the claims for service pay and house allowance these will be disallowed because from the claimant's payslips produced with the respondent's bundle of documents it is clearly shown that the claimant was paid house allowance and was a contributor to NSSF. These heeds of claim are therefore disallowed.
20. On the claim for overtime and public holidays, these will be allowed for the reason that part III of the Employment Act (Section 9 through to section 160 read together with Section 74 of the Act obliges an employer to draw a contract of employment setting out the details contained in Part III which include hours of work, overtime leave and work during public holidays. Section 9(2) of the Act specifically places the responsibility to draw the contracts specifying the items contained in Part III on the employer. Section 74 places the responsibility of keeping the employment records on the employer. The respondent did not produce these records. This therefore placed it at a disadvantage to the claim by the claimant. The Court will therefore award the claimant the claim for overtime and public holidays as prayed.
21. In the conclusion the Court awards the claimant as follows.
 - a. Overtime dues Ksh. 141,120
 - b. Public holidays worked Ksh. 98,000
Ksh. 239,120
 - c. Costs of the suit
 - d. The respondent shall issue the claimant the certificate of service.
 - e. The award shall be subject to taxes and statutory deductions.
22. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY, 2022.

ABUODHA NELSON JORUM

JUDGE ELRC

