



**Kenya Hotels and Allied Workers Union v Green View Guest House & another
(Cause E002 of 2022) [2022] KEELRC 13459 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13459 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E002 OF 2022
CN BAARI, J
DECEMBER 8, 2022**

BETWEEN

KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT

AND

GREEN VIEW GUEST HOUSE 1ST RESPONDENT

JOSHUA OKOTH MIGIRE 2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed this suit through a Memorandum of Claim dated 12th January, 2022, and filed in court on 17th January, 2022. The Claimant prays that the court orders the Respondents to pay the grievant, one Philip Osano Athemba, 15 days worked for September, 2020, 11 years pending leave days, 8 months pro-rated leave, 114 pending public holidays, 560 pending off days, Service pay for 11 years, and wage underpayment for May 2012, all amounting to Ksh. 836,494.00.
2. The Respondents entered appearance on 11th February, 2022, through the Firm of B.A.Obiero & Co. Advocates, but did not proceed to file a response to the Claimant's claim. The Law Firm later vide their letter of 17th May, 2022, ceased acting for the Respondents.
3. The matter proceeded for formal proof upon entry of an interlocutory judgment against the Respondents. The Claimant presented the grievant on 11th October, 2022, to testify in support of his case. The Grievant adopted his witness statement and produced the documents filed in the matter as exhibits in the case.
4. The Claimant filed submissions in the matter, and which have been duly considered.



The Claimant's Case

5. The Claimant's case is that the grievant was engaged by the Respondents on 17th January, 2009, as a cook, where he served for 11 years 8 months in the same capacity up to 15th September, 2020.
6. It is the Claimant's further case that the grievant served the Respondents with the requisite resignation notice on 15th September, 2020.
7. The Claimant states that the grievant was underpaid as his monthly gross salary was Kshs. 9000.00 per month, as at the time of his resignation.
8. The Claimant's further case is that the grievant subscribed to the Claimant union privately within the provision of Section 52 of the *Labour Relations Act*, 2007.
9. It is the Claimant's case that the grievant had not proceeded on any annual leave at the time he terminated his services with the Respondents. It is their case that the grievant had worked on public holidays without compensation, and which had accumulated to 114 days as at the time of his resignation.
10. The Claimant states that the grievant had accumulated 560 days of pending off days which the Respondent had not compensated by the time he resigned from their service. The Claimant further states that the grievant's NSSF contribution was not paid.
11. It is the Claimant's case that at the time of his departure, the Respondents declined to pay his terminal dues and accrued rights, leaving the grievant with no option but report the matter to his union.
12. The Claimant states that it wrote to the Respondents and in its letter dated 23rd October, 2020, proposed to meet them on 29th October, 2020, to resolve the matter amicably but the Respondents did not hid the invitation.
13. It is the Claimant's prayer that it be awarded the reliefs listed in her statement of claim.

Analysis and Determination

14. I have considered the pleadings herein, the witness' oral testimony and the submissions by the Claimant. The issue for determination is whether the Claimant/grievant is deserving of the remedies sought.
15. I would first start by stating that the Claimant does not in my view, seem to have understood the issue between the grievant and his former employer- the Respondents. The dispute presented to the Labour office going by their letter of 3rd August, 2021, is a case of "unfair retirement", while it is clear that the grievant had actually resigned from his job.
16. The Claimant's claim against the Respondents is payment of 15 days worked for September, 2020, 11 years pending leave days, 8 months pro-rated leave, 114 pending public holidays worked, 560 pending off days, Service pay for 11 years and wage underpayment for May, 2012, all amounting to Ksh. 836,494.00.
17. The grievant issued a resignation notice dated 15th September, 2020, and which notice, was to take effect within a month going by the time given to the Respondents to prepare the grievant's dues. The Claimant claims for 15 days pay goes to say that the grievant left the service of the Respondents immediately after issuing his notice as had he continued for the term of the notice, he would have been entitled to the full pay for that month.



18. The notice having been issued mid-month, confirms that the grievant worked for the 15 days claimed, and the claim is found to have merit as Respondents did not contest the limited notice period and is hereby awarded.
19. The Claimant did not lead any evidence to prove that the grievant had unutilized leave days and that he worked on public holidays. The fact that the Respondents did not defend the suit, did not free the Claimant from the obligation to prove his case.
20. The Claimant should have shown through production of copies of leave forms the number of days taken in the time the grievant served, and the balance, as prove that indeed he had unutilized leave days that the Respondents ought to have paid for at the grievant's exit. The claim fails and is dismissed.
21. Similarly, nothing was placed before court to show that the grievant worked on public holidays, and for how long to support his claim. The claim equally fails and is dismissed.
22. On the claim for wage under payment, the wages subject of the claim date back to the year 2012, and go all the way to the year 2020. The claims in my view are what the law describes at Section 90 of the [Employment Act](#), as a continuing injury.
23. The grievant herein resigned on 15th September, 2020, while this suit was lodged in January, 2022. The claims for wage underpayment being a continuing injury, were time barred by September, 2021; one year after the cessation of the under payment, which is the date of the grievant's resignation.
24. The claims for wage underpayment are thus time barred this claim having been filed after the one year statutory time line. All the claims for wage under payment fail and are dismissed.
25. In whole, Judgment is entered for the Claimant as against the Respondents for:
 - a. Payment of 15 days worked in September, 2020, at Kshs. 4,500/-
 - b. I make no orders as to costs.
26. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 8TH DAY OF DECEMBER, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. E. Ngame present for the Claimant

N/A for the Respondents

Christine Omollo- C/A

