



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

ELRC CAUSE 18 OF 2020

JAMES MUEMA MUNYAO.....CLAIMANT

-VERSUS-

LOSSESSIA RESORTS & LODGES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants herein filed a Memorandum of Claim dated 10th June, 2020 on the 18th June, 2020, via the firm of N. M Kamwendwa and company Advocates, seeking for compensation for alleged wrongful, unfair and unlawful dismissal.
2. The claimant states that he is a qualified executive Chef who attained a Diploma from LTI-DIANI training center in conjunction with Utalii college and has worked in at least 7 high end hotels such as Great Rift valley Lodge, Thika Sports Club, Golden Tulip, Kaskazi Beach , Diani Beach Mombasa, Red Court Hotel and the Respondent.
3. He averred that he was employed by the respondent as an executive Chef at its establishment situated at Lossessia, Samburu County on the 15th June, 2018 earning a salary of Kshs. 140,000/-.
4. He stated that his duties were to manage the kitchen and food production, supervise and manage kitchen staff, ensure kitchen hygiene is maintained at all times and to attend management meetings of the Respondent.
5. He averred that he worked for the Respondent diligently. However on the 19th December, 2019 he proceeded for his annual leave as normal which leave was to end on 18th January, 2020 instead he was informed by the Human resource manager to utilize his off days and report back to work on 1st January, 2020.
6. He contends that on the 26th January, 2020, he received a call from the general manager one Mr. Ngali informing him that one of the directors by the name Mr. Kihoro had employed someone to take over his duties and that they no longer required his services and that his dues were to be paid to him.
7. He stated that on 30th January, 2020 he received a message alert from his bank, that Kshs 140,000/- had been credit to his Account however on following with the management on his terminal dues he did not receive any response.
8. He stated that he followed up with the Respondent severally and finally wrote a demand letter asking for his terminal dues which letter did not elicit any response either.
9. He stated that he was dismissed from employment without any Notice or disciplinary hearing therefore prays for judgment against the Respondent for; -

i. A maximum compensation for unlawful termination of Kshs 1,680,000/-

ii. Service pay of Kshs. 1,260,000/-

iii. Three (3) months' salary in lieu of Notice of Kshs 420,000/

iv. Underpayment of leave earned and unpaid of Kshs 46,461/-

v. Unpaid bonus for 2019 of Kshs. 140,000/-

vi. Travelling allowance of Kshs 40,000/-

vii. Costs and interest of Claim.

10. The Respondent was served with the pleadings on the 26th June, 2020 as per the affidavit of service filed in Court however they never entered Appearance or defended this suit therefore this suit proceeded undefended.

11. The claim herein was slated for formal proof hearing on the 6th July, 2021 where the Claimant, James Muema Munyao (CW-1) sought to adopt his statement 10th June, 2020 together with the documents number 1 to 15 which the court allowed.

12. The Claimant opted not to file any submissions in this claim.

13. I have examined all the evidence and submissions of the claimant herein. The respondent having been served and having failed to enter appearance, this matter proceeded as an undefended claim.

14. The claimant established that he was an employee of the respondent and he was dismissed for no apparent reason and without being accorded an opportunity to be heard.

15. The claimant's case remained uncontroverted. I find the case was established as against the respondent.

16. I therefore enter Judgment for the claimant as follows;

1. 10 months salary as compensation for the unfair termination

= 140,000 x 10 = 1,400,000/=

2. 1 month salary in lieu of notice = 140,000/=

TOTAL = 1,540,000/=

Less statutory deductions

3. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kamwendwa for claimant – present

Court Assistant - Fred