



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 283 OF 2018

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS AND HOSPITAL WORKERS... CLAIMANT

VERSUS

FRIENDS HOTEL KAKAMEGA LTD..... RESPONDENT

JUDGMENT

1. The Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers (the Union) sued Friends Hotel Kakamega Ltd (the Respondent) on 22 August 2018, alleging that the summary dismissal of Donald Mudi (the Grievant) was unfair and breach of contract.
2. Although the Respondent accepted and acknowledged service of Notice of Summons and Statement of Claim on 11 April 2019, it did not enter appearance or file a Response.
3. When the Cause came up for directions on 15 March 2021, the Court directed that hearing proceeds on 24 May 2021.
4. The Union served a hearing notice which was acknowledged by the Respondent's receptionist on 12 May 2021, but there was no representation on the hearing day.
5. The Grievant's evidence was taken on 24 May 2021 and the Union filed submissions on 29 June 2021.
6. The Grievant was dismissed through a letter dated 26 February 2016, and the Union reported a trade dispute to the Cabinet Secretary for Labour and he appointed a Conciliator but the Respondent did not appear for conciliation forcing the Union to move to Court.
7. The Grievant's testimony that he was not afforded an opportunity to be heard was not rebutted or controverted.
8. Section 35(1)(c) of the Employment Act, 2007 requires the employer to issue a written notice of termination of employment.
9. Section 41(2) of the Act on the other hand envisages an oral hearing in cases of summary dismissal.
10. In consideration of the Grievant's unchallenged testimony and the provisions of the law, the Court will find that the summary dismissal of the Grievant was unfair.

Compensation

11. The Grievant served the Respondent from 2010 to 2016, and in view of the length of service, the Court will award the equivalent of 6-months gross salary as compensation (the gross monthly salary was Kshs 8,400/-).

Salary in lieu of notice

12. The Grievant was not issued with a written notice and the Court will grant the equivalent of 1-month salary in lieu of notice.

Service pay

13. The Grievant was contributing to the National Social Security Fund and thus is not eligible for service pay.

Conclusion and Orders

14. The Court finds and declares that the summary dismissal of the Grievant was unfair and awards him:

i. Compensation Kshs 50,400/-

ii. Pay in lieu of notice Kshs 8,400/-

TOTAL Kshs 58,800/-

15. No order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 17TH DAY OF NOVEMBER, 2021

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr Kamuye, Industrial Relations Officer

For Respondent did not participate

Court Assistant Chrispo Aura