



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 806 OF 2016

JOSEPH GACHOKA.....CLAIMANT

- VERSUS -

KISIWA GUEST HOUSE LODGE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 5th November, 2021)

JUDGMENT

The Court made a ruling in the case on 12.03.2021 and ordered:

- 1) That the ex-parte judgment entered herein on 31.01.2020 against the respondent or applicant and all consequential orders and proceedings thereto is hereby set aside and the matter be heard on merit on a date to be fixed on priority basis.
- 2) That the applicant to pay the claimant's costs of the application in any event.

On 12.03.2021 the Court ordered by consent:

- 1) Case to resume hearing at the stage of cross-examination of the claimant's witness.
- 2) Case allocated 30 minutes for hearing on 16.06.2021 at 9.00am or soon thereafter.

On 16.06.2021 the respondent and respondent's counsel did not attend Court while the claimant's counsel and witness were present. The Court ordered:

- 1) As the respondent's counsel is absent, the respondent's case is closed subject to final submissions.
- 2) The claimant to file and serve submissions by 09.07.2021 and the respondent by 30.07.2021.
- 3) Mention notice be served for 12.10.2021 at 9.00am for directions on judgment.

On 12.10.2021 the claimant's counsel had complied but the respondent's counsel who was present had not complied and the Court gave the respondent the last chance to file submissions by mention on 27.10.2021. The respondent had not complied on 27.10.2021 and respondent's counsel was absent. The Court fixed judgment for 05.11.2021.

In view of the respondent's failure to cross-examine the claimant, failure to present a witness and failure to file final submissions, the Court finds that nothing has changed to warrant interference with the judgment on merits as delivered by Rika J on 31.01.2020. The judgment is hereby reinstated entirely. The respondent will pay costs of the entire proceedings.

In conclusion the suit is determined with orders:

- 1) The Judgment by Rika J herein delivered on 31.01.2020 is hereby reinstated entirely thus:
 - a) Termination was unfair.
 - b) The respondent shall pay to the claimant: compensation for unfair termination, equivalent of claimant's 12 months' salary at Kshs.180, 000; notice at Kshs. 15, 000, 000; annual leave at Kshs. 48, 462; and service at Kshs.3, 750 – total **Kshs.247,**

212.

c) Certificate of service to issue.

d) Costs to the claimant.

e) Interest granted at **16%** per annum from the date of judgment till payment is made in full.

2) For avoidance of doubt the respondent to pay the claimant's costs of entire proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 5TH NOVEMBER, 2021.

BYRAM ONGAYA

JUDGE