



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 210 OF 2014**

**BETWEEN**

**STANLEY MEROKA MOSOMI.....CLAIMANT**

**VERSUS**

**SEVERIN SEA LODGE [E.A.] LIMITED.....RESPONDENT**

***Rika J***

***Court Assistant: Benjamin Kombe***

***Thabit, Wampy & Kitonga Advocates for the Claimant***

***Sichangi & Partners, Advocates for the Respondent***

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 14<sup>th</sup> April 2014. He avers, he was employed by the Respondent Hotel in January 2005 as a Casual Employee. He was paid Kshs. 500 daily. He was placed on seasonal contracts. His contract was terminated around 11<sup>th</sup> February 2012 without notice or reason. He was assigned guard duties from 2005. He was not allowed to take annual leave. He was denied house allowance, night shift allowance, traveling allowance and severance pay.

2. He prays for Judgment against the Respondent for:-

- a. Declaration that termination was unfair.
- b. Declaration that the Claimant was in permanent employment.
- c. 12 months' salary in compensation for unfair termination at Kshs. 680,000.
- d. Leave over a period of 7 years at Kshs. 105,000.
- e. House allowance in arrears at Kshs. 319,000.
- f. Traveling allowance over a period of 7 years.
- g. Severance pay at Kshs. 75,000.
- h. Night shift allowance at Kshs. 450,000.
- i. Any other suitable relief.
- j. Costs.

3. The Respondent filed its Statement of Response on 5<sup>th</sup> June 2014. Its position is that the Claimant worked for the Respondent between 2005 and 2010 as a Casual Employee. He did not work in continuity. He last worked as a Casual Employee, on 30<sup>th</sup> November 2010. His salary was Kshs. 7,283 monthly. He worked as a Security Guard. He was subsequently placed on seasonal contract from 1<sup>st</sup> March 2012 to 30<sup>th</sup> April 2012. From May 2012, he was engaged as a Casual Employee. On or around 10<sup>th</sup> May 2012, he abandoned his position. He was therefore dismissed for gross misconduct. He did not work in continuity. He took annual leave or was paid in lieu thereof. He was paid all his dues, a fact he and his Union KUDHEIHA acknowledged. He was a Member of the N.S.S.F. The Respondent paid Employee contributions in lump sum. The Respondent urges the Court to dismiss the Claim with costs.

4. The Claimant gave evidence in the absence of the Respondent and its Advocates, on 16<sup>th</sup> October 2019. The hearing date was obtained with the consent of the Parties on 19<sup>th</sup> February 2019.

5. The Claimant repeated what is contained in his Pleadings and Witness Statement, in his oral evidence before the Court. He states he was patrolling one side of the Hotel on 10<sup>th</sup> May 2012 when the General Manager passed the other side, did not see the Claimant, and alleged therefore, that the Claimant was not attending to his duty. The Supervisor thereafter called the Claimant. He told the Claimant about the General Manager's complaint. The Claimant explained he was patrolling the other side. He was advised to go home and wait to be recalled. He was never recalled.

**The Court Finds:-**

6. The Claimant was a Member of Kenya Union of Domestic, Hospitals, Education Institutions and Allied Workers Union [KUDHEIHA].

7. After Claimant's contract was terminated, KUDHEIHA and the Respondent consulted and corresponded with regard to the dispute.

8. On 17<sup>th</sup> November 2012, Respondent's Administration Manager wrote to KUDHEIHA's Coast Branch Secretary, advising that the Respondent had paid all terminal dues to the Claimant.

9. Claimant's Union replied on 7<sup>th</sup> December 2012, stating it had looked at the relevant documents, and realized the Respondent had completely cleared with the Claimant.

10. There is on record a Clearance Certificate signed by the Claimant on 8<sup>th</sup> May 2012. The Claimant acknowledged receipt of Kshs. 7,623 from the Respondent, which is described as full and final settlement. He states he has no further claims against the Respondent, including claims for reinstatement and compensation.

11. The Claimant, while acknowledging in his Statement of Witness at paragraph 10, that he engaged KUDHEIHA to pursue the dispute on his behalf, states nothing of the Clearance Certificate and Discharge. He says nothing of terminal dues paid and acknowledged.

12. In his evidence before the Court, he did not dispute the existence of the Certificate of Clearance and Discharge, or allege he was compelled to sign the document.

13. In the circumstances the Court does not find any ground to warrant revisiting the circumstances surrounding termination of Claimant's contract. He was represented by his Union. The Union agreed with the Employer that termination was in order. The Claimant signed Clearance Certificate, which states he does not have a claim for compensation or reinstatement. If one does not have a claim for reinstatement or compensation, how is the Court to find that he has a claim for unfair termination? Why would he turn around to allege termination was unfair? He had the benefit of representation by his Union.

14. Whereas the Court is not barred from examining if unfair termination has taken place, and whether terminal dues have been paid, an Acknowledgment and Discharge Voucher signed by the affected Employee, coupled with the full benefit of representation by his Trade Union, does not call upon the Court to review the terms of settlement.

15. The Court finds no merit in the Claim. IT IS ORDERED:-

***a. The Claim is declined.***

***b. No order on the costs.***

**Dated and delivered at Mombasa this 14<sup>th</sup> day of February 2020.**

**James Rika**

**Judge**