



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 474 OF 2016**

**WASHINGTON OKOTH ODHIAMBO.....CLAIMANT**

**VERSUS**

**GOLDEN PALACE CASINO.....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 9 December 2019.
2. Washington Okoth Odhiambo (Claimant) and Abraham Oruko, Human Resources Manager with Golden Palace Casino (Respondent) testified.
3. The Claimant filed his submissions on 19 December 2019 while the Respondent filed its submissions on 15 January 2020.
4. The Court has considered the pleadings, evidence and the submissions, and will adopt the Issues as identified by the parties in the submissions.

**Competency of the Suit**

5. The Respondent challenged the competency of the Cause on the ground that *Golden Palace Casino* was the trading name for Nakuru Lucky Investments Ltd, and therefore incapable of being sued.
6. The Respondent cited the decision of the Court of Appeal in *Deposit Protection Fund Board in Liquidation of Euro Bank Ltd (in Liquidation) v Rosaline Njeri Macharia & Ar* (2016) eKLR.
7. The Claimant in resisting the competency challenge asserted that the contract of employment he was issued with and dated 20 August 2015, was on the letterhead/name of *Golden Palace Casino* and that one of the terms of service was that he would report to the Pit Manager of *Golden Palace Casino*.
8. The Claimant also contended that under Article 260 of the Constitution, a person includes an unincorporated body and that such unincorporated body could be sued.
9. The Claimant drew umbrage in *Trusted Society of Human Rights Alliance v Nakuru Water and Sanitation Services Co & Ar* (2013) eKLR.
10. It is correct as asserted by the Claimant and affirmed in the *Trusted Society of Human Rights Alliance* decision that under the Constitution, 2010, an unincorporated entity can be sue and be sued.
11. The traditional principle in the authority cited by the Respondent is no longer good law.

12. And even if the Court were wrong in that conclusion, the Respondent itself issued a contract in the name and style of *Golden Palace Casino*, thus holding out to the Claimant that was the name and description of the employer as contemplated by section 10(2)(b) of the Employment Act, 2007. It would be unconscionable for it to disown the contract or allege misjoinder.

### **Unfair termination of employment**

#### **Standard of proof**

13. In terms of section 45(7) of the Employment Act, 2007, the Claimant was under a burden to demonstrate, at the first instance that an unfair termination of employment occurred.

14. In an attempt to prove that there was unfair termination of employment, the Claimant testified that on 25 February 2015 at about 9.40 pm, he was summoned to the human resource office where he found a Director, Human Resource Manager and 2 Policemen and that he was accused of attempting to fraudulent assist a customer the previous night, whereupon the Director informed him his services were no longer required before he was arrested and taken to Kilimani Police Station.

15. According to the Claimant he was released after 3 days without being charged and upon reporting to work he was denied entry by guards, and upon calling the Human Resources Manager, he informed him he could do nothing except facilitating payment of his earned wages.

16. The Claimant stated that he then sought legal assistance and a demand letter was written.

17. The Respondent's witness took a different trajectory. He asserted that when the Claimant reported after being released by the Police he allowed him to resume duty but he did not and that the Respondent thereafter received a demand letter dated 3 March 2016.

18. The Respondent replied to the demand letter on 7 March 2016 contending that the Claimant was still in employment.

19. The Court notes that the Respondent was insisting on 7 March 2016 that the Claimant was still an employee, and that the Claimant had been issued with a *show-cause* letter but declined to accept.

20. The explanation appears illogical, for if the Claimant had been issued with a *show-cause* notice, the same would have been produced in Court. The Respondent did not also offer an explanation of why it did not pay the Claimant February 2016 wages if he was still on the pay-roll.

21. The Court is satisfied that the Claimant discharged the burden expected of him.

#### **Procedural fairness**

22. It is more probable and the Court finds that the Respondent's Director informed the Claimant that his services were no longer required and that he was denied entry upon reporting back to work after release by the Police.

23. Section 35(1)(c) of the Employment Act, 2007 contemplates *written notice of termination of employment*. Section 41 of the Act requires the employer to conduct a hearing.

24. The Respondent did not prove that it issued the *written notice* or that a hearing as required by the aforesaid provision of the law was conducted.

25. The Court finds that the Respondent did not meet the procedural fairness threshold.

#### **Substantive fairness**

26. The Respondent did not lead any evidence to prove that it had valid and fair reasons to terminate the Claimant's contract.

27. The Court finds that the Respondent did not have valid and/or fair reasons to terminate the Claimants contract.

### ***Compensation and Salary in lieu of notice***

28. The Claimant served the Respondent for about a year, and in consideration of the length of service, the Court is of the view that the equivalent of 1-month salary as compensation would be fair (salary was Kshs 25,000/-).

29. Considering that the Respondent did not issue written notice of termination, the Court finds that the Claimant is entitled to a 1-month salary in lieu of notice.

### **February 2016 salary**

30. The Claimant's testimony that he was not paid earned wages for February 2016 was not rebutted, and the Court will allow the head of the claim.

### **Accrued leave**

31. At least 21 days annual leave with full pay is a statutory/contractual entitlement of every employee.

32. The Claimant testified he did not go on leave for the period of service and relying on the testimony, and section 10(3) & (7) of the Employment Act, 2007, the Court will allow this head of the claim.

### **Conclusion and Orders**

33. The Court finds and declares that the Respondent unfairly terminated the Claimant's employment and awards him

(i) Compensation	Kshs 25,000/-
(ii) Pay in lieu of notice	Kshs 25,000/-
(iii) Accrued leave	Kshs 25,000/-
(iv) February 2016 salary	Kshs 25,000/-
<b>TOTAL</b>	<b>Kshs 100,000/-</b>

34. The Claimant to have costs.

**Delivered, dated and signed in Nairobi on this 6<sup>th</sup> day of March 2020.**

**Radido Stephen**

**Judge**

### **Appearances**

For Claimant Ms. Muhanda instructed by Mudeshi Muhanda & Co. Advocates

For Respondent Mr. Juma instructed by Mutua-Waweru & Co. Advocates

Court

Assistant

Judy

Maina