



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1623 OF 2015**

**KIOKI MUSYOKI.....1<sup>ST</sup> CLAIMANT**

**GILBERT MWALIWA .....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**KIBE MUIGAI HOLDINGS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimants averred that they were employed by the respondent to help set up the operations of Emerald Hotel as General Manager and Head House Keeper respectively.
2. The 1<sup>st</sup> claimant’s starting salary was Kshs 160,000/= which was to be reviewed to Kshs 250,000/= upon opening the hotel. The 2<sup>nd</sup> claimant’s was Kshs 70,000/= to be reviewed to 109,000/= upon opening of the hotel and a further housing allowance of Kshs 47,000/=. The claimants carried out their duties and responsibilities as required however the respondent did not pay the claimants stating that it was cash strapped.
3. The respondent’s officers represented to the claimants that they had sought a loan from Equity Bank (k) Limited and that they would pay the claimants all the salary and allowances arrears upon receipt of the loan. The bank advanced the respondent the money in October, 2012 but the respondent reneged on the promise to pay the claimants. Instead the respondent under the guise of closure for renovation of the hotel unlawfully terminated the claimant’s contract of service. At the time of closure, the respondent owed 1<sup>st</sup> claimant Kshs 4,400,000/= and Kshs 2,096,405/= to the 2<sup>nd</sup> claimant.
4. The respondent was served with the claim herein but neither entered appearance nor filed a defence to the claim. The matter was therefore certified as undefended and proceeded for hearing as such on 26<sup>th</sup> April, 2018.
5. The burden of proof that a lawful termination of employment has occurred rests upon the employer. The respondent did not refute the claimant’s claim. The court therefore enters judgment against the respondent as follows:

**Kioko Musyoki**

a. One month’s salary in lieu of notice	160,000
b. Salary arrears	3,840,000
c. Six months’ salary compensation	
for unlawful termination	<u>960,000</u>
	<b><u>4,960,000</u></b>

**Gilbert Mwaliwa**

a. One month’s salary in lieu of notice	70,000
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b. Salary arrears	1,680,000
c. Six months' salary compensation for unlawful termination	<u>420,000</u>
	<b><u>2,170,00</u></b>

d. Costs

6. The award shall be subject to taxes and statutory deductions.

7. It is so ordered.

**Dated at Nairobi this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.