



**REPUBLIC OF KENYA**

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

**CAUSE NUMBER 682 OF 2017**

**BETWEEN**

**1. JANET AKINYI**

**2. BEATRICE ACHIENG'**

**3. HAMISI BAKARI DZAMBO**

**4. TEREZY MUTHEU MAILU**

**5. DANIEL ORITO OMUSULA**

**6. LILIAN WAIRIMU CHEGE**

**7. BERYL ATIENO OBOBO.....CLAIMANT**

**VERSUS**

**1. NYALI HOTELS INTERNATIONAL LIMITED**

**2. NYALI INTERNATIONAL BEACH HOTEL AND SPA**

**3. NYALI SUN AFRICA BEACH HOTEL AND SPA LIMITED....RESPONDENTS**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Thabit, Wampy & Kitonga Advocates for the Claimants*

*No appearance for the Respondents*

**JUDGMENT**

1. This Claim is without Response.

2. Notice of Summons, Statement of Claim, accompanying Bundles of Documents and Mention Notices, are indicated through Affidavits of Service sworn by Process Servers, to have been served upon the Respondents, on various occasions. There is no Memorandum of Appearance or Statement of Response, in any form, filed by any of the Respondents. The Respondents did not attend Court sittings, on any single occasion.

3. In their Amended Statement of Claim filed on 21<sup>st</sup> February 2018, the Claimants state, they were employed by the Respondents under various contracts, on diverse dates, beginning September 2005. Their last contracts were terminated on 23<sup>rd</sup> January 2017. There was no notice, and Claimants' salaries were in arrears at the time. No reason was given for the decision. They were not heard. They were not paid terminal benefits. They urge the Court to find termination was unfair and grant to them compensation and terminal benefits. Their claims consist:-

§ Notice pay.

§ Salary arrears.

§ Service charge.

§ Leave days.

§ Public holidays.

§ Leave traveling allowance.

§ Gratuity/service pay.

§ Damages for unfair and unlawful termination.

4. In total, they claim an amount of Kshs. 3,279,703 under the above heads. They also claim costs, interest and any other suitable relief.

5. The Claim was heard on formal proof, on 1<sup>st</sup> July 2019. The 1<sup>st</sup> Claimant, Janet Akinyi, gave evidence for the Claimants. She adopted the Pleadings, Witness Statements and Documents filed by the Claimants.

**The Court Finds:-**

6. The Claimants were employed on fixed term contracts which expired on 23<sup>rd</sup> January 2017. This is shown in the letter given to all the Claimants by the Respondents, dated 23<sup>rd</sup> January 2017.

7. The Respondents explained that they had made a careful review of business trends in the coming month, and concluded their business was at its lowest, making it unable to renew the contracts of the Claimants.

8. The Court notes that the Claimants had their contracts renewed from as early as the year 2005 without fail and reasonably and legitimately, expected to go on working after January 2017.

9. The Respondents have not responded to the Claim, and have not therefore, proved reason or reasons justifying the letter of 23<sup>rd</sup> January 2017.

10. In that letter, the Respondents undertook to pay to the Claimants: salary arrears; salary for days worked in January 2017; service charge; annual leave; leave traveling allowance; and rest days. Nothing was paid except Kshs. 15,000 to each Claimant, which they state was by way of salary advances.

11. These terminal benefits offered to the Claimants by the Respondents, are mainly the same prayers sought by the Claimants, as shown at paragraph 3 of this Judgment. The Claimants however have not persuaded the Court to grant gratuity/service pay. The pay slips on record show they were actively subscribed to N.S.S.F.

12. As the Respondents have not disputed the figures assigned to the benefits pleaded, the Court does not have reason to rework the figures.

13. On compensation, the Claimants have not argued convincingly, why they should be awarded the maximum compensation, equivalent of 12 months' salary. The Court however, notes that termination was not for any fault of the Claimants; they were ready to continue working as they had always done for years, for the Respondents' Hotel; and their records are not shown to have had any blemishes. **Judgment is entered in favour of the Claimants, against the Respondents, as follows:-**

§ Notice pay as pleaded.

§ Salary arrears as pleaded.

§ Service charge as pleaded.

§ Leave days and Public Holidays as pleaded.

§ Leave traveling allowance as pleaded.

§ Compensation for unfair termination equivalent of 6 months' salary.

§ It is declared termination was unfair.

§ Costs.

§ Interest at 14% per annum from the date of Judgment, till payment is made in full.

14. *It is so ordered.*

**Dated and delivered at Mombasa this 26<sup>th</sup> day of September 2019.**

**James Rika**

**Judge**