



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 151 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

BARIZI BAR AND RESTAURANT.....RESPONDENT

JUDGMENT

1. The grievant was employed by the respondent on 22nd December 2010 and was dismissed from employment on 4th April 2016. The grievant states that his employment was unlawfully and unfairly terminated by the respondent and seeks reinstatement to his job and in the alternative be paid maximum compensation for the dismissal.

2. The grievant Charles Pundo Odongo testified under oath as CW1 and relied on his witness statement dated 18th April 2017 and produced exhibits '1' to '10' in support of his case. CW1 testified that he worked as a cook and earned Kshs. 10,000 per month. That he was a member of the claimant union. That he had a good relationship with the respondent and had no letter of warning. That on 6th September 2015, he fell sick and was admitted at St. Camillus Mission Hospital on 16th October 2015. That the Doctor recommended that the claimant to take 3 months sick leave. That the respondent was aware of the claimant's sickness and paid September and October salary in full. That the claimant was not paid salary for November, December 2015 and January 2016.

3. That on 3rd April 2016, the claimant reported to work as usual, and worked up to 10.00 p.m. Upon arriving home, he received a phone call from Mr. Oscar, Assistant Manager that the Director had instructed the claimant not to report to work the following day. The claimant reported to work on 4th April 2016 to find out why he was not to report back to work. He was told his employment had been terminated. The grievant was not paid salary for March 2016. The claimant union tried to intervene in vain.

4. The grievant was not given any reason for the termination.

5. The respondent agreed to pay one month salary in lieu of notice; 3 days worked in April 2016; salary for November, December 2015 and January and March 2016; prorata leave for 3 months and underpayment of wages for 3 years.

6. The respondent did not honour the agreement hence the suit.

7. The claim made is per exhibit '7' to the claim amounting to:

(a) Kshs. 11,831 in lieu of notice.

(b) Kshs. 1,183 being salary for 3 days in April 2016.

(c) Kshs. 40,000 being salary for November, December 2015, January and March 2016.

(d) Prorata leave for 3 months Kshs. 2,070.

(e) 3 years underpayment Kshs. 39,666 as per legal Notice No. 197(24 months) Kshs. 29,952.

Total amount Kshs. 124,702

8. The respondent did not testify to rebut the claim. The court finds that the claim for the terminal benefits is duly proved on a balance of

probabilities and is awarded in the sum of Kshs. 124,702.

Compensation/Reinstatement

9. The court finds that the summary dismissal of the claimant was without notice, notice to show cause, any reason nor any disciplinary hearing preceding the same. The summary dismissal was unlawful and unfair in violation of *Sections 36, 41, 43 and 45 of the Employment Act, 2007*. The claimant is entitled to compensation in terms of *Section 49(1) (c) as read with (4) of the Act*.

10. The claimant had served as a cook for six (6) years with good record. He did not contribute to the dismissal. He had good career prospects with the respondent that was unfairly curtailed. He was not given notice to prepare himself for the shock of a job loss. The claimant was not paid any terminal benefits upon dismissal. The claimant suffered loss and damage and is entitled to the equivalent of six (6) months salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs. 70,986.

11. In the final analysis judgment is entered in favour of the claimant as against the respondent as follows:

(a) Six (6) months compensation Kshs. 70,986.

(b) Terminal benefits Kshs. 124,702.

Total award Kshs. 195,670.

(c) Interest at court rates from date of filing suit in respect of (b) above and from date of judgment with respect to (a) above till payment in full.

(d) Costs of the suit.

Judgment Dated, Signed and delivered this 16th day of September, 2019

Mathews N. Nduma

Judge

Appearances

M/S Mwaka for claimant

Chrispo – Court Clerk