



**REPUBLIC OF KENYA**

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

**CAUSE 1792 OF 2015**

*(Before Hon. Lady Justice Hellen S. Wasilwa on 30<sup>th</sup> October, 2019)*

**RICHARD NDULA TININA**

**JUSTUS MWANZIA IVUTI**

**FANUEL MAKOLO WICHENJE**

**SHADRACK B. AMIHANDA.....CLAIMANTS**

**VERSUS**

**CATERING SERVICES LIMITED**

**T/A IMPALA HOTEL .....RESPONDENT**

**JUDGMENT**

1. The Claimants filed a Statement of Claim on 8<sup>th</sup> October 2015. They aver that in a meeting held on 14<sup>th</sup> April 2015, the Respondent's Hotel Manager, Mr. J. M. Mutua, informed them that they will not be required to report on duty from the following day, 15<sup>th</sup> April 2015.

2. They aver that the Respondents action of stopping them from working without justification amounts to wrongful termination. They therefore seek the following reliefs:

*1. A declaration that the Respondent was in breach of the Claimant's employment contracts and violated Articles 41 and 46 of the Constitution of Kenya, 2010 and the Employment Act and should pay compensation to the Claimants.*

*2. A declaration that the Respondent unfairly terminated the employment of the Claimants.*

*3. Compensation as particularised in the claim being Kshs. 310,418, Kshs. 257,969, Kshs. 283,386 and Kshs. 249,596, for 1<sup>st</sup> to the 4<sup>th</sup> Claimants respectively.*

*4. An order compelling the Respondent to issue to each of the Claimant with a certificate of service.*

*5. Any further relief that this Honourable Court may deem fit to grant.*

*6. Costs of the suit and interest on damages.*

3. The Respondent filed a Statement of Defence on 9<sup>th</sup> December 2015. It denies having employed Mr. J. M. Mutua and the Claimants as its employees. It avers, in the alternative, that the Claimants absconded duty for an extended time thus they were summarily dismissed under Section 44 (4) of the Employment Act.

4. The 2<sup>nd</sup> Claimant testified on behalf of all the Claimant while the Respondent neither called any witness nor filed written submissions.

**Claimant's case**

5. Justus Mwanzia Ivuti, CW1, testified that they were all employed by the Respondent as Cooks. He testified that on 14<sup>th</sup> April 2015 they

were invited to a meeting, attended by the Respondent's Manager and Accountant, during which they were informed that there were changes in the sales and that they had been terminated.

6. He contended that they were not issued with termination letters and that during their employment there was never a complaint on their performance.

7. He stated that they were entitled to leave, were members of NSSF and NHIF and that the Respondent used to issue them with payslips.

8. In cross-examination, he testified that there was no agenda for that meeting and that the Manager just wanted to inform them that they would no longer work for the Respondent. It was his testimony that they were not paid in the month of March and April 2015. He testified that though the respondent made their NSSF and NHIF contributions, not all dues were paid to them. He further testified that they were not issued with Certificates of Service.

#### **Claimant's submissions**

9. The Claimants submitted that they were invited to a meeting during which they were informed that they were not to report on duty from 15<sup>th</sup> April 2015. They averred that the Respondent's action of terminating them was unfair and contravened the provisions of the Employment Act and the Constitution.

10. They submitted that the Respondent did not give any reason for the termination as provided under Section 43 of the Employment Act. They therefore urged the court to award them 12 months salary for unfair termination.

11. They submitted that they did not receive their salary for the 14 days worked in April 2015 hence it is only fair that the court awards them their salary arrears. They further submitted that during their period of employment they were not allowed to go on leave and that they worked for more than 12 hours without compensation.

12. They urged the court to award them the gratuity subject to Section 35 (5) of the Employment Act and also award them the amounts sought in the Claim.

13. I have examined the evidence and submissions filed. The Respondent never called any witness and therefore the Claimants' case remained uncontroverted.

14. The Respondent had vide their response indicated that the Claimants never worked for them but the evidence from the Claimants show that the Claimants were their employees as per letters from the Respondent's at page 18, 19 and 23 of the Claimants' Claim.

15. Payslips of the Claimants were also annexed to show there was an employment relationship with the Respondent.

16. The Respondents failed to issue the Claimants with any appointment letters or termination letters to dispute this employment relationship and therefore Section 10(7) of Employment Act, which states as follows, comes into play:-

***“If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer”.***

17. Given that the Claimants' case remain uncontroverted, I find the Claimants were terminated unfairly and I find for them and award them as follows:-

#### **Richard Ndula Tinina, Fanuel Makolo Wichenje and Shadrack B. Amihanda**

***1. 1 Months' salary in lieu of notice = 13,576/=.***

***2. 14 days salary not paid***

***in April 2015 = 14/30 x 13,576 = 6,335/=.***

***3. 10 months' salary as compensation***

***for unfair termination = 10 x 13,576 = 135,760/=.***

***Total = 155,671/=***

#### **Justus Mwanzia Ivuti**

***1. 1 Months' salary in lieu of notice = 13,525/=.***

***2. 14 days' pay for***

April 2015 =  $14/30 \times 13,525 = 6,312/=$ .

**3. 10 months' salary as compensation**

**for unfair termination =  $13,525 \times 10 = 135,250/=$ .**

**Total = 155,087/=**

**18.** The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this Judgement.

Dated and delivered in open Court this **30<sup>th</sup> day of October, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Maina holding brief Kuloba for Claimants- Present

Respondent – Absent