



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 125 OF 2016

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

VERSUS

SIMARY SAFARI HOTEL CO. LTD.....1ST RESPONDENT

SIMARY INVESTMENTS CONTROL LTD.....2ND RESPONDENT

CAROLINE MWIHAKI GIKONYO.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th October, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 01.02.2016 alleging wrongful withholding of the grievants' salaries for September and October 2015; un-procedural redundancy; and refusal to pay accrued and terminal dues. The suit was filed on behalf of the grievants being the claimant's members namely Jack Geoffrey Waweru Njuguna; Margaret Atieno Mulonga; John Waweru Gichuki; Judith Anyango Odano; Dominic Waweru Rugambi; and Eunice Achieng Okelo. The claimant prayed that the respondent pays the grievants on account of salary arrears; one month pay in lieu of notice; public holidays worked and not paid for; prorated leave and untaken and unpaid annual leave; severance pay; and 12 months compensation for unfair termination, the claimant prayed that the grievants are paid by the respondents Kshs. 432, 000.00; Kshs. 232, 359.90; 232, 359.90; 429, 350.40; Kshs. 244, 999.80; and Kshs. 267, 400.00 respectively. The claimant further prayed for any other orders deemed fit and for costs of the suit.

The claimant's case is that the grievants joined the union on 12.03.2014 and were employed by the respondents on diverse dates; the 3rd respondent being the agent of the 1st and 2nd respondent. The grievants were terminated on 06.11.2015 without a valid reason, termination notice and terminal pay.

The respondents appointed Kaingati Kamonjo & Company Advocates to act in the suit. The advocates subsequently obtained orders to cease acting on account that the respondents could not be located and the advocates had lost communication and contact with the respondents. The respondents did not file defence and despite service did not attend the hearing and other steps in the suit.

The claimant's witness (CW) was Jack Geoffrey Waweru Njuguna. He testified that the grievants were terminated on 06.11.2015 and they were not paid terminal dues now subject of the claim. Salary for September and October 2015 was withheld. They made demand for the arrears on 05.11.2015 and the Chief Executive Officer one Caroline Mwhaki Gikonyo admitted to owe. On 06.11.2015, the grievants reported on duty and Caroline had employed other workers in place of the grievants and told the grievants to look for employment elsewhere. The claimant therefore prayed for remedies as per the statement of claim.

The Court has considered the evidence and the pleadings and returns as follows:

- a) The evidence is that the grievants were members of the claimant trade union at all material time and the claimant union had standing to sue on behalf of the grievants on the individual contracts of service.
- b) The Court returns that the exhibited payslips show that the grievants were paid by Simary Investments Co. Ltd and the Court returns that the employer was the 2nd respondent.
- c) In absence of any other evidence there is no reason to doubt the evidence by the CW and the Court returns that the termination was unfair for want of a valid reason as per section 43 of the Employment Act, 2007.

d) The Court has considered the period of service by each claimant, the fact that each desired to continue in employment and the aggravating factor that the salaries due had been withheld and each is awarded 8 months' salaries at the gross monthly pay as at October 2015.

e) The Court has considered that there is no established adverse reason for termination and the grievants were entitled to construe redundancy and each is entitled to severance pay under section 40 of the Act.

f) The grievants are entitled, on a balance of probability, to salary arrears as prayed for; and pay in lieu of annual leave as prayed. The claimant gave no evidence on pay for work on public holidays as prayed for and the same is declined.

In conclusion judgment is hereby entered for the claimant against the 2nd respondent Simary Investment Co. Ltd for:

- 1) The declaration that the termination of the grievants' employment was unfair.
- 2) The 2nd respondent to pay the grievants upon the headings of 8 months' salaries for compensation under section 49 of the Act; severance pay as prayed for; pay in lieu of annual leave as prayed for; and salary arrears or withheld pay as prayed for.
- 3) The claimant to compute the dues under order 2 and to file and serve the same in 7 days for recording the quantum in Court on appropriate date.
- 4) The 2nd respondent to pay the claimant's costs of the suit.
- 5) The 1st and 2nd respondents having not participated, each is not entitled to costs.

Signed, dated and delivered in court at Nairobi this Friday 18th October, 2019.

BYRAM ONGAYA

JUDGE