



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 333 OF 2016

(Before Hon. Justice Mathews N. Nduma)

VINCENT GABRIEL ONDEKO.....CLAIMANT

VERSUS

ALBA HOTELS LIMITED.....RESPONDENT

J U D G E M E N T

1. The Claimant seeks compensation for wrongful and unfair termination of employment and payment of terminal benefits to wit –

- | | |
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| (i) One month salary in lieu of notice | Kshs.10,700. |
| (ii) Arrear salary for July, 2014 | Kshs.10,700 |
| (iii) Payment in lieu of leave for two (2) years | Kshs.14,980 |

Facts of the Case

2. The Claimant was employed by the Respondent on 1/7/2013 in terms of written contract of employment marked annex '1'.

3. The Claimant earned a monthly salary of Kshs.10,700. The Claimant worked at the hotel continuously until 3rd June, 2015 when the Respondent wrongfully and unfairly terminated the employment. The Claimant did not go on leave while he worked and claims payment in lieu thereof. The Claimant was not given notice of termination, nor was he paid in lieu of notice. No valid reason was given for the termination.

4. The Claimant testified under oath in support of the particulars of claim.

5. The Respondent was served with summons and the memorandum of claim but did not enter appearance nor file a statement of defence to the claim.

6. The pleadings and the testimony by the Claimant is uncontroverted and this court finds that the claim has been proved in all respects on a balance of probabilities.

7. The court finds therefore that the employment of the Claimant was terminated for no valid reason and without following a fair procedure in violation of sections 41, 43, and 45 of the Employment Act, 2007.

8. The Claimant is entitled to compensation in terms of section 49(1) (c) of the Act. Compensation is guided by section 49(4) of the Act as follows –

(i) The Claimant did not contribute to the termination. He was not paid terminal benefits upon termination. He had served faithfully for a period of about two (2) years and suffered loss and damage as a result of the wrongful termination without notice.

(ii) The Claimant is awarded equivalent of four (4) months salary as compensation in the sum of Kshs.42,800.

9. Judgement is entered in favour of the Claimant as against the Respondent as follows –

(a) Compensation 42,800.

(b) Kshs.10,700 in lieu of notice.

(c) Kshs.14,980 in lieu of leave.

Total award Kshs.68,580.

(d) The award in (a) above is payable with interest at court rates from date of judgment and that in (b) and (c) from date of filing suit.

(e) The Respondent to pay costs of the suit.

Dated and Signed in Kisumu this 6th day of February, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 2nd day of March, 2018

Maureen Onyango

Judge

Appearances

Claimant in person

Anne Njung'e – Court Clerk