



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 870 OF 2013**

**BETWEEN**

**PATRICK LITU.....CLAIMANT**

**VERSUS**

**GEOFFREY NKIRIA T/A KATARO**

**PARIS CLUB.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Nyabena Nyakundi & Company Advocates for the Claimant*

*Respondent in Person*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 10<sup>th</sup> June 2013. He states he was employed by the Respondent as Cashier / Barman on 9<sup>th</sup> July 2011, on a salary of Kshs. 10,000 per month. His contract of employment was terminated by the Respondent on or about 21<sup>st</sup> July 2012. He avers termination was without notice and/or reason. He prays for Judgment against the Respondent in the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 10,000.
- b) Salary for July 2012 at Kshs. 10,000.
- c) Service gratuity at Kshs. 5,000.
- d) Overtime at Kshs. 110,880.
- e) Annual leave at Kshs. 10,000.
- f) Refund of Kshs. 22,900.
- g) 7 Public Holidays' pay at Kshs. 5,385.

h) House allowance at Kshs. 18,000.

i) Underpayments at Kshs. 112,323.

j) 12 months' salary in compensation for unfair termination at Kshs. 120,000.

Total.....Kshs. 423,408.

k) Certificate of Service to issue.

l) Declaration that termination was unfair.

m) Costs.

n) Interest.

o) Any other suitable order.

2. The Respondent filed his Statement of Response and Counterclaim on 24<sup>th</sup> June 2013. The Respondent states he employed the Claimant on probation, on 2<sup>nd</sup> August 2011. The Claimant was to work for 15 days in a month, earning Kshs. 10,000 monthly. The period of probation was extended by 6 months on 1<sup>st</sup> February 2012. The Claimant was not engaged on full-time basis. During probation, the Claimant misappropriated Kshs. 285,519 from the business. He accepted liability and undertook to pay back, but only paid back Kshs. 22,900. He was arrested by Police from Buruburu Police Station and released upon giving an undertaking to pay the money. He engaged in an act of gross misconduct by misappropriating Respondent's money and by absenting himself from work to avoid disciplinary proceedings. The Respondent counterclaims the sum of Kshs. 285,519, costs and interest. There is no express prayer for dismissal of the Claim made by the Respondent.

3. The matter has been mentioned severally in Court in the absence of the Respondent, on giving of procedural directions. There are, Affidavits of Service filed indicating the Respondent had been notified when the matter came up before the Court on different occasions. Finally the matter was fixed for hearing by the Court on 17<sup>th</sup> April 2018, during the Court's Service Week. Hearing date was notified to the Parties by the Court. The Respondent did not attend Court on hearing, and the Claimant gave evidence, and closed his case, on 17<sup>th</sup> April 2018. He filed his Closing Submissions on 18<sup>th</sup> April 2018.

4. The Claimant restated in his oral evidence, his employment history; the terms and conditions of employment; and the circumstances in which his contract was terminated by the Respondent. He was arrested by Buruburu Police Station Officers on the instigation of the Respondent. He was asked to pay to the Respondent some money to gain his freedom. He was not told why he was being arrested. His contract was terminated. He was not given reason for the decision. He was not heard.

**The Court Finds:-**

5. The Respondent has failed to give evidence, to respond to the evidence given by the Claimant, and to establish the Counterclaim. There is no evidence on record showing that the Claimant misappropriated Kshs. 285,591 from the Respondent's business. The Respondent has not demonstrated before the Court, valid reason or reasons justifying termination of the Claimant's contract of employment, as required under Section 43 and 45 of the Employment Act 2007. Similarly, there is no support for the Counterclaim. There is no evidence from the Respondent to show that the Claimant abandoned his position to avoid disciplinary proceedings.

6. There is no merit in the Counterclaim. ***The Counterclaim is declined.***

7. The Respondent as stated above did not prove the reason justifying termination. There were no charges

presented against the Claimant. He was not asked to show cause why, he should not be disciplined, either for misappropriation of Respondent's funds or for absconding. There was no hearing in any form. Termination went against the standards of fairness set under Sections 41, 43 and 45 of the Employment Act 2007. ***It is declared termination was unfair.***

***8. The Claimant is granted 1 month salary in lieu of notice at Kshs. 10,000.***

***9. He is allowed the prayer for compensation for unfair termination the equivalent of 12 months' salary, at Kshs. 120,000.***

10. Termination took place on 21<sup>st</sup> July 2012. The Claimant is entitled to salary for 21 days worked in the month of July 2012, not salary for the whole of July 2012 as claimed. ***He is granted salary of 21 days worked at Kshs. 8,076.***

11. The Claimant worked for 1 complete year from July 2011 to July 2012. The Respondent did not give evidence showing that the Claimant was actively subscribed to the N.S.S.F or any other Social Security Plan. ***The Claimant deserves and is granted service pay under Section 35 of the Employment Act, at 15 days' salary for 1 complete year of service at Kshs. 5,769.***

12. There are no records from the Respondent, showing that the Claimant utilized his annual leave, or was compensated in lieu of such utilization. The Claimant had completed 12 consecutive months at work, and merited a minimum of 21 days of paid leave, as of the time of termination. ***He is allowed the prayer for annual leave pay based on the statutory minimum of 21 days at Kshs. 8,076.***

***13. The prayer for house allowance is allowed at 15% of basic salary of Kshs. 10,000 paid to the Claimant, for 12 months, at Kshs. 18,000.***

14. The Claimant did not supply the Court with satisfactory evidence or material, to establish the prayers for overtime pay; refund of Kshs. 22,900; public holidays; and underpayments. These prayers are rejected.

***15. Certificate of Service to issue under Section 51 of the Employment Act 2007.***

***16. Costs to the Claimant.***

***17. Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

IN SUM, IT IS ORDERED:-

***a) It is declared termination was unfair.***

***b) The Respondent shall pay to the Claimant: notice pay at Kshs.10,000; compensation the equivalent of 12 months' salary at Kshs. 120,000; 21 days' salary at Kshs. 8,076; service pay at Kshs.5,769; annual leave pay at Kshs.8,076; and house allowance at Kshs. 18,000 – total Kshs. 169,921.***

***c) Certificate of Service to issue.***

***d) The Counterclaim is rejected.***

***e) Costs to the Claimant.***

***f) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

Dated and signed at Mombasa this 5<sup>th</sup> day of July 2018.

James Rika

Judge

Dated, delivered and signed at Nairobi this 31<sup>st</sup> day of July 2018

Onesmus Makau

Judge