



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MALINDI**  
**CAUSE NUMBER 43 OF 2017**

**BETWEEN**

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

**VERSUS**

**MAPANGO MANAGEMENT LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Deputy Secretary General John Simiyu for the Claimant*

*Onchangu Kemunto & Associates, Advocates for the Respondent*

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**JUDGMENT**

1. This Claim is brought by the Claimant Union, on behalf of 4 of its Members [Grievants], Julius Ngowa Mwaringa, Jonathan Charo Koi, Stephen Kyalo Masavi and Stephen Muramba Mweni, who were Employees of the Respondent.

2. The Grievants state they were employed by the Respondent, a hotel business, in the positions of Maintenance Technician, Cook, Cook, and Barman respectively. They were employed on diverse dates. The 1<sup>st</sup> Grievant's contract was terminated by the Respondent on 31<sup>st</sup> April 2016. Others' contracts were terminated on 16<sup>th</sup> March 2016. They state termination was on account of their association with the Claimant Union. They seek Judgment against the Respondent for:-

- a) Declaration that termination was unfair.
- b) 1 month salary in lieu of notice.
- c) Public holidays.
- d) Annual leave.
- e) Arrears of salary.
- f) Gratuity.
- g) Underpayment of salary.
- h) 12 months' salary in compensation for unfair termination.

3. There was no Response filed by the Respondent. The Claimants were heard on formal proof, on 17<sup>th</sup> July 2018. The date for formal proof

was first scheduled for 28<sup>th</sup> February 2018. The Respondent filed a Memorandum of Appearance on 16<sup>th</sup> April 2018. All the 4 Grievants testified, adopting their Pleadings, Documents and Witness Statements on record.

***The Court Finds:-***

4. There is no Response to the Claim. The Pleadings, Oral Evidence, and Documents presented by the Claimant and its Members, are uncontested. The Court is satisfied that the Grievants were employed by the Respondent, on the terms and conditions of service, stated in their Claim. Their contracts were terminated without notice and without valid reason or reasons. They were not faced with any employment offences. They were not heard on any infraction. No ground of any nature, to justify termination, is shown by the Respondent. Termination did not meet the minimum statutory standards of fairness under Section 41, 43 and 45 of the Employment Act 2007. The Claimant has shown, as required under Section 47 [5] of the Employment Act, that its Members' contracts were unfairly terminated. The Respondent did not justify termination as required under this provision.

5. The nature and amount of terminal benefits claimed is undisputed. Compensation is merited under Section 49 and 50 of the Employment Act as read together with Section 12 of the Employment and Labour Relations Court Act.

IT IS ORDERED:-

***[a] Termination was unfair.***

***[b] The Respondent shall pay to the Grievants compensation and terminal benefits, as particularized in the Statement of Claim, and respective Witness Statements, filed on 9<sup>th</sup> October 2017.***

***[c] Costs to the Claimant.***

Dated and delivered at Malindi, this 30<sup>th</sup> day of November, 2018.

James Rika

Judge