

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NYERI

CASE NO. 404 OF 2017

JOHN BARAGU NGARI.....CLAIMANT

VERSUS

LAIKIPIA COMFORT HOTEL LTD.....RESPONDENT

JUDGMENT

1. The Claimant was employed by the Respondent as a general manager from 7th January 2015 till 14th May 2017 when he was dismissed. He asserts that the dismissal was uncalled for and that it took place without adherence to the dictates of the law as he was not heard in his defence before the dismissal. He thus sought payment in lieu of leave for 2016, accrued off days for the year 2015, 2016 and 2017, overtime for 2015 and 2016, gratuity for 2 years, 3 months salary in lieu of notice, 2 months severance pay, 12 days accrued leave in 2017 and 15 days worked in May 2017 less the sum of Kshs. 136,920/- paid. He also sought compensation for the dismissal, costs of the suit plus interest.

2. The Respondent filed a defence in which it averred that the Claimant was not entitled to the claims in his suit. It was averred that the termination did not breach the Constitution of Kenya or the Employment Act. The Respondent averred that the Claimant was paid his terminal dues being the 15 days he worked in May 2017, the service dues for the 2 complete years (2015-2016), accrued leave for 2016/2017, and one month salary in lieu of notice.

3. The Claimant and Anthony Kinyanjui for the Respondent testified. The evidence was that the Claimant was dismissed due to performance related issues. The Claimant was issued with a summary dismissal letter which did not give the Claimant notice. He was not given a hearing in terms of Section 41 of the Employment Act. He was however paid his dues including notice pay and the only remedy he has is the matter of compensation for the dismissal as the leave dues and the service pay were made. He would be entitled to recover on 3 months salary as compensation. He will also have costs of the suit on this sum. In the final analysis I enter judgment for the Claimant against the Respondent for:-

- a. Kshs. 120,000/- being 3 month's salary as compensation
- b. Costs of the suit

It is so ordered.

Dated and delivered at Nyeri this 22nd day of November 2018

Nzioki wa Makau

JUDGE