



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 2073 OF 2014**

**JAMES KIOKO MUTUNGA.....CLAIMANT**

**VERSUS**

**FRIENDS DINER COMPANY LTD.....1<sup>ST</sup> RESPONDENT**

**KEDHEIHA WORKERS.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant averred that he was employed by the respondent as a waiter until 26<sup>th</sup> August, 2014 when his services were terminated. According to him, during the period he served the respondent he served diligently and without any bad record or warning.

2. The 1<sup>st</sup> respondent on its part pleaded that the termination of claimant's services was on account of redundancy and not on account of his union membership. This was done through a letter dated 26<sup>th</sup> August, 2014 giving the claimant one month notice. The 1<sup>st</sup> respondent further averred that the 2<sup>nd</sup> respondent immediately responded to the notice by booking a joint meeting with the 1<sup>st</sup> respondent.

3. According to the 1<sup>st</sup> respondent, together with the 2<sup>nd</sup> respondent a joint tabulation of the claimant's benefits was done amounting to Kshs 58,451.92 which comprised of unutilized leave, accumulated overtime, service gratuity and salary for September 2014. The claimant declined to collect the same leaving the 1<sup>st</sup> respondent with no option but to invoke section 62 of the Labour Relations Act by reporting the dispute to 2<sup>nd</sup> respondent's Nairobi Branch offices. The 1<sup>st</sup> respondent further averred that the claimant served the 2<sup>nd</sup> respondent with seven days' notice of intention to sue for violation.

4. In his oral evidence in court, the claimant contended that his services were terminated on account of his union membership. He alleged that the respondent threatened him that if he did not quit the union his services would be terminated. He further stated that he sued his own union, the 2<sup>nd</sup> respondent for failure to defend him. He denied the 1<sup>st</sup> respondent had the right to declare redundancy since they were employing more people despite claims of low business. He further stated that he refused to collect his dues from the 1<sup>st</sup> respondent because he did not agree with the computation.

5. The letter dated 26<sup>th</sup> August, 2014 attached to the claimant's memorandum of claim informed him the 1<sup>st</sup> respondent was carrying out a restructuring operation in the face of diminished business. The claimant was therefore informed of intention to terminate his services. Whereas the claimant alleges his services were terminated on account of union membership no evidence was led or alluded to by him in support of this allegation. Besides if this could have been true his union which he ironically turned round to sue in these proceedings could have raised the issue. The court is therefore of the view that the termination of the claimant's services was on account of redundancy as pleaded by the 1<sup>st</sup> respondent.

6. The court in the circumstances finds the claim without merit and hereby dismisses the same. The court however directs that the 1<sup>st</sup> respondent pays the claimant the sum of Kshs 58,451.92 as computed by the

1<sup>st</sup> and 2<sup>nd</sup> respondent. This payment shall be subject to statutory deductions.

It is ordered.

Dated at Nairobi this 10<sup>th</sup> day of February 2017

**Abuodha Jorum Nelson**

**Judge**

Delivered this 10<sup>th</sup> day of February 2017

**In the presence of:-**

**Abuodha Jorum Nelson**

**Judge**