



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE 2126 OF 2014**

**GORDON OTIENO OMATCH.....CLAIMANT**

**VERSUS**

**WEST HOUSE HOTEL.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was employed by the respondent on 12<sup>th</sup> June, 2014 under a fixed term contract to last three months as Deputy Chief Chef. His salary was Kshs 25,000/= per month. The contract was scheduled to end on 9<sup>th</sup> September, 2014. According to the claimant he faithfully and dutifully served with dedication as required under the contract.
2. On 23<sup>rd</sup> July, 2014 he received a call at around 8.00 p.m. from his supervisor Mr Amos Ochieng who instructed him to report to work the next day at 10.00 a.m and not 7.00 a.m. as usual and see the Human Resource Manager for further instructions. When he saw the Human Resource Manager on 24<sup>th</sup> July, 2014 he was served with a dismissal letter dated the same day without any explanation.
3. The dismissal letter did not indicate specific reasons for the termination but delved into unspecified and unsubstantiated allegations of performance, expectations and integrity issues. The claimant therefore sought judgement against the respondent for unlawful termination of services and for payment of compensation as well as terminal dues.
4. The respondent filed a response to the claim in which it averred that the claimant was its employee under temporary contract of employment for a period of 3 months effective 9<sup>th</sup> June, 2014 to 9<sup>th</sup> September, 2014. On 21<sup>st</sup> July, 2014, concerns were raised against the claimant by the Chief Chef about his performance and the Chief Chef felt that the claimant was unable to perform his duties to the expected standards.
5. The respondent further denied the claimant was unlawfully terminated and averred that the claimant was given enough oral warnings from his supervisors but did not adhere to the same even after making numerous promises to improve his ways.
6. The respondent further averred that the claimant was summoned and given a hearing as required by law and by his own hand put in an apology to the Chief Chef for underperformance. The respondent never showed up for the hearing hence the matter proceeded ex-parte after the court became satisfied that the respondent was duly served.

7. In his oral evidence in court the claimant reaffirmed that he was employed on a fixed term contract for 3 months at a salary of Kshs 25,000/= per month. He did not work for the full term since he was dismissed on 24<sup>th</sup> July, 2014. According to him he was not given a hearing before dismissal and further that he was dismissed without notice.

8. The claimant herein was dismissed on account of non-performance. He had a 3 month fixed contract and was dismissed approximately one and a half months into the contract. Dismissal on account of underperformance requires that an employee must have been observed for a while and where possible placed on performance improvement program.

9. The respondent did not exhibit in its pleadings that it subjected the claimant to such a process. The onus of proof of reasons for dismissal or termination of employment rests on the employer. The respondent herein never appeared in court to justify or defend the reason for terminating the claimant's services.

10. The court is therefore left with no choice but find and hold that the termination was unfair and hereby awards the claimant as follows:

- |  |                      |
|--|----------------------|
| a. One month's salary in lieu of notice                                    | 25,000               |
| b. Two months salary as compensation<br>for unfair termination of services | <u>50,000</u>        |
|  | <b><u>75,000</u></b> |
| c. Costs of the suit   |                      |

11. It is so ordered.

Dated at Nairobi this 17<sup>th</sup> day of March, 2017

**Abuodha J. N.**

**Judge**

Delivered this 17<sup>th</sup> of March, 2017

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**