



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2331 OF 2012

FRANCIS MUTHINI MUE.....CLAIMANT

VERSUS

RAKESH ANAND t/a RAUNAQ RESTAURANT A.K.A.

JEATZ RESTAURANT.....RESPONDENT

JUDGMENT

1. The claimant brought the present action claiming he was employed by the respondent in December, 1996 as a waiter and worked for eleven years. According to him he was stopped from working without any reason in November, 2007.
2. He denied that the reason his services were terminated was because he left with a customer to collect money and never came back. Upon termination the claimant reported the issue to the Labour office but the respondent never turned up for the meetings to attempt the resolution of the dispute. The claimant denied receiving any warning letter prior to dismissal.
3. On cross-examination, the claimant admitted that he was sent out but when he returned he was sent away to go home and come the next day.
4. The respondent on its part through Mr. Rakesh Anan testified that the claimant worked for the respondent for about ten years and that his salary was around Kshs.6,500/= per month. According to Mr. Anan, a regular customer came to the restaurant and asked if they could eat and go with the claimant to get cash.
5. The respondent agreed and the claimant left with the customer to collect the cash but never came back. The bill was around Kshs.4,560/-. According to Mr. Anan, the claimant came back after seven days with some people claiming to be Labour Officers to demand his pay.
6. The respondent wrote to the Labour Office over the incident and was later invited to Nyayo House where he attended meetings and submitted documents. He was advised by the Labour officers to pay the claimant for days worked and November, and annual leave days. The respondent disputed the calculations.
7. According to Mr. Anan, Public holidays were paid for at the end of the day when staff were called to work. According to Mr. Anan, the underpayment was for six months only. The respondent admitted owing the claimant Kshs. 6,552.
8. In cross-examination he admitted that he did not write to the claimant to return to work but stated he

did not have his address.

9. The court has reviewed and considered the documents in support of claimant’s claim and those filed by the respondent in opposition. It would seem that the parties separated from the employment contract however there is no evidence of notice of termination. It must be noted that the separation from employment took place in November, 2007 before the current Employment Act came into operation. The applicable law therefore was the repealed Employment Act (Cap. 226) where there was no obligation to give reason for termination of employment and compensation for unfair dismissal was unavailable.

10. When the claimant first presented his claim to the Labour Officer his complaint was payment in lieu of notice, 9 days worked in November, annual leave, public holiday and certificate of service. The respondent admitted underpaying the claimant but only for six months.

11. The court doing its best will award the claimant as follows:

One Month’s salary in lieu of notice	6150
Salary for 9 days worked in November	1,845
Annual leave 48 days	9,840
Public Holidays 22 days	4,510
Underpayment	<u>5,454</u>
	<u>27,799</u>

12. The claimant shall further have costs of the suit.

13. It is so ordered.

Dated at Nairobi this day of 2017

Abuodha J. N.

Judge

Delivered this 28th day of April 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge