



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT NAIROBI**  
**CAUSE NO. 25 OF 2011**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 31<sup>st</sup> May, 2017)**

**KENYA UNION OF DOMESTIC, HOTELS,  
EDUCATIONAL, INSTITUTIONS, HOSPITALS  
AND ALLIED WORKERS UNION..... CLAIMANT**

**VERSUS**

**FIG TREE HOTEL LIMITED..... ..RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 5.9.2011 seeking damages for unfair dismissal. He states that he was employed by the Respondent on 20<sup>th</sup> August, 1986 as a Waiter with a monthly salary of Kshs.6,408/= where he worked until 30<sup>th</sup> December 2002, when he was issued with a letter with allegations that on 29.2.2002, he had gone outside the hotel to purchase drinks for the hotel customer without authority from the management and without the official order book.
2. The Claimant avers that he responded to the letter and told them that he purchased the drinks with oral permission from the management. He was thereafter sent on suspension on 13.1.2003 and terminated on 3.2.2003.
3. He states that the matter was reported to the District Labour Officer who called for several meetings but the Respondent failed to turn up. That the matter was taken to the Joint Industrial Council meeting on 14<sup>th</sup> April, 2004, when a sub-committee was appointed to investigate the dispute.
4. That the parties met and it was agreed that the complainant would be given a normal termination letter which was to be picked up on 6<sup>th</sup> March, 2005. On the said date he was told by the Respondent that they had decided to pay him Kshs.50,000/= instead which the Claimant was not agreeable to.
5. It is the Claimant's contention that the dispute was formally reported to the Minister for Labour on 28.4.2005 in accordance with Section 7 of the Trade Dispute Act who appointed an investigator to whom a memorandum was submitted but she failed to submit her findings and recommendations.
6. The Claimant through his Union forwarded a notification of dispute to the employer through the Minister on 30.4.2010.

7. That there was a further delay by the Ministry of Labour leading the Claimant to file suit in this Court.
8. The Respondent filed a reply on 7<sup>th</sup> June 2012, wherein they state that the Claimant committed an offence on 29.12.2002 by buying his own drinks and selling them at the hotel without the hotel authority which lead to his termination. They state that they wrote him a letter on 30.12.2002 requesting him to explain in writing why he committed the said offence.
9. That the Claimant responded and confirmed the charges and proceeded to be rude to the Respondent. The Respondent made the decision on 13.1.2003 to suspend him for 21 days and thereafter, terminated him on 3.2.2003.
10. They further allege that they held several meetings in their accounts department but the Claimant was adamant in settling the matter.
11. That the matter was referred to Kenya Association of Hotelkeepers and Caterers who appointed a sub-committee to investigate the matter. Investigations revealed that the Claimant was guilty of selling his own drinks at the hotel. It was agreed that he would be summarily dismissed and he would be paid Kshs.50,000/=.
12. The Respondent states that the Claimant's Union proceeded to file this dispute in Court despite reaching a settlement in the Joint Industrial Council meeting of Kshs.50,000/=.
13. They pray for the dispute to be dismissed.
14. The Respondent did not participate at the hearing despite filing a reply to the claim.
15. Having considered the evidence of both parties, I note that the Claimant was terminated on 3.2.2003 by the Respondents apparently for purchasing drinks and selling in Respondents' establishment.
16. He was then dismissed and told to collect his dues and salary for month on 10<sup>th</sup> February 2013. The Claimant did not collect this cash. The Respondent had offered him 50,000/= which he apparently rejected.
17. What the Claimant seeks in this suit is still payment of terminal dues. In assessing the terminal dues Claimant is entitled to, I note that the Respondent had agreed to make this payment. The Claimant had calculated his dues to be Kshs.119,133/= as per the Statement of Claim.
18. In this Court's view, the Claimant's claim of overtime of 560 days has not been established though pleaded. The issue of notice of 4 months is also not established as the notice period as per law is 1 month.
19. The Claimant had served Respondent for 16 years and I find he is entitled to service pay equivalent to 15 days for each year worked which translates to:

**1. Kshs.  $\frac{1}{2} \times 6,408 \times 16 = 51,264/=$  .**

**2. The Claimant is entitled to salary for 10 days worked = 2,136/= .**

**3. 1 months' notice = 6,408/=.**

**4. Leave earned and not taken of 1999/2000 = 52 days = 11,107/=**

**Total = 70,915/=**

20. Other prayers of leave, traveling allowance, overtime, rest days and public holidays are not proved and are therefore not awarded.

21. The Respondent will pay costs of this suit.

**Read in open Court this 31<sup>st</sup> day of May, 2017.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mware for Claimant – Present

No appearance for Respondent