



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO.187 OF 2016**

**RACHEL WANJIKU KIRURI..... CLAIMANT**

**VERSUS**

**MICHAEL MURAYA KIRARA.....1<sup>ST</sup> RESPONDENT**

**HARISSON MBARU KIHARA.....2<sup>ND</sup> RESPONDENT**

**(BOTH RESPONDENTS TRADING AS METUMI BAR)**

(Before Hon. Justice Byram Ongaya on Friday 12<sup>th</sup> May, 2017)

**JUDGMENT**

The claimant filed the memorandum of claim on 07.09.2016 through Kirubi Mwangi Ben & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Payment of terminal dues of Kshs. 574, 461.00 being one month pay in lieu of notice Kshs. 10, 497.00; public holidays Kshs. 10, 497.00; annual leave for 6 years Kshs. 44, 087.00; service gratuity at 15 days per year for 6 years served Kshs.31, 491.00; underpayment of wages Kshs.207, 941.00; house allowance Kshs.130, 688.00; and 12 months pay for compensation for unfair termination Kshs.125, 964.00.
- b) Costs of the suit and interest.
- c) Any other or better relief the honourable court may deem fit to grant.

The response to the claim was filed on 11.10.2016 through Kimwere Josphat & Company Advocates. The respondent prayed that the respondent's claim be dismissed with costs.

The parties agreed that the suit be determined on the basis of pleadings, documents and submissions on record. The court has taken into account all the material on record and makes findings on the issues in dispute as follows:

- a) There is no dispute that the parties were in a contract of employment. The court finds that the claimant was employed by the respondents as a waiter at the bar from 01.01. 2010 to July 2016 when her services were terminated on account of redundancy and as per the respondent's submissions and pleading. There is no reason to doubt the respondent's date of commencement of the employment and the claimant's position that it was in August 2009 was not justified or established by way of evidence. Thus the claimant was in employment of the respondent for 5 years

and 7 months making 67 months of service.

b) As redundancy notice was not served per section 40 of the Employment Act, 2007 and taking into account the period of service of 3 years, the claimant is awarded one month pay in lieu of termination notice and a further 9 months' pay under section 49(1) (c) of the Act. While making that award the court finds that the claimant was unfairly dismissed as the relevant redundancy notice was not served. The award is for **Kshs.84, 348.00** the claimant's statutory monthly pay being Kshs. 9, 372.0 0. In making the award the court has considered the circumstances leading to redundancy as well as the considerably long time the claimant had been in the respondents' service.

c) The claim on public holidays is awarded at **Kshs. 21, 243.20** as submitted for respondents.

d) As the claimant served for 5 years and 7 months, annual leave accrued in view of section 28(1) (a) of the Act. The claimant is awarded **Kshs.52, 327.00** being pay in lieu annual leave over the period of service.

e) As the claimant served for 5 complete years, severance pay is awarded at **Kshs. 23, 430.00** being half month pay for each year served in view of section 40 (1) (g) of the Act.

f) The claimant is awarded underpayment at 67 months served making statutory monthly wage Kshs. 9, 372 less monthly wage as paid Kshs.6000 per month and the difference is Kshs.3, 372.0 times 67 months thus **Kshs.225, 924.00**.

g) Service pay is awarded at **Kshs.44, 673.20** as submitted for the respondent.

h) There was no evidence on the claim for house allowance and the same is deemed unjustified. The basis of the formulae as invoked in the submissions for the respondent was not explained or justified.

In conclusion judgment is entered for the claimant against the respondents for:

a) The respondents to pay the claimant **Kshs.399, 515.40** by 01.07.2017 failing interest at court rates to be payable thereon from the date of this judgment till full payment.

b) The respondents to pay the claimant's costs of the suit

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 12<sup>th</sup> May, 2017**.

**BYRAM ONGAYA**

**JUDGE**