



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 370 OF 2016

FELIX KAHINDI.....1ST CLAIMANT
MONICA WAITHERERO WAMBUI.....2ND CLAIMANT
MAGDALENE MWEU.....3RD CLAIMANT
HASSAN SUDI.....4TH CLAIMANT
BEATRICE KAMBI.....5TH CLAIMANT

VERSUS

HELLEN AKUMU ODERO.....RESPONDENT

J U D G M E N T

INTRODUCTION

1. The first claimant was employed by the respondent as a Chef in August 2004 earning a monthly salary of ksh.4800. The second, third and fifth claimants were employed by the respondent in 2008 as waitresses earning ksh.4000 and ksh.5000 respectively. The fourth claimant was employed as a cook in November 2008 earning ksh.4500 per month. They all worked continuously until 15/6/2015 when they reported to work as usual but found the premises closed without any reason given or prior notice. Their effort to get audience with the respondent was in vain and as such they deemed that they had been terminated unfairly and unlawfully. They therefore prayed for salary in lieu of notice, salary arrears accrued leave and severance pay.

2. The respondent never filed any defence and suit disposed of by way of submissions on the basis of the record filed. The issues for determination are

(b) Whether the termination of the claimant's services was unfair.

(b) Whether the claimants are entitled to the relief sought.

CLAIMANT'S CASE

3. The claimants filed written statements on 30/6/2017 which basically repeats what is averred in the memorandum of the claim with respect to the dates of engagement and termination and the terms of

employment including their salary and leave entitlement of 21 days per year. According to the claimants, their services were unfairly terminated by closing the business without prior notice or fair hearing. Before the termination their salary had fallen into arrears. They reported the closure to the county labour officer, in Malindi who wrote a demand letter to the respondent. The respondent responded by letter dated 23/11/2015 admitting to pay salary arrears to the claimants by January 2016 but she never paid hence this suit.

ANALYSIS AND DETERMIANTION

4. There is no dispute that the claimants were employed by the respondent and terminated on 15/6/2015 as pleaded by the claimants.

Unfair termination

5. The reason for termination of the claimant's employment was closure of business. In other words, their services were no longer required and as such the termination was on ground of redundancy. The question that arises is whether the claimants' jobs were lawfully and fairly declared redundant.

6. Under section 40 of the Employment Act, employer is barred from terminating the services of his employee without complying with the strict procedure provided for under the said section. The employer is required in mandatory terms to first serve at least one month prior notice in writing to the employees (or his unions) and the labour officer, thereafter conduct a fair selection process to identify the employees to be terminated on redundancy and thereafter pay the selected employees all their accrued benefits plus severance pay at the rate of at least 15 days pay per years of service.

7. In this case that procedure was not complied with and it rendered the termination unfair and unlawful within the meaning of Section 45 of the Act. Under the said section 45, termination of employment by the employer is unfair if the employer fails to prove that it was for founded on a valid and fair reason and that it was done after following a fair procedure.

Relief

8. The claimants are awarded one month salary in lieu of notice, accrued leave and severance pay as prayed. The leave will however be for the last year service for lack of evidence that the employer had accepted to accumulation of the same as required under regulation 9 (1) (a) of the Regulation of Wages (Hotel & catering trades) Order. They will also get their salary arrears as admitted by the respondent's letter dated 23/11/2015. However the claim for General damages is dismissed for lack of legal basis.

Summary of individual awards

Felix Kahindi

Severance pay (ksh.4800x11x15/30)	26400
Salary arrears	27555
Notice	4800
Leave	<u>3876.95</u>
	<u>62631.95</u>

Monicah Wambui

Notice4000
Leave3230.75
Severance pay for 2 years14000
Salary arrears14939
35919.75

Hassan Sudi

Noticeksh.4500
Leave3634.60
Salary arrears 7170
Severance15750.00
31054.60

Beatrice kambi

Notice5000
Leave4038.45
Salary arrears34420.60
Severance pay20000.00
Ksh.63458.45

Disposition

9. For the reason that the claimants were unfairly and unlawfully terminated on ground of redundancy, I enter judgment for them in the aggregate sum of ksh. **229,231.50** plus costs and interest.

Dated, signed and delivered at Malindi this 22nd day of September 2017

O. N. Makau

Judge