



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

**AT MOMBASA**

**CAUSE NO. 883 OF 2016**

**OMAR SHABAN & 13 OTHERS .....CLAIMANTS**

**VERSUS**

**ARMO LTD t/a LILY PALM RESORT WATAMU .....RESPONDENT**

**J U D G M E N T**

**I N T R O D U C T I O N**

1. The claimants have sued the respondent for unfair termination of their employment contracts and prays for compensation for accrued terminal benefits. The respondent has not filed any defence and as such the suit proceeded by way of formal proof. Mr. zablon Vegosa Man'gon'go (4<sup>th</sup> claimant) testified as CW1 on behalf of all the 14 claimants. The issues for determination are

(a) Whether the claimants' contracts of service was unfairly terminated by the respondent on 15/10/2016.

(b) Whether they are entitled to the reliefs sought.

**CLAIMANT'S CASE**

2. CW1 testified that the respondent operates the Lily Palm Restaurant in Watamu, Kenya and she employed all the 14 claimants on 1/1/2013 in various positions and earning different salaries. The first to third claimants were gardeners earning ksh.13930 and 12163 per month respectively. The fourth to tenth claimants were security guards earning ksh.11440 except the CW1. The eleventh and 12<sup>th</sup> claimants were barmen and laundry assistants earning ksh.11440 and ksh.7400 respectively. Finally the 13<sup>th</sup> and 14<sup>th</sup> claimants were cleaners and store keeper earning ksh.9500 and 1500 respectively.

3. On 15/10/2016 the respondent through her managers' verbally terminated the services of all the claimants without any prior notice or fair hearing. In addition, the respondent failed to pay their terminal dues plus salary arrears for the period between July and September 2015. According to the claimants the termination of their contracts of service was unfair and prayed for compensation, salary in lieu of notice, salary arrears, travelling allowance plus severance pay amounting to ksh.1,031,516 in the aggregate.

**ANALYSIS AND DETERMINATION**

4. It has not been denied that the claimant were employed by the respondent on 1/1/2013 and worked until

15/10/2016 when they were verbally terminated by the respondent. The issues for determination are already set out herein above.

### **Unfair termination**

5. Under Section 45(2) of the Employment Act, termination of employment contract by the employer is unfair if the employer fails to prove that the termination was grounded on a valid and fair reason and that it was done after following a fair procedure. As observed above, the respondent has not contested either by pleadings or evidence, the allegations by the claimants that she verbally terminated their services on 15/10/2013 for non valid reason without prior notice and without first according them a fair hearing. Consequently, I find and hold that the claimants have discharged their burden of proving unfair termination as required by Section 47(5) of the Act.

### **Reliefs**

6. Under Section 49 of the Act, each claimant is entitled to one month salary in lieu of notice as prayed but they will not get compensation because it was not prayed for in the suit .

7. However the claimants will get salary arrears as prayed because the same has not been disproved by evidence from employment records. The claim for travelling allowance is dismissed for lack of evidence to support it. Likewise the claim for severance pay is dismissed because the dismissal was not through redundancy. Finally the claim for general damage is dismissed for lack of legal basis

### **Summary of awards**

#### 1<sup>st</sup> claimant (Omar Shaban)

Notice .....ksh.13930

Salary arrears .....ksh.41790

Ksh.55720

#### 2<sup>nd</sup> claimant (Lewa Kadenge)

Notice .....ksh.12163

Salary arrears .....ksh.24326

Ksh.36489

#### 3<sup>rd</sup> claimant

Notice.....ksh.12163

Salary arrears.....ksh.36489

Ksh. 48652

#### 4<sup>th</sup> claimant [ Zablon Mwangongo)

Notice .....ksh.15000

Salary arrears ..... ksh.60000

Ksh.75000

5<sup>th</sup> claimant [ Abdi Ali]

Notice .....ksh.11,440

Salary arrears .....ksh.45760

Ksh.57200

6<sup>th</sup> claimant [ Mbaga Kaluwa]

Notice .....ksh.11440

Salary arrears .....ksh.45760

Ksh.57200

7<sup>th</sup> claimant [ Salim Kitsao]

Notice .....ksh.11440

Salary arrears .....ksh.45760

Ksh.57200

8<sup>th</sup> claimant [ Evans Otiato]

Notice .....ksh.11440

Salary arrears .....ksh.45760

Ksh.57200

9<sup>th</sup> claimant [Judith Chemwa]

Notice .....ksh.11440

Salary arrears .....ksh.34320

Ksh.45760

10<sup>th</sup> claimant [ Matias ziro]

Notice .....ksh.11440

Salary arrears .....ksh.45760

Ksh.57200

11<sup>th</sup> claimant [ Josphat Sakimba]

Notice .....ksh.11440

Salary aresrs.....ksh.22880

Ksh.34320

12<sup>th</sup> claimant [ Mary Luvuno]

Notice .....ksh.7400

Salary arears.....ksh.17880

Ksh.25200

13<sup>th</sup> clamant [Taura Kazungu]

Notice .....ksh.9500

Salary arrears.....ksh.9500

Ksh. 19000

14<sup>th</sup> claimant [ Lucas Bahati]

Notice .....ksh.15000

Salary arrears.....ksh.30000

Ksh.45000

#### DISPOSITION

8. For the reason that the claimants were unfairly terminated, I enter judgment for them in the sum of ksh.671,141 plus costs and interest from the date of suit. The said award will be subject to statutory deductions.

Dated, signed and delivered at Malindi this 22<sup>nd</sup> September 2017

O. Makau

Judge