

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 152 OF 2016

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS....CLAIMANT

VERSUS

HABIB VENTURES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 17th November, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 04.07.2016 claiming the unfair or unlawful dismissal of their members being Dominic Malua Kilonzo, and, Nancy Njeri Ng'ang'a (the 1st and 2nd grievants respectively)

The 1st grievant claims for notice pay Kshs. 10, 500.00; gratuity Kshs. 18, 173.00; annual leave for 3 years served Kshs. 22, 050.00; underpayment Kshs. 86, 400.00; and full compensation for unfair termination Kshs. 154, 800.00 making a sum of **Kshs. 291, 923.00**. The 2nd grievant claims for notice pay Kshs. 12,000.00; maternity leave Kshs. 36,000.00; annual leave for one year Kshs. 4, 800.00; underpayments Kshs.36, 000.00; full compensation for unfair termination Kshs. 144,000.00 making a total of **Kshs. 232, 800.00**.

Despite service, the respondent failed to enter appearance, file a defence, or attend the hearing. The claimant opted to rely on the pleadings and the documents on record together with the final submissions that were filed.

The 1st grievant served for 3 years while the 2nd grievant served for only six months.

On 03.08.2013 the 1st grievant was involved in a road traffic accident while in possession of Kshs. 90,000.00 being the respondent's money and held in the course of the 1st grievant's duty. The 1st grievant reported the accident and was admitted at Garissa and later Machakos level 5 hospitals for medication. The respondent failed to follow up on the 1st grievant's medication as expected in section 34 of the Employment Act, 2007. The respondent's General Manager visited the 1st grievant at hospital and demanded Kshs. 90, 000.00 from the grievant at a time the grievant had already spent Kshs. 60,000.00 on his medication. Thus the 1st grievant could surrender only Kshs. 30,000.00.

The court has considered the material on record and makes findings as follows:

1. There is no material evidence and pleadings on circumstances under which the grievants came to be dismissed. In such circumstances, there is no basis for the court to make findings of unfair or unlawful termination or otherwise decision as claimed and prayed for.
2. Taking all material on record into account, the claimant has failed to provide evidence and to justify award of reliefs as was prayed for.
3. As the respondent failed to appear, there will be no orders as to costs.

In conclusion, the memorandum of claim is hereby dismissed with no orders as to costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 17th November, 2017.**

BYRAM ONGAYA

JUDGE