



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 186 OF 2105

BETWEEN

BONIFACE MULI MUKUNICLAIMANT

VERSUS

CHARLES RUGUNA T/A MIRITINI MEALS HOTEL ... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Maina Advocate instructed by Marende Birir Shimaka & Company Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed his Statement of Claim on 7th April 2015. He states he was employed by the Respondent as Manager, at a salary of Kshs. 8,000 per month, in June 2014. He worked for 6 months, and was unfairly and unlawfully dismissed in December of the same years. He worked daily from 6.00 a.m. to Midnight, and received no compensation for the excess hours worked. He states he was entitled to a salary of Kshs. 20,000 per month, but received only Kshs. 8,000. Overall, he prays the Court to award him against the Respondent the following:-

- a. *1 month salary in lieu of notice at Kshs. 8,000.*
- b. *Overtime of 10 hours per day for 6 months, at Kshs.118,000.*
- c. *Unpaid off days for 6 months at Kshs. 6,384.*
- d. *Underpayment of salary at Kshs. 72,000.*
- e. *Compensation for unfair termination at Kshs. 24,000.*
- f. *Costs, interest and any other reliefs*

2. There are Affidavits of Service filed by the Claimant indicating the Respondent was served with the Summons and the Hearing Notice. He did not file any Response, or attend Court for the Hearing. The

Claimant gave evidence, and closed his case, on 23rd September 2015. He confirmed the filing of his Closing Submissions on 13th October 2015.

3. He testified his agreement with the Respondent on employment, was that he would be paid a salary of Kshs. 20,000 as Manager. His boss was ill and entrusted the running of the business to the Claimant. The Claimant worked overtime without compensation. He worked in the restaurant and the butchery. The Claimant was sacked after the Respondent's Wife alleged she was not comfortable with the way he was running the business. He used to forward the daily earnings from the business to the Respondent through the M-pesa platform. He prays the Court to allow the Claim.

The Court Finds:-

4. The Claim is undefended. The Claimant was employed for 6 months by the Respondent, at the Respondent's restaurant and butchery business. He left employment in December 2014. He earned a salary of Kshs. 8,000 per month.

5. His Claim that he worked for 10 excess hours daily was not persuasive. There was no clocking system availed to the Court. The Claimant worked largely in the absence of the Respondent. He told the Court the Respondent was ailing, and the Claimant was left to run the business unsupervised. The Court is not convinced that the Claimant worked 6 excess hours a day, and merits overtime pay. The mode of computation of the overtime pay was in any case, not made known to the Court. This item is rejected.

6. The prayer for unpaid off days is similarly rejected. The Claimant did not give the Court a clear picture on his schedule of weekly duties. He did not say when he was meant to be off duty. He was managing the business and did not show he was prevented from taking his rest days as and when they fell due. The amount of Kshs 6,384 attached to this item was not broken down for the Court to understand.

7. The Claimant was paid Kshs. 8,000 per month. He states he was supposed to earn Kshs. 20,000 per month as salary. He does not justify the claim for underpayment on any wage instrument. He did not claim this sum at any time when in employment. The item is based on an alleged oral agreement between the Parties. The Court did not find the Claimant's evidence on this item convincing. The prayer for underpayment is declined.

8. Termination was unfair for want of valid reason and fairness of procedure. The Respondent stayed out of the proceedings and did not justify termination as required under Section 43 and 45 of the Employment Act 2007. The Claimant testified he was dismissed by the Respondent on the advice of the Respondent's Wife. This was not a valid reason, and fairness of procedure was not established. The Claimant is allowed the prayer for notice pay and compensation. He prays for 1 month salary in lieu of notice and 3 month's salary in compensation for unfair termination, which the Court deems fair prayers to grant, considering the Claimant had served for only 6 months. ***He is granted 1 month salary in lieu of notice at Kshs. 8,000 and 3 months' salary for unfair termination at Kshs. 24,000 – total Kshs. 32,000 in satisfaction of the Claim. He shall have the costs of the Claim and interest at 14 % per annum from the date of the delivery of the Award.***

Dated and delivered at Mombasa this 19th day of February, 2016

James Rika

Judge