



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 169 OF 2013

(Originally Nairobi Cause No. 1423 of 2011)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....CLAIMANT**

v

SILVER HOTEL, NAIVASHA.....RESPONDENT

JUDGMENT

1. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Union) sued Silver Hotel, Naivasha (Respondent) in Nairobi on 23 August 2011 and the issue in dispute was stated as *unfair termination of employment of Jane Wambui, Charity Njeri and Joseph Kinuthia-Grievants*).
2. The Respondent filed its Response on 20 September 2011, but due to various reasons, the Cause did not take off for hearing until 18 January 2016.
3. The record indicates that the Respondent did not appear in Court during appearances on 26 October 2011, 17 November 2011, 7 December 2011, 16 February 2012, 7 June 2012, 21 June 2012, 31 July 2012, 9 July 2013, 4 October 2013, 11 March 2014, 21 July 2014, 25 March 2015, 29 June 2015 and 3 December 2015.
4. On some of the instances, the Union had failed to serve appropriate notices upon the Respondent.
5. On 3 December 2015, the Court fixed the Cause for hearing on 18 January 2016, and the Union was directed to serve a hearing notice.
6. When the Cause was called on 18 January 2016, the Respondent and its Advocate on record were not present.
7. On record were 2 affidavits of service filed in Court on 8 January 2016 and 18 January 2016, attesting to service upon the Respondent's advocate on record and the Respondent's Manager respectively.
8. The Court being satisfied with the service allowed the hearing to proceed.
9. Charity Njeri and Joseph Kinuthia both testified.
10. Charity Njeri stated that she was employed by the Respondent on 21 May 2003 as a cashier and that she served until 25 September 2008 when she was issued with a termination of employment letter. She reported to the Union which in turn reported a dispute to the Minister but the Conciliator returned a verdict of unresolved dispute.
11. She stated that she was seeking the dues set out in the Memorandum of Claim.
12. She also testified on the terms and conditions of service including working overtime, being underpaid, and not going on annual leave for 2007/2008.
13. Joseph Kinuthia on his part testified that he was employed by the Respondent on 8 January 2002 as a cook/chef and that he was dismissed on 28 November 2009, without being given any reasons

- or hearing.
14. On the terms and conditions of service, this Grievant stated that he had pending 22 leave days, was not getting house allowance, worked overtime including during public holidays, not being paid wages for October and November 2008.
 15. The third Grievant Jane Wambui did not testify and an application for adjournment to trace her was rejected.
 16. The testimony by Charity Njeri and Joseph Kinuthia remains unchallenged/uncontroverted.
 17. Further, sections 43 and 45 of the Employment Act, 2007 obligate an employer to prove the reasons for termination of employment and that the reasons are valid and fair. That burden was not discharged in this Cause.
 18. The Court has also considered section 10(3) and (7) of the Employment Act, 2007.
 19. The legal effect being that there are no real disputed facts, and in this regard, the Court finds that the dismissal of these 2 Grievants were unfair as contended.
 20. The Court further finds for these 2 Grievants in terms of the heads of claim as set out in the Memorandum of Claim.

Conclusion and Orders

21. The Court finds and holds that the 2 Grievants who testified have proved their respective cases on a balance of probabilities and awards them and orders the Respondent to pay them as follows

Charity Njeri

i. 2 months pay in lieu of notice	Kshs 28,638/-
ii. Annual leave	Kshs 22,910/-
iii. Underpayments	Kshs 394,256/-
iv. House allowance	Kshs 88,069/-
v. Public holidays	Kshs 22,333/-
vi. Weekly rest days	Kshs 78,277/-
vii. Overtime	Kshs 20,910/-
viii. Service gratuity	Kshs 21,478/50
TOTAL	Kshs 556,971/50

Joseph Kinuthia

i. 2 months pay in lieu of notice	Kshs 14,000/-
ii. Pro rata leave	Kshs 5,133/-
iii. House allowance	Kshs 89,250/-
iv. Gazetted public holidays	Kshs 39,667/-
v. Weekly rest days	Kshs 39,667/-
vi. Overtime	Kshs 31,536/-
vii. October/November wages	Kshs 14,000/-
viii. Service gratuity	Kshs 24,500/-
TOTAL	Kshs 257,753/-

22. No order as to costs.

Delivered, dated and signed in Nakuru on this 3rd day of May 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Onwonga, Industrial Relations Officer, KUDHEIHA

For Respondent Gicheha & Co. Advocates (did not appear at hearing)

Court Assistant Nixon