



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1741 OF 2011

(Before Hon. Lady Justice Hellen S. Wasilwa on 9th June, 2016)

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS(KUDHEIHA)..... CLAIMANT**

VERSUS

THIKA SPORTS CLUB..... RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant filed his Memorandum of Claim on 19.10.2011, where he seeks his terminal benefits that were not paid upon resignation. He states that he was employed by the Respondent as a bar waiter on 1.12.2003 at a monthly salary of Kshs. 5,363/= and was housed by the Respondent.

2. On 25/12/2009, the Grievant served the Respondent with a letter of resignation and the Respondent accepted his resignation but failed to pay the Grievant his terminal benefits. The Grievant thus prays for:

- 1. Service pay for 6 years - $9,966 \times 6 = \text{Shs. } 59,796.00$**
- 2. Salary arrears for 2009 - $831.20 \times 12 = \text{Shs. } 9,974.20$**
- 3. Salary arrears for 2010 - $823 \times 2 = \text{Shs. } 1,646.000$**
- 4. Housing allowance - Shs. 9,000.00**
- 5. Notice pay - Shs. 19,954.00**
- 6. Long Service Award - Shs. 2,500.00**
- 7. Annual leave - Shs. 9,143.00**
- 8. Travelling allowance - Shs. 3,200.00**
- 9. Public Holidays - Shs. 8,540.00**

10. Late night transport	-	Shs. 275,200.00
Sub-Total	-	Shs. 398,953.40
Less paid	-	Shs. 204,890.00
Total	-	<u>Shs. 194,063.40</u>

3. The Respondent filed its Memorandum of Defence on 18.11.2011 wherein they deny being party to any CBA and that they owe the Grievant any money. They contend that the Grievant was paid his terminal benefits in accordance with his letter of appointment dated 1.12.2003.

4. Further, they state that the Grievant on accepting the terminal benefits acknowledged receipt and duly discharged the Respondent from any future claim in respect of the said employment contract. It is on this basis that the Respondent prays that the Claim be dismissed with costs.

5. The matter was referred by the Court to a Conciliator who filed a report on the matter on 28.11.2012 summing up her findings as follows:

- 1. That the employer did not at all come to the Labour office despite set date for the meeting.**
- 2. That the Conciliator established that the management of Thika Sports Club had done their tabulation amounting to Kshs. 373,358.00.**
- 3. That the employee was paid Kshs. 204,890 cheque No. 108,146 from Thika Sports Club.**
- 4. That on 10th April, 2010, the Claimant Mr. Anthony Gachoki signed a document confirming that he accepted Kshs. 204,890.00 as part payment of his final dues and that he will further claim the balance of the said dues from the Club.**
- 5. That the Conciliator understood the said dues to be the total amount that had earlier been tabulated by Thika Sports Club, therefore the balance is Kshs. 168,468.00 which should have been paid and is yet to be paid.**
- 6. It was established that there was no need of going through the tabulation again since the same had been done by the Respondent and paid Kshs. 204,890.00.**
- 7. The employer should pay the balance of their tabulation of Kshs. 168,468.00.**

6. Having considered the submissions of both parties and upon consideration of the report from the Labour Officer, this Court finds that the Respondents had on their own admitted that they owed Claimant service out and paid him 204,890/= as per Appendix 2.

7. There were some balances to be paid. As per the Conciliator report, what was unpaid was Kshs.168,468/=. I find this is what is due to the Claimant and enter judgment for him in the said figure plus costs of this suit.

8. This amount will attract interest with effect from the date of this judgment.

Read in open Court this 9th day of June, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mwari Stephen for Claimant

No appearance for Respondents