



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABORU RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.2046 OF 2014**

**GEORGE KIROGA KANIARU..... CLAIMANT**

**VERSUS**

**CAROLINE CHERONO T/A CHOCHO HOUPOUR RESTAURANT..... RESPONDENT**

**JUDGEMENT**

1. The issue in dispute is the unfair termination of the claimant and refusal to pay terminal dues
2. The claim was filed on 17<sup>th</sup> November 2015, the respondent was served with summons and hearing notice issued and Affidavit of Service sworn by Peter Mwangi Njoroge and filed on 25<sup>th</sup> September 2015. Further the respondent was served vide registered mail and an Affidavit of Service filed on 23<sup>rd</sup> September 2016 by Diffinah Moithaga. There was no appearance or defence filed by the respondent.
3. The claim is that on 11<sup>th</sup> December 2012 the claimant was employed by the respondent as a Chef in the restaurant with a salary of Kshs.22, 000.00 per month and without housing or a house allowance. The employment was without a written contract in contravention of section 9 of the Employment Act.
4. The claimant served diligently until 27<sup>th</sup> April 2014 when he was told by the Manager, Moses that he had been suspended from 28<sup>th</sup> April 2014. That since the claimant has been terminated from his employment without due cause, notice, reason or payment of any terminal dues.
5. The claimant is seeking payment of;
  - a. Notice pay;
  - b. Service gratuity;
  - c. Refund of unremitted NHIF deductions;
  - d. House allowance;
  - e. Overtime pay;
  - f. Compensation; and
  - g. Certificate of service.
6. The claimant also testified in support of his case. That upon employment by the respondent, it was

orally agreed that upon business increasing, he was have his salary raised. That as work progressed well, the business increased and work volumes went high. The claimant asked the respondent to increase his salary but was adviced to source another chef whom he would train so that they could work together. The claimant went ahead and looked for another chef, he trained him and were working cordially. When he reminded the respondent on his salary increase, he was told not to report back to work and the new chef he had sourced and trained, took over his duties. That this was unfair, the termination was not justified and the termination was contrary to section 45 of the Employment Act.

### **Determination**

7. Section 9 of the Employment Act requires all employers to issue an employee with a written contract of employment spelling out the terms and conditions of such employment. Where there is no written contract, the word of the employee shall suffice. The oral arrangements between an employer and employee only serve to the detriment of the employer. It is therefore necessary to issue such a written document as where a claim arises, the court is guided by the terms between the parties as the primary document.

8. In this case, it is apparent the respondent was not keen to defend the claims set out by the claimant, and as such, on the evidence before court, I find the claimant was never issued with written terms of employment and the law applicable applies. Where the employee is terminated without any written reasons, notice or a hearing, the same amounts to unfair termination pursuant to the provisions of section 45 of the Employment Act.

9. Where a termination of employment is unfair, the remedies due are in accordance with section 49 of the Employment Act.

10. The claimant is hereby awarded in terms of his claim. However, the claimant is seeking a salary of Kshs.25, 300.00 on the basis that this was inclusive of house allowance but in evidence he testified that his monthly salary was Kshs.22, 000.00 per month. As there is a separate claim of house allowance, the two shall be separated and awarded differently as to award within the monthly pay would be double pay.

### **Judgement is hereby entered for the claimant in the following terms;**

- a. Notice pay at kshs.22,000.00;**
- b. Service gratuity for 1 completed year all at kshs.11,000.00;**
- c. Service pay for non-remittance of statutory dues all at kshs.11,000.00;**
- d. House allowance Kshs.52,800.00;**
- e. Overtime pay Kshs.192,000.00;**
- f. Compensation awarded at 6 months' salary all being kshs.132,000.00; and**
- g. Certificate of Service to issue.**

**Orders accordingly.**

**Delivered in open court at Nairobi this 6<sup>th</sup> day of October year 2016.**

**M. MBARU**

**JUDGE**

In the presence of:

Court Assistant: Lilian Njenga

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