



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 336 OF 2013**

**BETWEEN**

**JOHN KINYUA MAINA.....CLAIMANT**

**VERSUS**

**FLORIMON LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

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

*Mr. Mwakireti Advocate instructed by Mwakireti Ndumia & Company Advocates for the Respondent*

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**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION**

**AWARD**

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

1. The Claimant was employed by the Respondent Casino and Night Club Company, on 1<sup>st</sup> November 1996 as Personnel Officer. His contract was terminated by the Respondent on 12<sup>th</sup> September 2013. He was informed a new Management had taken over the Casino Business. The Casino was said to be making financial losses under the old Management. The Claimant served as the Personnel Manager for both arms of the Business, serving the Casino and the Night Club. His last salary was Kshs. 28,239.
2. He claims the Respondent took its decision while the Claimant was away on leave. He was not given notice of the decision. He had worked diligently for 16 years. Termination disregarded the laid down procedure, and offended the Employment Act 2007. The Claimant was not paid his full terminal benefits. He holds termination was unfair. In the Statement of Claim filed on 7<sup>th</sup> October 2013, he seeks the following Orders:
  - a. General damages for unfair and unlawful termination;

- b. 12 days' salary for work done in September 2013 at Kshs. 11,295;
- c. Loss of earnings;
- d. 4 months' salary in lieu of notice at Kshs. 104,956;
- e. 19 days' salary for each year completed in service at Kshs. 228,314;
- f. Cost; interest; and any other suitable relief.

3. The Respondent filed its Statement of Response on 12<sup>th</sup> November 2013. It is conceded the Claimant was employed by the Respondent. Initially he was employed as a Driver on 1<sup>st</sup> November 1996 before he became the Personnel Officer. He was not diligent, and his gross salary on termination was Kshs. 22,531, not Kshs. 28,239. It is true his contract was terminated by the Respondent on 12<sup>th</sup> September 2013. The Casino Section closed on 26<sup>th</sup> August 2013, while the Night Club Business continues to operate to-date. 46 Employees or 45% of the total workforce, who were attached to the Casino, had their contracts terminated. The Claimant's responsibilities as Personnel Officer diminished. A decision was made his contract is terminated. He was offered terminal benefits, comprising:-

- 19 days' salary for 16 years completed in service at Kshs. 228,314; and
- 4 months' salary in lieu of notice at Kshs. 104,956.

After deductions the amount offered to the Claimant was Kshs. 250,337. He refused to collect this sum from the Respondent. Termination was carried out in accordance with the Law and the Collective Bargaining Agreement in force. His record was replete with warning and suspension letters; it is incorrect for the Claimant to allege he worked diligently. The Respondent urges the Court to reject the Claim and order the Claimant to collect his settlement cheque in the sum of Kshs. 250,337 from the Respondent.

4. The Parties were heard and closed their respective cases on the 4<sup>th</sup> December 2014. The Claimant gave evidence as did Obadiah Kariuki Chege, Respondent's Personnel Manager.

5. The Parties agreed at the hearing that:-

- a. The prayer for general damages in the Claim is amended to one for compensation for unfair termination.
- b. Prayer [b] [d] and [e] on 12 days worked, notice pay, and service pay are allowed.

**6. The Court adopts the Parties' Consent, and enters an Award in favour of the Claimant for 12 days' salary at Kshs. 11,295; 4 months' salary in lieu of notice at Kshs. 104,956; and service pay at Kshs. 228,314- total Kshs. 344,565.**

7. The main issue left for the consideration of the Court is whether termination was unfair, and the Claimant entitled to compensation.

8. The Claimant explained he was on leave from 19<sup>th</sup> August 2013. It was to end on 12<sup>th</sup> September 2013. He returned to find the letter of termination of employment on his desk. He was advised business was low, and new Management had taken over effective from 26<sup>th</sup> August 2013. He was not told about the new Management before he took leave. He was not a Gaming Officer restricted to the Casino; he was the Personnel Officer, in charge of both arms of the Business. He was not aware that his responsibility had considerably diminished after the Casino Employees lost their jobs. The termination letter stated the new Management could employ the Employees anew. The 46 Employees from the Casino had been taken in by the time the Claimant came back from leave. The old Employees were reabsorbed. The Claimant confirmed he was offered terminal benefits in accordance with the terms of the CBA, and all along the Respondent was willing to pay him these benefits. He did not collect his dues. He did not agree with the

computation because it did not include compensation.

9. Obadiah Kariuki testified the Claimant's contract was not unfairly terminated. The Casino Business was performing poorly. New Owners who could run the Business took over on 26<sup>th</sup> August 2013. The Trade Union KUDHEIHA, with whom the Respondent has a CBA, was informed by the Respondent of the takeover. It was agreed the Employees be paid terminal benefits for services rendered. The Claimant was a Member of the Trade Union. He was advised to collect his dues on 16<sup>th</sup> September 2013. The Respondent adhered to the CBA. The Mombasa County Labour Office was involved in the exercise. Kariuki agreed on cross-examination that the Claimant was on leave at the time the Business changed hands. There was no official communication to the Employees on the takeover, until the day they received termination letters. The Trade Union learnt of the takeover on receiving the letters of termination. Existing Employees were interviewed 2 days after the New Management entered the scene.

*The Court Finds:-*

10. The Claimant was employed by the Respondent Company on 1<sup>st</sup> November 1996. He worked as a Driver initially before becoming the Personnel Officer. The Respondent Company runs two Businesses-Casino and Night Club. The Claimant was the Personnel Officer for the whole Business. It is agreed the Respondent terminated the Claimant's contract of employment on 12<sup>th</sup> September 2013. The salary earned by the Claimant on termination was disputed in the Statement of Response. The Claimant's pay slip for August 2013 supports, and the Court finds, that his gross monthly salary was Kshs. 28,239 on termination.

11. The circumstances surrounding the termination of the Claimant's contract of employment suggest to the Court the presence of an unfair termination of employment. The Claimant was the Personnel Officer for the whole Business. One would expect he would have been notified of any changes in the Business, before he went on leave, on 19<sup>th</sup> August 2013. He was kept in the dark. On returning to work on 12<sup>th</sup> September 2013, he was slammed with a letter of termination. He was told the Business had changed hands. He was not aware of any intended changes prior to his leave. There is no evidence he was made aware the Respondent intended to place its Casino Outlet under new Management for economic reasons.

12. The existing Employees were advised to reapply for their jobs 2 days after the new Management came in. They were taken in. The Claimant was away all the while. He had no chance of reapplying. His Trade Union learnt of the changeover only after the letters of termination were in the hands of the Employees. No effort is shown to have been made by the Respondent to call the Claimant from leave to participate in the takeover. It was not clear to the Court why his position, which cut across the two arms of the Business, would be treated as falling within the Gaming entity, and the Claimant subjected to the same terms of disengagement and re-engagement as the Casino Employees. He was not informed to reapply for the job. He found the letter of termination waiting for him.

13. In sum the Court is satisfied termination was unfair. There was no substantive justification shown by the Respondent. It was not explained why the Claimant, serving both arms of the Business, would have to leave employment or reapply for his job. Why did not the Respondent retain him in its Night Club Business, or allow him the opportunity to reapply to the new Management to continue serving both arms of the Business? The manner of termination disregarded the minimum procedural standards of fair termination of employment, contemplated by the law under Section 41 and 45 of the Employment Act 2007. The Claimant merits compensation for unfair termination. ***He is granted 5 months' gross salary for unfair termination amounting to Kshs. 141,195.***

IT IS ORDERED:-

***a. Termination of the Claimant's contract was unfair;***

***b. The Respondent shall pay to the Claimant, within 30 days of the delivery of this Award, 5 months' gross salary in compensation at Kshs. 141,195; 12 days' salary at Kshs. 11,295; 4***

*months' salary in notice pay at Kshs. 104,956; service pay at Kshs. 228,314- total Kshs. 485,760;*

*c. No order on the costs.*

Dated and delivered at Mombasa this 27th day of February 2015

**James Rika**

**Judge**