



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NUMBER 12 OF 2013**

**BETWEEN**

**DELVIS DECHE ..... CLAIMANT**

**VERSUS**

**HOTEL SAPPHIRE LIMITED ..... RESPONDENT**

**Rika J.**

**Court Assistant – Mr. Kombe**

**Mr. Olewe instructed by Mbugua Mureithi & Company Advocates for the Claimant**

**Mr. Ojode instructed by Ojode Udoto & Onjoro Advocates for the Respondent**

**ISSUE IN DISPUTE: TERMINAL BENEFITS**

**AWARD**

**(Rule 27(1) (a) of the Industrial Court (Procedure) Rules 2010)**

1. The facts in this dispute are similar in main, to the ***Industrial Court at Mombasa, Cause No. 9 of 2013, between Lennox Ndume Misunga v. Hotel Sapphire Limited.***
2. Although the Claimants, gave evidence separately, the Witness for the Respondent in ***Misunga***, Francis Furaha Thoya, gave evidence answering all the Claims.
3. There are common prayers sought in these series of Claims, registered as Cause No. 9 to Cause No. 14, all of 2013.
4. In this Claim the Court, guided by the determination in Cause No. 9 of 2013, ***Finds and Awards:-***

- (a) The Claimant was employed by the Respondent as a Waiter, effective from 4th April 2001, earning Kshs.10,657 per month.
- (b) He was advised by the Respondent on 1st November 2012, that he had 268 days of accrued annual leave.
- (c) He was to proceed on leave on 12th November 2012, to resume on 14th December 2012. The Leave Schedule, prepared by the Respondent, showed he would take 30 days of annual leave, leaving his balance at 238 days.
- (d) He resigned voluntarily while on leave, on 16th November 2012 leading his Employer to revise down, his outstanding annual leave days.
- (e) The deposit of Kshs.24,023, made by the Respondent to the Labour Office on account of the Claimant's outstanding leave, did not satisfy his outstanding annual leave entitlement.
- (f) ***The Claimant is granted 238 days of annual leave pay at Kshs.10,657÷26 working days = Kshs.409.90 x 238 days= Kshs.97,552.50.***
- (g) He is entitled to service pay for the period between 4th April 2001 to 4th April 2008 – a period of 7 years. ***Service pay is granted at Kshs.10,657÷26 working days= Kshs.409.90 x 15 days= Kshs.6,148.30 x 7 years= Kshs.43,037.***
- (h) The Claimant is granted ***16 days' salary and house allowance for December 2012 at Kshs.409.90 x 16=6,558.***
- (i) ***The Respondent shall release to the Claimant his Certificate of Service forthwith.***
- (j) ***It is declared the Respondent's treatment of the Claimant amounted to unfair labour practice, and violated Article 41 of the Constitution of Kenya.***
- (k) For reasons given in *Misunga* there shall be no order on costs and interest.

In sum, IT IS ORDERED:-

- (I) It is declared the Respondent's treatment of the Claimant amounted to unfair labour practice, and was in violation of Article 41 of the Constitution of Kenya.***
- (ii) The Respondent shall pay to the Claimant annual leave pay at Kshs.97,552.50; service pay at Kshs.43,037; 16 days' salary and house allowance at Kshs.6,558 – total Kshs.147,147.***
- (iii) The Respondent shall release to the Claimant his Certificate of Service forthwith.***
- (iv) The monetary award be satisfied within 21 days of the delivery of this Award.***
- (v) Parties to meet their own costs, and no order on the interest.***

Dated and delivered at Mombasa this 6th day of March 2015.

**James Rika**

**Judge**