



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NUMBER 14 OF 2013

BETWEEN

MWINYIHAMISI SARE ALI 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 Bar Man, effective from 4th February 2003, earning Kshs.10,657.
- (b) He was advised by the Respondent on 1st November 2012 that he had 224 days of accrued annual leave.
- (c) He was to proceed on leave on 12th November 2012, to resume on 14th December 2012, a period of 30 days, leaving his total balance at 194 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 Officer on account of the Claimant's outstanding leave, did not satisfy his outstanding annual leave entitlement.
- (f) ***The Claimant is granted 194 days of annual leave pay at Kshs.10,657 ÷ 26 working days = Kshs.409.90 x 194 days = Kshs.79,517.60.***
- (g) He is entitled to service pay for the period between 4th February 2003 to 4th February 2008 – a period of 5 years. ***Service pay is granted at Kshs.10,657 ÷ 26 working days = Kshs. 409.10 x 15 days = Kshs.6,148.50 x 5 = Kshs.30,742.***
- (h) ***The Claimant is granted 16 days' salary and house allowance for December 2012 at Kshs.409.90 x 16 = Kshs.6,558.***
- (I) ***The Respondent shall release to the Claimant his Certificate of Service forthwith, as required under Section 51 of the Employment Act 2007.***
- (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 the Constitution of Kenya.***
- (ii) ***The Respondent shall pay to the Claimant annual leave pay at Kshs.79,517.60; service pay at Kshs.30,742; 16 days' salary and house allowance at Kshs.6,558 – total Kshs.116,817.***
- (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 orders on the interest.***

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

James Rika

Judge

