



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1121 OF 2011**

**KENYA HOTELS AND ALLIED WORKERS UNION.....CLAIMANT**

**VERSUS**

**DABEN LIMITED (DOLCE THE CLUB).....RESPONDENT**

**JUDGMENT**

1. This cause proceeded as an undefended cause after the Court noted that despite the fact that the respondent was served and entered appearances no response to the claim was ever filed.
  2. The claimant who states he was a former employee of the respondent, informed the Court that the respondent's management had refused to pay his terminal dues.
  3. According to him he was employed in 1998. He produced his job identity card and certificate of merit. At the time of employment he was earning Kshs.1200/= per week which was later advanced for Kshs.5,000 per month.
  4. According to him his relationship with the respondent was cordial and he did not understand why his services were terminated in May, 2004. He tried to seek audience with the respondent Managing Director but was unable to prompting him to report the matter to the Union which took it up and eventually referred the same to the Ministry of Labour for arbitration. The Ministry adjudicated the matter and recommended that his termination be reduced to normal termination and he be paid his terminal dues. He thus sought the order of the Court that he be paid his terminal dues as per his statement of claim.
  5. In claims for unlawful and or unfair dismissal, the onus of proving the wrongfulness or unfairness of the termination shall rest on the employee while the employer shall have the burden of justifying the grounds of the termination. Section 43 further places the burden of proving the reasons for termination on the employer and failure to do so, the Court will deem such termination unfair.
4. The grievant in this matter documented and narrated to Court the various attempts he made to have the respondent available to explain to him the reason for termination of his services to no avail. In that respect, the Court will proceed to deem the termination unfair and award him as follows:-

**Kshs.**

- (a) One month's pay in lieu of notice.....5,000

(b) House allowance.....	1,500
(c) Accrued leave.....	24,000
(d) 6 months' salary as compensation for unfair dismissal.....	30,000
(e) Severance pay at 15 days' pay for each Complete year of service.....	<u>13,400</u>
	<u>70,900</u>

5. The claimant shall have costs of the suit.

6. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 22<sup>nd</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and  
.....for the Respondent.

Abuodha J. N.

Judge