



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 610 OF 2014

BETWEEN

- 1. ALEX CHARO**
- 2. JOSPHAT KOLE MWAMBA**
- 3. OBED SULUBU KAZUNGU**
- 4. GEORGE MURAGE KANGANGI..... CLAIMANTS**

VERSUS

- 1. GRAND CHINA LIMITED**
- 2. CHINA TOWN RESTAURANT..... RESPONDENTS**

Rika J

Court Assistant: Benjamim Kombe

Mr. Nyange Sharia Advocate instructed by Kituo Cha Sheria, Advocates for the Claimants.

Okanga & Company Advocates for the Respondent absent.

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Procedure Rule 2010]

1. The Claimants filed a Joint Statement of Claim on 4th December 2014. They have sued the 1st Respondent which is a Parent Company to the 2nd Respondent. The Respondents operate a Restaurant within Mombasa. The first 2 Claimants worked for the Respondents as Waiters. The third Claimant worked as a Cleaner, while the fourth was a Chef. They all claim the Respondents terminated their contracts of employment on the 11th April 2014, in circumstances they consider to amount to unfair and unlawful termination. They seek against the Respondent the following Award:

- a. A declaration that termination was unfair and unlawful.
- b. A declaration that they were entitled to 1 month leave after every 12 months.
- c. A declaration that they were entitled to house allowance and in-house savings.

- d. They are paid 11 days' salary for work done in April 2014; 1 month salary in lieu of notice; annual leave for the years in service; pro-rata leave; severance pay; and 12 months' salary for unfair termination at Kshs. 104,400- total Kshs. 530,620.
- e. Certificate of Service is issued by the Respondents to the respective Claimants.
- f. Any other order the Court deems fit, and the costs of the Claim.

2. The Respondents filed a Notice of Appointment of Advocates on 16th January 2015. Nothing else was filed on behalf of the Respondents. Procedural Directions issued in the absence of the Respondents, as did the hearing on the 15th June 2015. Although notified of the various mention dates, the hearing date, and of the Claim filed herein, the Respondents neither filed any challenge to the Claim, nor attended Court on any occasion. Proceedings were *ex-parte*.

3. The Claimants adopted their Pleadings, Witness Statements and Documents and asked the Court to consider and determine their Claim on the strength of this record, under Rule 21 of the Industrial Court [Procedure] Rules 2010.

4. Having examined the whole record and in the absence of any counterevidence, the ***Court Finds:-***

5. The 4 Claimants were employed as Waiters, Cleaner and Chef respectively. Their contracts were terminated on the 11th April 2014. There is no valid reason shown by the Respondents, why the contracts were terminated. The Claimants were simply informed the Respondents would not open their Restaurant the day following the 11th April 2014. The Respondents closed their business until 24th December 2014 when they reopened and engaged new Employees.

6. The Claimants did not have the benefit of substantive justification from the Respondents. They were not availed procedural fairness. They were just called on their phones, and advised not to report for duty the following day. Termination was unfair on validity of reasons as well as fairness of procedure. The Respondent failed to discharge its obligations to the Claimants under Section 41, 43, 45 and 47 of the Employment Act 2007.

IT IS ORDERED:-

- a. ***It is declared termination of the Claimants' contracts of employment was unfair and unlawful.***
- b. ***The Respondents shall within 30 days of the delivery of this Award, pay to the Claimants the total amount of Kshs. 530,620 as particularized in the Statement of Claim on record, payable with an interest of 14% from the date of the delivery of the Award.***
- c. ***Certificates of Service shall be availed by the Respondents to the Claimants forthwith.***
- d. ***Costs to the Claimants***

Dated and delivered at Mombasa this 31st day of July 2015

James Rika

Judge