



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 10 OF 2015**

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

**VERSUS**

**SPORTSMAN'S ARMS HOTEL.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 31<sup>st</sup> July, 2015)**

**JUDGMENT**

The claimant filed the memorandum of claim on 28.01.2015 and prayed that its member Peter Kagwima Wanjahi, the grievant, be compensated for pay in lieu of one month notice Kshs.9, 350.00; house allowance Kshs.162, 690.00; overtime of Kshs.2, 993, 356.80; 12 months' salaries at 10, 753.00 per month being Kshs. 129, 036.00; underpayments of Kshs. 19,452.00, Kshs.39, 790.80, and Kshs. 56, 370.00 between May 2010 to October 2013; and the sum claimed was Kshs. 3, 410, 045.00. The claimant further prayed for costs of the suit and that the court may make any other order as may please to grant.

The respondent's defence was filed on 24.04.2015 through M/S Kiget & Company Advocates. The respondent prayed that the claimant's memorandum of claim be dismissed with costs.

The grievant was employed by the respondent as a security guard effective 2.01.2004. The grievant worked on night and day shifts in alternation. The grievant was summoned to a meeting on the night of 1.10.2013 attended by the respondent's general manager and security officer and a letter dated 1.10.2013 was handed to the claimant. The letter titled "**Change of Security Details**" conveyed that the respondent had been advised by its security consultants and insurer to change its security details in view of what had happened in Nairobi so that the respondent had decided to engage a professional security firm from 1.10.2013. In view of that development the letter stated that the respondent had decided to lay off its security guards with full benefits. The grievant then received a further letter dated 1.10.2013 conveying that in view of the earlier letter the grievant's employment had been terminated with effect from 1.10.2013.

The grievant's case was that the termination was unfair because it did not comply with the law on redundancy as he was given no notice or prepared for the termination. The grievant stated that he had served for 8 years 9 months, he was underpaid as claimed in the statement of claim and he claimed house allowance.

The respondent did not deny the sudden termination of the grievant's employment but urged that the grievant was not prepared by way of the relevant notice because the change was urgent in view of the wide spread threats of terrorist attacks in the country.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The

court makes findings as follows:

1. The court finds that the grievant's service was terminated for reasons not attributable to the grievants as it amounted to redundancy as provided for in the Employment Act, 2007 and section 40 of the Act on redundancy applied.
2. Under section 40 of the Act the respondent was required to pay the dues as provided under the collective agreement, outstanding leave days due, at least one month notice in lieu of termination notice, and severance pay of at least 15 days pay for each completed year of service. Respondent's exhibit 1 shows that the respondent paid the claimant service gratuity for 9 years at 15 days per year served, accrued leave, and one month in lieu of notice making Kshs. 59,216.67. The court finds that the respondent substantially complied with the provisions for redundancy under section 40 of the Act except that the 30 days notice to the grievant that the redundancy was to take place was not served. The purpose of such notice was to prepare the grievant for the redundancy and failure of such preparation rendered the redundancy decision unlawful procedurally and therefore it was unfair. For failure to serve that notice the court finds that a payment of 3 months' salary being **Kshs.28, 050.00** in view of that extent of the unlawfulness of the termination proceedings will meet the ends of justice in this case.
3. The claimant has claimed underpayments, house allowance due but not paid and overtime. The termination was on 1.10.2013 and the suit was filed on 28.01.2015. Section 90 of the Employment Act, 2007 provides that a suit based on a contract of service with respect to continuing injury or damage be filed within 12 months next after the cessation thereof. The court finds that the alleged default or neglect by the respondent to underpay the grievant, failure to pay house allowance or overtime was a claim in the nature of a continuing injury or damage as envisaged under section 90 of the Act and the suit ought to have been filed by 1.10.2014. Accordingly the court finds that the claims were time barred under the section and the prayers in that regard will fail.

The claimant has partially succeeded in the claim and is awarded partial costs of the suit fixed at **Kshs. 15, 000.00** only

In conclusion judgment is entered for the claimant against the respondent for:

1. The respondent to pay **Kshs.43, 050** as awarded by 1.10.2015 failing interest at court rates to be payable thereon from the date of this judgment till full payment.
2. The declaration that the termination of the grievant's employment by the respondent was unfair.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 31<sup>st</sup> July, 2015.**

**BYRAM ONGAYA**

**JUDGE**