



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 349 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> July, 2015)**

**JOHN KAMWERE MWANGI.....CLAIMANT**

**VERSUS**

**REGISTERED TRUSTEES OF NAIROBI GYMKHANA SPORTS CLUB....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein John Kamwere Mwangi filed his Statement of Claim on 7/3/2014 through the firm of Nyabena Nyakundi and Company Advocates. It is the Claimant's position that he was unfairly terminated by the Respondent who also failed to pay him his terminal dues.
2. The Claimant avers that in 1996, he was offered employment by the Respondent as a waiter at its restaurant whereupon he worked until 2008 when he was promoted as a Snooker Attendant as a salary of Kshs.21,079/= per month and a house allowance of Kshs.5,250/=. He attached a copy of his August 2013 pay slip as Appendix 1.
3. The Claimant averred that on 20/6/2008, he requested for a loan of Kshs.150,000/= from his employee which he was granted and it was agreed that deductions will be made within 3 years. The Respondents, the Claimant avers reneged on this agreement.
4. The Claimant avers that he worked for the Respondent with due diligence until 31/8/2013 when the Respondent terminated his employment. At the time, it is the Claimant's averment that he had served the Respondent for 17 years. The Claimant produced Appendix 4 as a letter from Respondent, claiming that the contract was coming to an end.
5. It is the Claimant's averment that his contract was terminated without notice and without adherence to principles of natural justice and the law. He also avers that he was not paid his terminal dues as enumerated in paragraph 12 of the claim. He also prays for costs of this suit.
6. The Respondent filed the Memorandum of Defence on 14/4/2014 through the firm of Nyaencha Waichari & Company Advocates. It is the Respondents averment that the Claimant voluntarily terminated his employment with the Respondent in 2007 where upon he was paid his full dues in December 2007.

Thereafter, the Claimant was put on periodic term employment which in this expired on 31/8/2013 and the Respondent opted not to renew the contract. The Respondents did not produce any documents showing that the Claimant voluntarily retired, nor any documentation showing payment of the terminal dues.

7. From the evidence adduced in court, the Claimant was an employee of the Respondent. The terms and conditions of this employment are not clear because the Claimant was never issued with any appointment letter.

8. The claim that the Claimant voluntarily terminated his employment in 2007 is also not supported by any evidence.

9. On 26/7/2013, the Respondent wrote to Claimant informing him that his contract was to end on 31/7/2013, and was not going to be renewed. Whether Claimant had previously been on contract or not is also not clear.

10. The Respondents had a Collective Bargaining Agreement with the Kenya Hotels and Allied Workers Union which Collective Bargaining Agreement was signed on 17/12/2013 but was effective from 1/1/2013 and was to remain in force for 2 years and expire on 31/12/2014. At the time the Claimant's 'contract' purportedly expired, the Collective Bargaining Agreement was in force and the Claimants' services were covered by this Collective Bargaining Agreement.

11. Clause 19 of Collective Bargaining Agreement provides that employment of a worker who had served over 10 years would be terminated after giving 5 months notice or pay in lieu. In any case, an employee who is terminated before attaining the appropriate retirement age shall be entitled to gratuity equal to 26 years for each completed year of service. before

12. It is not clear how the contract of Claimant changed from permanent and pensionable to contract. The allegation by Respondent remains a mere allegation.

13. The manner of terminating an employment after giving 4 days notice was in bad taste and without following rules of natural justice. This was also contrary to the provisions of Clause 19 of the Collective Bargaining Agreement.

14. It is therefore the finding of this court that the Claimant was unfairly terminated. I therefore find for the Claimant as follows:

1. **5 months salary in lieu of notice =  $30,327 \times 5 = 151,635/=$**

2. **Gratuity equivalent to 26 days for 17 years worked**

**$= 26/30 \times 30,327 \times 17 = 446,817/=$**

3. **Long service award as per the Collective Bargaining Agreement = Kshs.4,500/=**

4. **6 months salary as compensation for unlawful termination =  $6 \times 30,327 = 181,962/=$**

**TOTAL = 784,914/=**

5. **The Claimant shall be issued with a Certificate of Service.**

6. **The Respondent will pay costs of this suit.**

Read in open Court this 21<sup>st</sup> day of July, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Respondent

Nyabena for Claimant