



**REPUBLIC OF KENYA**  
**EMPLOYMENT & LABOUR RELATION COURT AT KISUMU**  
**CAUSE NO. 332 OF 2014**  
*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA HOTELS & ALLIED WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**FIRM ROCK RESORT (LAKERS HUB) .....RESPONDENT**

**J U D G E M E N T**

**Introduction**

The claim herein is filed by Kenya Hotels and Allied Workers Union on behalf of the Grievant Joseph Otieno Ariya, a member of the Claimant Union. The Claimant alleges that the Grievant was unfairly terminated by the Respondent, and seeks the followings:-

- (a) Reinstatement of the Aggrieved
- (b) In the alternative payment of terminal dues and benefits as stipulated in the employment Act 2007 and compensation for loss of job unfairly as calculated below:-

(i)	1 month salary in lieu of Notices	= Kshs. 15,000.00
(ii)	Public Holidays	
	<u>15,00 x 15 day</u>	
	30	= Kshs.7,500.00
(iii)	Off days June, 2011 - July 2013	
	<u>15,000 x 104 days</u>	
	30	= Ksh52,000.00

(iv)	Salary arrears July, 2012 - July 2013	
	(15,000 x 12) - 10,000 x 12)	= Kshs.60,000.00
(v)	12 months compensation for unfair and Unprocedural termination	
	15,000 x 12 months	= Kshs.180,000.00
	<b>Total</b>	<b>= Kshs.314,500.00</b>

(c) Any order that the court may be pleased to issue.

(d) The aggrieved be issued with certificate of service.

The Respondent was served with Summons and Memorandum of Claim and filed a response through Nyanga & Co. Advocates in which it denied the allegations in the Memorandum of Claim.

The case was on 12th March, 2015 fixed for hearing by consent on 24th September, 2015. On the hearing date the Respondent did not attend court and after ascertaining that the hearing date was fixed by consent I allowed the hearing to proceed in the absence of the Respondent

#### **Claimant's case.**

The Grievant Joseph Otieno Ariya testified that he was employed by the Respondent as housekeeping and Laundry Supervisor by appointment contract dated 1st June, 2011 for a fixed term of three years ending 31st May, 2014 at a salary of Shs.15,000 per month. He earned that salary up to June, 2012. In July 2012 the Respondent reduced his salary to Shs.10,000 per month. Upon inquiring why he was told that he will be paid the withheld salary as bonus. On 18th January, 2013 there was a disagreement between the Grievant and a fellow employee and on 19th January, 2013 the Grievant was sent on compulsory leave for one month on account of the disagreement. The letter sending him on compulsory leave stated that he would be on compulsory leave awaiting the directors meeting to deliberate further on the issue. He resumed duty on 20th March, 2013 but was told to wait as his issue had not been deliberated by the directors.

After that he went to the Union to seek advise. The union advised him to wait for a decision as directed by the employer. He waited until July, 2013 when the Respondent informed him that he will be recruited join as a salesman on commission without a salary. He was paid salary for February, March, and April, 2013. He was not paid for May, June, and July. He did not agree with the terms of the new appointment as it meant his previous employment had been terminated.

He reported the matter to the Claimant union who wrote to the Respondent seeking a meeting. A meeting was held on 4th September 2013. At the meeting the Respondent agreed to pay the Grievant notice, public holidays worked, salary for one month, off duties and arrears of withheld salary of Shs.5000 per month. The Respondent however failed to pay prompting the Claimant Union to report a dispute to the Minister for Labour by a letter dated 2nd October, 2013.

The Minister accepted the dispute and appointed Hellen Maneno of Kisumu Labour Office as conciliator. Meetings were called at the Labour office by the Conciliator on 5th February, 5th March, and 3rd June, 2014 but did not result in agreement forcing the Claimant to file this suit.

The Grievant stated that he is claiming Shs.15,000 being one months salary in lieu of notice, Shs.7,500 for public holidays worked and not paid, salary arrears of Shs.60,000/= salary for May, and June, 2013, of Shs.20,000, leave for 2.5 years at Shs.29,250 and compensation of Shs.180,000/=.

Mr. John Simuyu who appeared for the Claimant informed the court that he will rely on the documents on record and the submissions in the Memorandum of Claim. He sought a date for judgement.

### **Issues and determination**

I have considered the pleadings herein, that is the Memorandum of Claim and the documents annexed thereto, the defence filed by the Respondent and the tabulation of terminal dues and benefits filed by the Claimants on 30th September, 2015.

The issues for determination are whether the Claimant was unfairly terminated and whether he is entitled to the prayers sought.

The Employment Act provides that for termination to be fair there must be proof of valid reason and the employer must also prove fair procedure. In the present case the Claimant was sent on a one month compulsory leave and the Respondent did not take any further action until the Claimant went to inquire about his fate and was offered fresh employment as a commission salesman. He was thus not subjected to the procedure for termination as provided in Section 41 of the Employment Act.

The defence filed by the Respondent is a mere denial of all the averments of the Memorandum of Claim. Evidence was adduced by the Respondent to controvert the evidence of the Grievant. I do not have any reason to disbelieve the Grievant.

This being the case, I find that the termination of the Grievant employment was unfair for want of both validity of reason and fair procedure. The Grievant is therefore entitled to the remedies set out in Section 49 of the Employment Act.

The Claimant prayed for reinstatement of the Grievant in the Memorandum of Claim but no evidence was adduced to support the prayer. I therefore treat the prayer as having been abandoned.

Since the termination of the Grievant's employment contract was unfair he is entitled to one months salary in lieu of notice, withheld salary, salary for the period he was on compulsory leave, annual leave not taken and compensation. The Respondent did not controvert the evidence that the Grievant worked on off days and public holidays and he is therefore entitled to the same.

For the foregoing reasons I award the Claimant the following :-

1. One (1) months salary in lieu of notice .....Shs.15,000.00
2. Public holidays .....Shs. 7,500.00
3. Off days 104 days .....Shs.52,000.00
4. Salary arrears .....Shs.60,000.00
5. The Claimant prayed for full compensation of 12 months salary. Having worked for only 2 years, and taking into account the circumstances under which the Grievant was terminated, it is my opinion that 4 months salary is reasonable compensation and I award him Shs.60,000.
6. The Respondent shall issue the Claimant a Certificate of Service.
7. I award the Claimant costs of Shs.20,000/=.

**Dated signed and delivered in open court this 20th day of November, 2015.**

**MAUREEN ONYANGO**

**JUDGE.**