



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 84 OF 2014**

**ERIC MAMISI SIFUMA**

**SAMUEL NJUGUNA MWANGI**

**PETER IMBAYI.....CLAIMANTS**

**v**

**GUAVA RESTAURANT.....RESPONDENT**

**JUDGMENT**

1. In a poorly drafted Statement of Claim filed through the law firm of A.M. Murindi & Co. Advocates in Court on 2 April 2014, the Claimants jointly sued the Respondent and the issues in dispute were stated as
  1. Underpayment of salaries as from June, July, August 2012 to November 2013
  2. Accrued leave
  3. Severance pay for 2 years
  4. Salary in lieu of Notice.
2. The Statement of Claim was served upon the Respondent and it filed a Reply to the Claim on 11 June 2014.
3. On 5 November 2014, the Claimants filed a Notice to Act In Person and on 13 July 2015, the Respondent filed Supplementary List of Documents.
4. The Cause was heard on 14 July 2015 and the parties were directed to file submissions.
5. The Court has considered the pleadings, evidence and submissions and identified the issues arising for determination as, *whether the termination of the Claimants' employment were unfair, whether the Claimants were underpaid, whether the Claimants are owed salary arrears; accrued leave and appropriate remedies/orders.*
6. Although poorly drafted and initially represented by an advocate, the questions posed in this Cause raise difficulties and how to deal with them within the employment law framework.

**Whether termination of employment were unfair**

7. In the Statement of Claim, the Claimants pleaded that the Respondent closed shop without any notice to them and without paying them.
8. Eric Sifuma in his testimony stated that his employment was terminated on 8 November 2013

- orally without any notice and that no reasons were given.
9. Samuel Njuguna also testified and he stated that he was dismissed on 17 August 2013 when he was directed not to continue with work though no reasons were given.
  10. Peter Imbaya on his part stated that he was dismissed on 30 September 2013 and that no reasons were given for the dismissal.
  11. The Respondent's Director who testified admitted that the Claimants were his employees. He stated that from June to August 2013, the Respondent experienced problems with paying rent. The difficulties arose when the Respondent was denied a liquor license because a college was opened in the same building hence reduced sales.
  12. As a result, the landlord closed the restaurant and auctioneers moved in.
  13. The Claimants did not dispute the contention by the Respondent that the business underwent difficult times and the landlord closed the premises. Litigation involving the Respondent and the landlord and auctioneers were produced.
  14. The difficulties referred to earlier would include questions as to whether this was a case of redundancy or frustration of the contractual relationships by events beyond the parties control and the interplay of the legal principles which would be applicable.
  15. Because of the state of pleadings and conduct of the Claimants, the Court is of the view that this is not an appropriate case to discuss the fairness or lack of it, in the separation.

### **Whether Claimants were underpaid**

16. All the parties agreed that the Claimants were on monthly wages of Kshs 27,000/-. The rate seems above the minimum prescribed minimum wages and the Court finds that there was no underpayment of wages.

### **Whether Claimants are owed salary arrears**

17. Eric Sifuma stated that his wages for June 2013 though remitted to the bank were reversed. He produced his bank statement which confirmed the reversal.
18. The Respondent admitted that this Claimant was paid through the banks. Although he contended that his records were still held up by auctioneers, he could have produced bank statements to counter the testimony of this Claimant but he did not.
19. This Claimant also stated that he was not paid any other wages until he left on 8 November 2013 save for Kshs 13,000/- paid in September 2013.
20. The testimony remains uncontroverted and this Claimant would be entitled to wages from June 2013 to 8 November 2013 less the Kshs 13,000/- already paid.
21. Samuel Njuguna Mwangi also stated that his wages for June 2013 were paid through the bank but were reversed. A bank statement was produced. He also stated that he was not paid wages for July 2013 and for the 17 days worked in August 2013. He would be entitled to these wages.
22. Peter Imbaya on his part also stated that the June 2013 wages which were paid through the bank were reversed, he was not paid wages for September 2013 and received only Kshs 12,500/- for August 2013.
23. This Claimant is entitled to the unpaid arrears.

### **Whether Claimants have accrued leave**

24. Eric Sifuma's testimony that he had a balance of 7 leave days was not challenged or controverted.
25. Samuel Njuguna Mwangi confirmed in cross examination that he took his leave but had a balance for 8 months. This would be equivalent to 14 days.
26. Peter Imbaya stated without being challenged that he did not take his leave. He served for about 11 months and was entitled to *pro rata* leave of 19 days.

### **Appropriate remedies/contractual entitlements**

#### ***3 months Notice pay***

27.The Court for the reasons given regarding the unfairness of dismissal declines to make an award under this head.

***Underpayments***

28.This was not proved and is dismissed.

***Accrued leave***

*Eric Sifuma*

29.The Court awards him Kshs 7,269/-

*Samuel Njuguna Mwangi*

30.The Court awards him Kshs 14,538/-

*Peter Imbaya*

31.For the 19 days, the Court awards him Kshs 19,730/-.

***Salary arrears***

*Eric Sifuma*

June 2013 wages	Kshs 27,000/-
July 2013 wages	Kshs 27,000/-
August 2013 wages	Kshs 27,000/-
September 2013 balance	Kshs 14,000/-
Total	Kshs 95,000/-

*Samuel Njuguna Mwangi*

June 2013 wages	Kshs 27,000/-
July 2013 wages	Kshs 27,000/-
17 days August 2013 wages	Kshs 17,653/-
Total	Kshs 71,653/-

*Peter Imbaya*

June 2013 wages	Kshs 27,000/-
August 2013 balance	Kshs 14,500/-
September 2013 wages	Kshs 27,000/-
Total	Kshs 68,500/-

**Conclusion and Orders**

