



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NYERI**  
**CAUSE NO.23 OF 2013**  
**(Formerly Cause No.423 of 2011)**

**THOMAS MUTEVU KITETU.....1<sup>ST</sup> CLAIMANT**

**ABDALLA SIRAMBARA WAMACHO.....2<sup>ND</sup> CLAIMANT**

**JULIA WANJA GITHUI.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**IZAAK WALTON INN.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 11<sup>th</sup> December, 2015)

**JUDGMENT**

The claimants filed the statement of claim on 21.03.2011 through Mulwa & Mulwa Advocates. The claimants prayed for:

- a. A declaration that the claimants' dismissal from employment was unlawful.
- b. Full payment of the claimants' terminal dues as determined by the court.
- c. Costs of the suit.

The respondent filed the statement of defence on 01.04.2011 through Eddie Njiru & Company Advocates. The respondent prayed for dismissal of the claim with costs.

The claimants' case is that they were employed by the respondent and that their employment was unlawfully terminated. The 1<sup>st</sup> claimant's case is that he was employed as a supervisor effective 5.02.2007 at Kshs. 15, 000.00 per month and dismissed on 6.07.2010. The 2<sup>nd</sup> claimant's case is that he was employed effective June 1997 as the supervisor, housekeeping at Kshs. 8, 500.00 and dismissed on 6.06.2010. The 3<sup>rd</sup> claimant's case is that he was employed on 25.01.2007 as a house keeper at Kshs.18, 000.00 per month and dismissed on 6.07.2010.

The respondent's case was that the claimants were dismissed because they were found to have involved themselves in acts of theft of the respondent's property as per findings of the internal investigations.

Further the respondent has pleaded that the reasons for the termination were set out in the letters of termination dated 6.07.2010 and the same was explained to the claimants verbally. Thus, the respondent pleaded that it denied the claimants' alleged unlawful termination.

The documents on record show that each claimant received the letter of 4.05.2010 for compulsory leave on account of the process of investigating the pilferages that had been taking place in the hotel and that preliminary inquiry had linked the claimants to the scam. The documents further show that each claimant received a letter terminating the service dated 6.07.2010. The termination letter referred to the letter of compulsory leave dated 4.05.2010 and conveyed the formal termination of the claimants' employment because it had been established that the claimants had not been honest in the conduct of their duties, which the letter stated amounted to gross misconduct so that the claimants were not entitled to terminal dues.

Despite service of the hearing notice, the respondent failed to attend the hearing on 2.11.2015.

The 3<sup>rd</sup> claimant testified on behalf of the claimants' case. The evidence was as follows:

- a. There was no reason for termination except that certain investigations had been done in the absence of the claimants.
- b. The alleged investigation reports were never showed or given to the claimants.
- c. Upon termination they were not given any terminal dues.
- d. The claimants were entitled to terminal dues being pay for 2 months of compulsory leave, 2 months' pay in lieu of the termination notice, pay for due and not taken leave days, and compensation for the unfair termination.

The court finds that the claimants have established that at termination, the respondent did not show any valid or genuine reason for termination as envisaged in section 43 of the Employment Act, 2007. Further the court finds that the respondent did not give the claimants a notice and a hearing as envisaged in section 41 of the Act. The court finds that the termination was unlawful and unfair. The claimants were diligent workers, they desired to continue in employment and they did not contribute to their termination. They are each are entitled to the terminal dues as set out in the submissions and to 12 months' pay for the unfair termination. They are awarded as follows:

- a. 1<sup>st</sup> claimant 92, 500.00 as submitted plus Kshs. 180,000.00 for unfair termination making **Kshs.272, 500.00.**
- b. 2<sup>nd</sup> claimant 54, 099.00 as submitted plus Kshs. 102,000.00 for unfair termination making **Kshs.156, 099.00.**
- c. 3<sup>rd</sup> claimant 87, 600.00 as submitted plus Kshs. 216,000.00 for unfair termination making **Kshs.303, 600.00.**

The claimants are entitled to the costs of the suit.

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

1. The declaration that the claimants' dismissal from employment was unlawful.
2. The respondent to pay the claimants **Kshs.272, 500.00, Kshs.156, 099.00, and Kshs.303, 600.00** respectively by 01.02.2016 in default interest to be payable thereon at court rates from the date of the judgment till full payment.
3. The respondent to pay the claimants' costs of the suit.

**Signed, dated and delivered in court at Nyeri this Friday, 11<sup>th</sup> December, 2015.**

**BYRAM ONGAYA**

**JUDGE**