



REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT AT NAIROBI  
CAUSE NUMBER 1018 OF 2011

**BETWEEN**

JOSEPH MACHARIA MBUGUA .....  
CLAIMANT

**VERSUS**

M/S YOUNG CLUB 7 & RESTAURANT.....  
RESPONDENT

*Rika J*

*CC. Leah Muthaka*

*Claimant in Person*

*Respondent Absent*

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant instituted filed his Statement of Claim on 25<sup>th</sup> June 2011. The Respondent did not enter appearance or file any Statement in Response. There are affidavits filed by Jackson Agire Yanana, suggesting the Respondent was invited to participate in the proceedings at different turns, but opted to keep away from the proceedings.
2. Irungu first testified *ex parte* on 17<sup>th</sup> Maya 2012 before the Hon. Justice I.E.K. Mukunya. The dispute was subsequently mentioned on various occasions after the changes made in the Industrial Court in July 2012. The Respondent did not avail himself in Court. On 17<sup>th</sup> June 2013, the Court directed the Claimant to give evidence afresh. The Respondent did not send any representative to Court.
3. The Claimant stated that the Respondent is a registered private company, running he business of bar and restaurant along River Road Street in Nairobi. He was employed by this business on or around 3<sup>rd</sup> October 2003 as a Waiter. He was paid Kshs. 3,000 per month. There was no house rent allowance paid. He claims he should have earned basic salary of Kshs. 4,281 and house rent allowance of Kshs. 633- total Kshs. 4,851 as given in the Legal Notice Number 48 of 1<sup>st</sup> May 2003. He was underpaid the sum of Kshs. 1,851 for 12 months, totaled Kshs. 22,212, running to 30<sup>th</sup> April 2004.
4. Subsequently, the Respondent did not amend the salaries and allowances due to the Claimant,

following the various legal notices. His contract was terminated on 24<sup>th</sup> February 2010, with total arrears of salary added up at Kshs. 198,741.

5. Irungu additionally claims he was not paid his annual leave entitlement for 7 years at Kshs. 47,481; severance pay based on 15 days' salary for each of the 7 years worked, at Kshs. 33,915; compensation the equivalent of 12 months' salary calculated at Kshs. 100,500; notice pay of one month total Kshs. 8,375; and unpaid salaries for the months of December 2009, January 2010, and February 2010. The Claimant seeks a total of Kshs. 414,137 from the Respondent as particularized above. He also seeks orders declaring termination unfair and unlawful; costs; interest; and any other remedy the Court deems suitable.

*The Court Finds and Awards:-*

6. There is no material to support the prayer for severance pay. The Claimant did not allude to a redundancy situation that would bring in the provisions of Section 40 of the Employment Act 2007 to his Claim. There was no case for payment of severance pay of 15 days' salary for each of the years worked. The Claimant did not point to the Court any Wage Order, Contract or provision under the Employment Act 2007, which justifies severance pay of Kshs. 33,915. This prayer is rejected.

7. The other prayers are based on credible evidence. There are legal notices, which the Respondent has not challenged. There is evidence of termination without cause or notice. There is evidence of unpaid salaries and annual leave entitlement. The Court upholds the prayers by the Claimant, except the prayers on severance pay, costs and interest. In sum:-

***[a] The termination of the Claimant's contract of employment was unfair; and***

***[b] The Respondent shall pay to the Claimant one month salary in lieu of notice; salary arrears; underpayments; annual leave entitlement; three months salary in compensation for unfair termination- all at Kshs. 304,847- within 30 days of the delivery of this Award;***

Dated and delivered at Nairobi this 17<sup>th</sup> day of January 2014

James Rika

Judge