



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 2430 OF 2012

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS, HOSPITALS AND
ALLIED WORKERS (KUDHEIHA) CLAIMANT**

VERSUS

SASINI COFFEE HOUSE LIMITED RESPONDENT

Mr. Stephano Njiru for Claimant

JUDGMENT

1. The Claimant is the Kenya Union of domestic, Hotels, Educational Institutions, Hospitals and Allied Workers Union (KUDHEIHA), who brought this suit on behalf of the Grievant Mr. Edward Ling'ang'a.
2. The Grievant was employed by the Respondent as an outlet Manager from 1st May 2010 at a monthly basic salary of Kshs.27,000/=.
3. The contract of employment is dated 5th May 2010 and contains all the terms of employment including;
 - i. Twenty one (21) days paid annual leave;
 - ii. Termination on one month notice or payment in lieu thereof.
4. The Grievant worked continuously until 17th July 2011 when he was suspended from duty following loss of Kshs.45,350/= that disappeared with one employee Boniface Muendo. The Grievant had sent the employee to Bank the money on his behalf as he was busy at the time.
5. The Grievant also admitted that the Restaurant experienced a loss of Kshs.50,000 and Kshs.30,000 on diverse dates by way of reimbursement.
6. The Respondent asked the Grievant to obtain a police abstract on the reported losses to enable the Respondent claim from insurance.
7. The Grievant was promised reinstatement and payment of salary once the insurance paid the

claims. This however did not materialize.

8. The Claimant reported a dispute to the Ministry of Labour on 26th January 2012 in terms of **Section 62(1)** of the **Labour Relations Act, 2007**.

9. The Minister appointed a conciliator but the dispute was not resolved hence the filing of this suit.

10. The Claimant seeks payment of;

1. one month's salary in lieu of notice in the sum of Kshs.27,000/=;
2. house allowance for 14 months at 15% of the basic salary (4050) per month in the sum of Kshs.56,700/=;
3. five (5) public holidays worked in 2010 in the sum of Kshs.9,000/=;
4. eleven (11) off-days not taken in the sum of Kshs.9,900/=;
5. annual leave for the year 2010 / 2011 in the sum of Kshs.27,000/=;
6. arrear salary for sixteen (16) days worked in July 2011 in the sum of Kshs.14,400/=; and
7. twelve (12) months' salary being compensation for the unlawful and unfair termination in the sum of Kshs.324,000/=.

11. The Respondent was duly served with the statement of claim but did not enter appearance nor was any statement of defence filed.

12. That notwithstanding, the Respondent was served with hearing notices to attend Court for hearing on 11th October 2013; and 16th July 2014 respectively.

On both occasions the Respondent failed to attend the hearing.

Affidavits of service were duly filed in respect thereof.

The matter proceeded on 16/7/2014 exparte.

13. The Claimant testified under oath in support of the particulars of claim and the prayers thereof.

14. The Court is satisfied that the Claimant has on a balance of probabilities proved the particulars of claim as set out.

15. However, in view of the admission that the Grievant had caused various monetary shortages to the business in circumstances which suggest that he was negligent, the Court views this case as one of normal termination and will not award any compensation for the termination.

16. This being the case, the Court awards the Claimant as follows;

(i) one (1) month salary in lieu of notice in the sum of Kshs.27,000/=.

(ii) in terms of **Section 31(1)** of the **Employment Act 2007** as read with the **General Wage Order** for the relevant period, the Claimant was entitled to at least 15% of the basic salary as house allowance.

The Court therefore awards him Kshs.56,700/= as house allowance for the period worked.

The Court further awards the Claimant;

(iii) Kshs.9,000/= being payment for five (5) public holidays worked and not paid double salary.

(iv) a further Kshs.9,900/= is awarded in respect of eleven (11) off-days not taken.

The Court is also satisfied that the Grievant was not granted annual leave for the year 2011 but notes that the Claimant worked up to 17th July 2011. The Grievant would therefore be entitled to eleven (11) days leave for the period and not twenty one (21) days.

(v) The Court awards him Kshs.9,900/= in lieu of leave days not taken in 2011

Furthermore, the Court is satisfied that the Grievant was not paid salary for the sixteen (16) days worked in the month of July 2011; and

(vi) The Court awards Kshs.14,500/= in respect thereof.

17. **The total award to the Claimant is Kshs.127,000/=.**

The award is payable with interest at Court rates from date of Judgment until payment in full.

The Respondent will also pay the costs of the suit.

Dated and Delivered at Nairobi this 7th day of November, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE