



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 196 OF 2013**

**WALTER NYAWARA WAUNA.....CLAIMANT**

**-VERSUS-**

**TAIDY'S RESTAURANT.....RESPONDENT**

(BEFORE HON. JUSTICE BYRAM ONGAYA ON FRIDAY 20<sup>TH</sup> DECEMBER, 2013)

**JUDGMENT**

The Claimant is **Walter Nyawara Wauna** and the respondent is Taidy's Restaurant. The claimant filed the memorandum of claim on 26.06.2013 and prayed for:

- a. **payment of 14 days wages during the period of suspension;**
- b. **48 days annual leave;**
- c. **9 months pro-rata leave at 2 days per month**
- d. **2 months wages for notice pay;**
- e. **underpayments;**
- f. **house allowance;**
- g. **6 months pay for unfair termination;**
- h. **costs of the suit; and**
- i. **any other remedy the court may deem fit.**

The claimant appointed Geoffrey Otieno & Company Advocates to act for him in the suit.

The respondent filed the memorandum of defence on 17.07.2013 through R.W. Chege & Associates and prayed that the claimant's claim be dismissed with costs.

The case was heard on 6.11.2013. The claimant gave evidence to support his case and the respondent's manager at the Eldama Ravine branch Josiah Chemammet (**RW**) gave evidence to support the respondent's case.

The claimant testified that he was employed by the respondent as a waiter with effect from 1.11.2006 at Kshs.5,000.00 per month. He testified that on 12.11.2009, he was suspended for 14 days without pay on allegations that he had adulterated a customer's drink. The claimant gave a written statement to exculpate himself from the allegations.

On 10.10.2012, the claimant recalled that a customer held a glass of wine and poured the wine on the barman's face. The wine wetted the customers within the vicinity. The following morning, the claimant was required to make a written statement to explain the events of 10.10.2013. The scuffle had involved the barman and so the claimant declined to record the statement as demanded. Later, the claimant

received a dismissal letter. The latter stated that the claimant had sold a customer “**bad wine**” in collaboration with the bar man. He was not paid any terminal dues. Intervention by the claimant’s trade union and the Labour Officer did not yield an amicable resolution because the respondent failed to cooperate.

RW testified that on 11.10.2012, the claimant went to RW’s office under the influence of alcohol as he was drunk. The claimant refused to discuss or write a statement about the events of 10.10.2012. Instead, the claimant threatened to kill RW while pointing a finger at RW. The dismissal letter was then issued.

The court has evaluated the evidence as presented. The claimant by his evidence stated that he refused to record the statement to explain the events of 10.10.2012. There is no doubt that the claimant was accorded notice and a hearing in view of the events of 10.10.2012. There is no reason to doubt the account as stated in the evidence of RW.

The court finds that the claimant has failed to establish a case of unfair termination and all the other claims in the memorandum of claim were not established.

In conclusion, judgment is entered for the respondent against the claimant as the memorandum of claim is dismissed with costs.

**Signed, dated and delivered in court at Nakuru this Friday, 20<sup>th</sup> December, 2013.**

**BYRAM ONGAYA**

**JUDGE**