



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 775 of 2010

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS, HOSPITALS AND ALLIED WORKERS.....
CLAIMANTS**

VERSUS

DECEMBER HOTELS LIMITED.....RESPONDENTS

ISSUE IN DISPUTE

**Wrongful termination of: 1. Mr. Obadiah Ng'ang'a
2. Mr. Gabriel Wahinya
3. Mr. William Kimwete Mwangangi**

AWARD

1. The Claimant herein Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and allied Workers filed their Memorandum of Claim dated 25th January 2011 in Court on 1st February 2011. They claim the following in respect of each of the 3 grievants:-

i. Obadiah Ng'ang'a

- a] Two months pay in lieu of notice.
- b] Salary arrears for March, April and October 2004.
- c] Annual leave for 5 years not taken *30 days per year.
- d] Travelling Allowance of the same years (5 years) *1,200=6,000
- e] Public holiday for 2 years at double rates *11 days=22 days
- f] Full compensation for loss of employment.
- g] Christmas bonus for 2003 as Shs.800/=

ii. Gabriel Wahinya

- a] Four months pay in lieu notice.
- b] Salary arrears for March, April and October 2004.
- c] Service gratuity for 17 years of service at 30 days per year worked as per clause 10 of the C.B.A. for termination on account of redundancy.
- d] Annual leave for 5 years not taken *30 days per year.
- e] Travelling allowance for same years *5 years* 1200=6000/=
- f] Christmas bonus of Shs.800/=.
- g] Full compensation for loss of employment.

iii. Wiliam Mwangangi

- a] Two months pay in lieu of notice.
- b] Annual Leave for 4 years at 30 days per year worked.
- c] Leave travelling allowance for 4 years at 1200 per year = 4800/=.
- d] Public holiday for 2 years *11 days = 22 days.
- e] Full compensation for loss of employment.

2. The Respondent did not file any response to the claim or attend court for the hearing of the case.

3. The case was first mentioned before Hon. Justice Isaac Mukunya on 22nd October 2010 when there was no appearance by either party. The case was mentioned further on 27th July 2010 when the claimant was represented but there was no appearance for the respondent. The court gave directions on filing of pleadings and fixed the case for hearing on 16th December 2010. On 10th December 2010, when the case came up for hearing, it was mentioned and fixed for hearing on 12th May 2011. The case was further mentioned on 12th May, 11th October 2011 and on 15th May 2012. The case was heard on 4th October 2012 when Mr. Mwari Stephen Njiru appeared for the claimant and there was no appearance for the respondent. Mr. Njiru informed the court that he will rely entirely on the Memorandum of Claim filed on 1st February 2011 and the supplementary submissions filed on 2nd June 2011.

4. The claimants case for each of the grievants is as follows:-

(i) Obadiah Ng'ang'a

He was employed in May 1998 at a basic salary of Shs.2,661/= and house allowance of Shs.750/=. He was terminated on 19th October 2004 when he was earning a salary of Shs.4,200/= and house allowance of Shs.850/-.

(ii) Gabriel Wahinya

He was employed on 9th July 1987 at a salary of Shs.2661/= and house allowance of shs.750/=. His employment was terminated in September 2004. He was not given a letter of termination.

(iii) William Mwangangi

He was employed on 2nd November 1997 and terminated on 28th January 2005. His last salary was Shs.3,630/= and house allowance of shs.850/-.

5. For all the grievants the claimant has not stated whether they were paid terminal dues upon termination of employment and if so, how much. Two letters of termination have been annexed to the Claimants memorandum in respect of Obadiah Ng'ang'a and William Mwnagangi. The letters advise the grievants to collect their salary for days worked on 5th October 2004 and 12th February 2005 respectively. The letters do not mention payment in lieu of notice. In addition to payment of salary in lieu of notice for each of the Grievants, the claimants pray for 3 months salary which was not paid (March, April and October 2004), annual leave for 4 years, traveling allowance for 4 years, public holidays for 2 years, Christmas bonus for 2003 and 12 months compensation in respect of each of the grievants.

6. As already stated above the claimant relied entirely on their submissions. In the submissions there is no mention of salary arrears, annual leave and travelling allowance, public holidays and Christmas bonus. These are only in the prayers. It is therefore not clear in the submissions how the salary arrears for March, April and October 2004 accrued, which years annual leave was not taken and why, which years the grievants worked on public holidays and were not paid, or how the Christmas bonus for 2003 accrued. The court has therefore no option but to hold that these items have not been proved by the claimants and are therefore rejected.

7. On the issue of compensation the court notes that termination letters for Obadiah Ng'ang'a and William Mwangangi have been annexed and the termination is instant and without notice. The Respondent did not comply with Clause 8 (d) of the Collective Bargaining Agreement which provides as follows:-

“On termination or dismissal, reasons shall be given in writing and copies shall be given to the shopsteward and the branch secretary of the union”.

No copies of the termination letters were given to the shopsteward and the branch secretary of the union, although the reasons of termination were given. The claimants were also not given notice or paid in lieu of notice as provided in the same Clause 8 of the Collective Bargaining Agreement at Sub clause 8[a], [b] and [c]. The claimants had worked for various number of years and were entitled to notice or pay in lieu thereof as follows:-

<u>NAME</u>	<u>YEARS OF SERVICE</u>	<u>NOTICE</u>
<u>ENTITLEMENT</u>		
(i) Obadiah Ng'ang'a	6 years	2 Months
(ii) Gabriel Wahinya	7 years	4 Months
(iii) William K. Mwangangi	7 years	2 Months

8. The Respondent having failed to give the grievants notice and to inform the shopsteward and the union branch secretary of the termination, I find that the termination of all the 3 grievants was unfair and they are entitled to both payment in lieu of notice and compensation.

9. I have looked at the report of investigation and the findings and recommendations of payment of 8 months salary as compensation for each of the grievants as reasonable. However the 2nd grievant had worked for 17 years, much longer than the other 2 grievants who had worked for 6 and 7 years respectively. It is my opinion that he deserves higher compensation due to the length of service. I find it reasonable to grant him full compensation of 12 months.

10. I therefore award each of the grievants as follows:-

(i) **Obadiah Ng'ang'a**

2 months salary in lieu of notice at Kshs.4,200/= basic salary plus Kshs.850/= house allowance which comes to Kshs.10,100/=. In addition he gets 8 months salary as compensation (5,050x8) amounting to Kshs.40,400/=, this brings the total award to Kshs.50,500/=.

(ii) **Gabriel Wahinya**

Having worked for 17 years he is entitled to 4 months notice of Kshs.4,460/= (basic salary) plus Kshs.850/= (house allowance) which amounts to Kshs.21,240/=. In addition he gets 12 months compensation amounting to Kshs.63,720/=. He is therefore is entitled to a total of Kshs.84,960.00/=.

(iii) **William Mwangangi**

He is entitled to notice of 2 months (basic salary of Kshs.3,650 and house allowance of Kshs.850) amounting to Kshs.9,000. He also gets 8 months compensation of Kshs.4,500 which amounts to Kshs.36,000. He is therefore entitled to Kshs.45,000.

The payments are to be made within 45 days from the date of this award failing which the claimant may apply for extraction and execution of the decree for the same.

Orders accordingly.

DATED AND DELIVERED IN NAIROBI THIS 12TH DAY OF NOVEMBER 2012.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE.

_____ for Claimant

_____ for Respondent