



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 65 OF 2014**

**CHARLES MUNGAI GAKUO.....CLAIMANT**

**VERSUS**

**AROMAH RESTAURANT LTD.....RESPONDENT**

**JUDGMENT**

1. The claimant testified that he was hired by the respondent on 5<sup>th</sup> September, 2013 as a manager. His letter of appointment was attached to the memorandum of claim. According to him it read assistant manager but he was operating as a manager. His contract was based on merit and trust but the respondent breached the trust. According to him, he was to formulate working hours. He organized two shifts. One at 6.15 a.m. and the second from 10.00 a.m. He worked in both reporting at 6.15 a.m and closing at 10.00 p.m. He was never paid overtime nor given days off.

2. He further stated that in October, 2013 the company's blender broke down and in return for payment of Kshs.11,250 he offered his for use but was only paid Kshs.1,000/=.

3. In October and November 2013 deductions in the sum of Kshs.15,862 was made from his salary under circumstances he said he did not understand. The cashier had a cash shortage so he was made to pay. It was his evidence that his employer frustrated him. He complained about the long working hours and arbitrary deductions from staff salaries. He was therefore constrained to tender his resignation. He resigned on 26<sup>th</sup> September, 2013 but around 28<sup>th</sup> September, 2013 the cashier had a shortage and he requested for an audit to find out who was responsible. He was forced to stay for the money to be recovered from his pay. He therefore worked until 25<sup>th</sup> November 2012 when he left and asked for his final dues.

4. He was paid Kshs.13,098 which was below what he expected. In cross examination he stated that he left the respondent after three months. He further stated that he was hired as an assistant manager and his tasks included handling cash and related tasks. It was further his evidence that the shortage took place after three weeks of working. He stated that the agreement over the blender was verbal and did not have proof that he was paid Kshs.1000/=. He further stated that he took responsibility for the lost cash as a supervisor.

5. The claimant called two witnesses. One Ms. Priscilla Gitau testified that the claimant was his manager and that they used to work from 6.15 a.m. to 10.00p.m. She used to serve food and that she was terminated without notice. The claimant's second witness Mr. Abednego Kioko also testified that the claimant was his manager. He ceased working for the respondent. It was his evidence that he did not

leave work in a good way. He was reinterviewed but never recruited again.

6. The respondent's witness Ms. Jockbet Njeri Mureithi testified that the claimant used to work as a supervisor and that he was employed on 5<sup>th</sup> September, 2013 for one year. He left after three months via a resignation letter dated 26<sup>th</sup> November, 2013. It was her evidence that the claimant never gave any advance notice of her resignation. According to her, the claimant was supposed to train staff on handling cash and team building. She denied the claimant was ever promoted to a manager. She stated that she made promises to the claimant based on his performance. It was her testimony that she knew the claimant before she employed him. He used to come and eat at the restaurant and found she was the owner. He therefore asked for a job and was hired at a salary of Kshs.25,000/= per month. According to her, the claimant was initially a good worker but later he became arrogant and hungry for power. He was competing with her as his boss. She denied frustrating the claimant making him to resign. It was the claimant who threatened to resign if SHE did not respond to his letters in writing.

7. The claimant used to report at 7.00 a.m. and leave at 7.00 p.m. She testified that the working hours would vary. A shift system was started but never worked out. She denied ever asking the claimant to bring his blender to the restaurant. She admitted deducting Kshs.15,000/= from the claimant's salary for October and November because he had handed over some cash he was in charge of short of that amount. According to her the claimant accepted responsibility for the shortage and that is why she made the deductions.

8. In cross-examination, she stated that she responded verbally to the claimant's letter on reorganization of the restaurant. She admitted not paying the claimant overtime.

9. This case presents an example of an employment relationship gone sour soon after engagement. As stated before, employment relationship is based on confidence and trust which if eroded the relationship cannot smoothly continue. In this case one witnesses an employee who is newly hired and deductions are made from his salary on account of cash shortages. He admitted that he took responsibility for the shortage. He chooses to resign but again opts to work extra so that lost money can be recovered from his pay. His resignation was to be immediate. Although the claimant alleges frustration leading to resignation, evidence of this did not come clearly at the trial.

10. The Employment Act requires that termination of employment where the contract of employment makes no provision is reckoned as concurrent with the period at which salary or wages is paid. Therefore in this case the contract between the parties was terminable by a month notice on either side. Therefore the claimant's immediate resignation was in breach of his contract of employment since no good reason was given warranting his immediate resignation.

11. A party in breach of a contract cannot seek to benefit from the same. This claim is therefore found by the Court to be unmerited and the same is hereby dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 9<sup>th</sup> day of September 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 9<sup>th</sup> day of September 2016

**In the presence of:-**

.....for the Claimant

and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**