Memorandum of Appeal on a Hotel Paid Break and Refusal to Resume Work

Educational sample 221 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

MEMORANDUM OF APPEAL

1. The Appellant appeals from the judgment delivered on [date] in Mombasa CMELRC [number]. The appeal challenges the finding of employer termination and the remedies dependent upon it. The parties, decree and relevant record pages are identified in [record index]. The appeal is brought within [applicable time or authorised extension].

2. The trial court erred in failing to evaluate the Labour Office meeting minutes at [pages], which recorded the Respondent position on paid breaks and continuing employment. The Appellant asks the Court to assess those minutes alongside the oral evidence, rather than treat absence from normal daily work as proof of dismissal.

3. The trial court erred in failing to consider the Respondent admission at [transcript page] that the employer called her back to work and that she did not return. The relevant communication, date, recipient and response are [record particulars]. This ground relies on evidence admitted below and does not introduce a new recall document.

4. The trial court consequently erred in finding unfair termination without determining which party brought the employment relationship to an end. The pandemic trading arrangements and continued payment of wages require consideration with the actual conduct and words of both parties.

5. The awards of compensation for unfair termination and salary in lieu of notice should be set aside if the termination finding is reversed. The grounds concerning underpayment, housing, leave and service pay are [state only specific supported grounds]. Those independently earned dues are not extinguished merely by a finding of resignation.

6. The Appellant seeks variation of the judgment to remove only the unsupported termination-related awards, appropriate determination of each remaining head, and an order on appeal costs. The Appellant will rely on the filed record and authorities under the Court directions, with due allowance for the trial court advantage in seeing witnesses.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Identify the exact lower-court judgment or ruling, operative decree, parties, concise grounds and requested disposition. Use the procedure for this particular appellate court: an ELRC appeal and a High Court or ELC first appeal are not Court of Appeal proceedings. Check limitation, any necessary leave or extension, record, fees, service and directions. Filing an appeal is not an automatic stay. Appeal to the ELRC from a designated subordinate court, not a Court of Appeal memorandum. Check the ELRC appellate procedure, record, filing time and directions. The source employer succeeded only on termination-related awards. Verify the ELRC Procedure Rules 2024 and 2025 amendments, or the applicable designated subordinate-court procedure, and current directions. Assess section 90 for each employment claim.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A room steward employed from May 2017 alleged verbal dismissal in May 2021, underpayment, unpaid housing and leave. The hotel said pandemic trading restrictions required paid shift breaks and that she declined a recall. Labour Office meeting minutes and an admission on cross-examination were central to the first appeal from Mombasa CMELRC 465 of 2021. The employer asserted leave and NSSF membership without producing the relevant records.

The ELRC replaced the unfair-dismissal finding with constructive resignation and removed notice pay and unfair-termination compensation. It upheld independently justified employment dues, including underpayment, housing, unused leave and service pay where the employer had not proved the statutory exclusion. Each party bore its appeal costs. The result turned on the actual minutes and recall evidence, rather than a general rule that every absence equals resignation.

Section 49 compensation and notice pay must be distinguished from earned statutory or contractual dues. Sections 31, 35(6) and 74 of the Employment Act and section 48 of the Labour Institutions Act were material. A bare assertion of NSSF participation does not establish the exclusion. Do not confuse constructive resignation found in this case with constructive dismissal caused by an employer breach. Assess limitation and the wage order applicable to each actual period.

[2025] KEELRC 1283 (KLR) - 6 May 2025. Source decision: https://new.kenyalaw.org/akn/ke/judgment/keelrc/2025/1283/eng%402025-05-06

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/firimbi-ta-sinai-hotel-v-imungu-2025-keelrc-1283-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.