

**SONIA KWAMBOKA RASUGU V SANDALWOOD HOTEL & RESORT LIMITED T/A
PARADISE BEACH RESORT & ANOTHER[2012]eKLR**



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 156 of 2011

SONIA KWAMBOKA RASUGU.....PETITIONER

AND

SANDALWOOD HOTEL & RESORT LIMITED

T/A PARADISE BEACH RESORT1ST RESPONDENT

LEON MURIITHI NDUBAI 2ND RESPONDENT

JUDGMENT

The Petitioner's Case

1. The facts of this petition are uncontested. The petitioner avers that she was unlawfully detained by the respondents at Paradise Beach Hotel on 28th January 2011 and released on 31st January 2011.
2. The petitioner's case is that she was at the material time a programme coordinator with the Kenya Community Development Foundation (KCDF). KCDF had organized a workshop for about 200 persons at the 1st respondent's hotel. KCDF and the hotel had agreed with terms of payment and the workshop proceeded as planned.
3. The petitioner testified that she was at Paradise Beach Resort in Kikambala from 23rd January 2011 to 28th January 2011 for a workshop. The participants were scheduled to leave on Friday 28th January 2011. At about 10.00 am when she was about to leave she was presented with an invoice and requested to settle it with two separate cheques by the hotel accountant by the name Dorothy. She informed Dorothy that she was not authorized to make payments and she did not have any cheques. The petitioner explained to her that payment could only be made once the invoice was received at KCDF office and processed within a week. Dorothy then requested her to wait as she sought instructions from her superiors. She then told the petitioner not to leave the hotel.
4. The petitioner testified that Dorothy declined to allow her to speak to her superior. Later in the afternoon, at about 1.00 p.m., after all the workshop participants had departed, Dorothy allowed her to speak on phone with her superior who declined to disclose his name. The person on the phone stated that he needed confirmation that payment would be effected. She gave him the KCDF Finance Manager's telephone number. The petitioner later learnt that the person she spoke to on phone was Leon, the 2nd respondent.
5. At about 3.00 pm, the petitioner received a call from the KCDF Finance Manager. He informed her that the KCDF would settle the bill and an email had been sent to confirm this commitment. An email was sent to Paradise dated 28th January 2011 to committing to settle the invoice. The email was sent to the 2nd respondent and was received at 4.13pm. It referred to telephone conversation between Leon and the Finance Manager and it stated, in part, "*We are committed to make payments at the earliest opportunity. We have proceeded and prepared the TT, awaiting our Directors to sign, which will be Monday morning. I hope this is enough commitment.*" The petitioner testified that even after receiving this email, Leon was non-committal about her release when she last spoke to him at about 5.00 pm. She had to stay overnight as the guards were still under instructions not to let her depart. On Saturday, 29th January 2011 at about 3.39 pm, another email was sent to the 2nd respondent stating, "*Attached please find the commitment letter, cheque and the TT partially signed. We hope this meets your requirements.*" The email was accompanied by a letter addressed to the respondents. The letter stated in part, as follows;

Dear Leon,

RE: *Commitment to pay Amount due to you*

Our Youth Forum from 25th to 28th January 2011, hosted by you refers.

We are in receipt of the final invoice, currently being processed. We are also aware that you have held hostage our staff, Ms Sonia Rasugu for non payment of the final balance.

We hereby reiterate our commitment to pay the balance due, thus proceed and accept this letter as a form of commitment.

The cheque and transfer letter of the amount is already done, awaiting final signature by Monday 31st January 2011.

Your prompt action is highly appreciated.

Francis Kamau

Finance & Investment Manager

6. Despite this email, the attached letter and copies of the cheque and TT instructions being forwarded to Leon, the petitioner was still not permitted to leave on Saturday. The petitioner had spoken to Leon in the morning, he said he would get back to her later in the day. All efforts to locate him were fruitless even the hotel staff could not reach him. She was once again forced to spend another night at the hotel. On Sunday, 30th January 2011 there was no communication from Leon. All she was told by the hotel management was that they were waiting for Leon's instructions and the guards could not permit her to leave despite persuasion. The petitioner stated at about 3.20 pm on Monday, 31st January, the guard informed her that she could leave.

7. The petitioner avers that due to the delayed departure, she had to reschedule her flight to Nairobi, the car she had hired wasn't returned on time and she had to organize her daughter's accommodation in Nairobi as she had left earlier in the company of the workshop participants. During this period the petitioner felt angry, humiliated and was embarrassed. She stated that her work was to train the youth on integrity yet she was placed in a situation where her own integrity was in question. The humiliation was aggravated by the fact that she remained in the hotel where she had organized the workshop and everyone looked at her as a crook and fraud. She was also worried about her daughter who had left by road earlier in the day and she would not be there to meet her as expected. The petitioner seeks declarations that her rights were violated and damages.

Determination

8. This is a case of false imprisonment. The petitioner was held without her consent and without authority of the law. The uncontested facts are that the petitioner was held against her will as she could not leave the hotel premises on her own volition. The guards had been instructed by the 2nd respondent to restrain her from leaving. I find and hold that the petitioner was unlawfully detained by the respondents contrary to the provisions of **Article 29(a)** of the Constitution which provides that, **"Every person has the right to freedom and security of the person, which includes the right not to be - (a) deprived of freedom arbitrarily or without just cause."**

9. I further hold that the respondents had no right to detain the petitioner on the ground of non-fulfilment of a contractual obligation. In this case, the petitioner was merely an employee of KCDF, the debtor and as such she was not even liable for the debt. The common law always protected the security of the individual from unauthorised willful detention of a person. In the case of **Sunbolf v Alford (1838) 3 M & W 248, 150 ER 1135**, the court stated that, **"If an Innkeeper has a right to detain the person of his guest for non-payment of his bill he has a right to detain him until the bill is paid, which may be life..... The proposition is monstrous. Again, if he have any right to detain the person, surely he is the judge in his own cause..."** The conduct respondents' conduct was indeed monstrous!

10. Having concluded that there is a violation of the petitioner's right, the proper relief as submitted by counsel for the petitioner is an award of damages. The detention caused the petitioner distress and embarrassment. The indignity and humiliation occasioned to her in the presence of the hotel staff is not in doubt. Counsel has prayed for a sum of Kshs.7,488,000/00 based on **Oscar v Chief Constable of the Royal Ulster Constabulary NI 290** where the court awarded UK Pounds 600 per hour.

11. Damages for false imprisonment are very much at large. I think cited decision bears no relation to the local circumstances. I have not been shown similar awards of our courts. I am aware that in cases of detention and torture the court has awarded the sums between Kshs. 1 million and Kshs. 5,000,000.00. In the case of **Rumba Kinuthia & others v The AG Nairobi HCCC No. 1408 of 2004 (Unreported)**, seven claimants who were detained for long period of time and were subjected to torture, cruel and inhuman treatment were awarded Kshs.1.5 million each. In the cases of **Nelson Akhahukwa Muyela v AG Nairobi Petition No. 783 of 2008 (Unreported)** and **Israel Okemo Agina v AG Nairobi Petition No. 1374 of 2003 (OS) (Unreported)** the sum of Kshs. 2 million was awarded in similar circumstances.

12. In this case, the unlawful act was not accompanied by torture and it was for a period of four days. But it was an intentional act designed to humiliate the petitioner to ensure that payment was made despite the fact that she was not liable for the debt and payment terms had already been agreed upon by the time the workshop began. The

petitioner's employer had at made a clear commitment to make pay the debt. Doing the best that I can the circumstances, I think a sum of **Kshs. 800,000/00** as general damages would be an appropriate award.

Disposition

13. I therefore enter judgment for the petitioner against the respondents jointly and severally;

(a) I declare that the petitioner right to freedom and security of the person under Article 29(a) was violated when the petitioner was detained without her consent at the 1st respondent's premises at Paradise Beach Hotel from 28th to 31st January 2011.

(b) I award the sum of Kshs. 800,000/00 as general damages to the petitioner.

(c) The petitioner shall have costs of the petition.

(d) Interest shall accrue on general damages at court rates from the date of judgment.

DELIVERED and **DATED** at **NAIROBI** this 26th day of October 2012.

D.S. MAJANJA

JUDGE

Ms C. Oduor instructed by Nungo, Oduor and Waigaw Advocates for the petitioner.



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