



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 466 OF 2017

CONSOLIDATED WITH CAUSE Nos. 467, 468, 469 AND 470 ALL OF 2017

HESBON MUCHANI MAKOKHA.....1ST CLAIMANT

DAUDI NYAWA MUNGA.....2ND CLAIMANT

PATRICK MUTA MWADZALA.....3RD CLAIMANT

PAUL MUEMA MUNYAO.....4TH CLAIMANT

NOAH WEKESA SIMIYU.....5TH CLAIMANT

- VERSUS -

TARMAL WIRE PRODUCTS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th November, 2021)

JUDGMENT

Each claimant filed a memorandum of claim against the respondent on 14.06.2017 through Abdiwahid & Associates Advocates. The respondent filed the memorandum of response in each of the files on 11.07.2017 through Namada & Company Advocates. Despite service of the hearing notice the respondent and the respondent's counsel failed to attend the hearing. Each claimant testified to support the respective claim.

The claimant's case is that each was employed by the respondent in the respondent's rolling mills department on diverse date and paid on daily rate but at the end of the month. Their case was that on 06.03.2017 the respondent terminated their respective employment without a just cause or reason. It was summary dismissal without notice, a hearing and a dialogue between the parties.

The 1st claimant claimed for:

- 1) One month's salary in lieu of notice Kshs. 11, 900.00.
- 2) Annual leave accrued 6 x 21 x 397 Kshs. 50, 022.00.
- 3) Salary for March Kshs. 11, 900.00.
- 4) Damages for unprocedural, wrongful and unfair termination Kshs.142, 800.00.
- 5) Punitive and aggravated damages.
- 6) Total Kshs. 216, 622.00.
- 7) Costs

The 2nd claimant prayed for:

- 1) One month's salary in lieu of notice Kshs. 13, 500.00.
- 2) Annual leave accrued $20/12 \times 21 \times 450$ Kshs. 22, 837.00.
- 3) Salary for March Kshs. 13, 500.00.
- 4) Damages for unprocedural, wrongful and unfair termination Kshs.162, 000.00.
- 5) Punitive and aggravated damages.
- 6) Total Kshs. 211, 837.00.
- 7) Costs

The 3rd claimant prayed for:

- 1) One month's salary in lieu of notice Kshs. 13, 500.00.
- 2) Annual leave accrued $7 \times 21 \times 450$ Kshs. 66, 150.00.
- 3) Salary for March Kshs. 13, 500.00.
- 4) Damages for unprocedural, wrongful and unfair termination Kshs.162, 000.00.
- 5) Punitive and aggravated damages.
- 6) Total Kshs. 255, 150.00.
- 7) Costs

The 4th claimant prayed for:

- 1) One month's salary in lieu of notice Kshs. 13, 800.00.
- 2) Annual leave accrued $16/12 \times 21 \times 450$ Kshs. 12, 880.00.
- 3) Salary for March Kshs. 13, 800.00.
- 4) Damages for unprocedural, wrongful and unfair termination Kshs.165, 600.00.
- 5) Punitive and aggravated damages.
- 6) Total Kshs. 206, 080.00.
- 7) Costs.

The 5th claimant prayed for:

- 1) One month's salary in lieu of notice Kshs. 13, 500.00.
- 2) Annual leave accrued $17/12 \times 21 \times 450$ Kshs. 7, 650.00.
- 3) Salary for March Kshs. 13, 500.00.
- 4) Damages for unprocedural, wrongful and unfair termination Kshs.162, 000.00.
- 5) Punitive and aggravated damages.
- 6) Total Kshs. 196, 650.
- 7) Costs.

The respondent's case was as follows. That at material time the claimants were serving on fixed term contracts. The last fixed term contract

expired on 08.03.2017. Thus the claimants' employment ended automatically by effluxion of time and the claim for unprocedural, unlawful and unfair termination has no basis in law. The fixed term contract had an inbuilt notice and claim for a month's pay in lieu of notice is unfounded as there was no premature termination. The claimants were paid cash in lieu of annual leave. The respondent prayed that the claimants' respective suits be dismissed with costs.

The documents filed for parties were admitted in evidence as filed. The claimants testified to support their cases. The claimants testified that on 06.03.2017 they reported at work as usual. They worked and at about 10.00am the supervisor summoned them and they went to the Human Resource Manager's office. The Human Resource Manager told them that their job was over and instructed them to leave the premises. CW1 testified that he did not recall the date the contract was ending.

The Court has considered the evidence including the documents filed for the respondent. It is true that the claimants were serving on a fixed term contract running from 08.02.2017 to 08.03.2017. The Court finds that they all served the contractual term and they were fully paid. The contracts lapsed by effluxion of time as urged for the respondent and the issue of unfair termination and notice pay does not arise as alleged. The documents filed for the claimant show that the claimants were paid for the due leave days throughout the periods served. Each signed a disclaimer stating that each had been paid the final dues including leave payment. The claims for salary in March 2017 was misconceived because they had been paid up to the last contractual working date. In the circumstances the claimants' suits are found unjustifiable. The respondent did not participate at the hearing and there will be no orders on costs.

In conclusion the claimants' respective suits herein are dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 26TH NOVEMBER, 2021.

BYRAM ONGAYA

JUDGE