



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 750 OF 2016

BETWEEN

SWAFI DZORO DANI .....CLAIMANT

VERSUS

TARMAL WIRE PRODUCTS LIMITED.....RESPONDENT

*Rika J*

Court Assistant: Andrew Mwabanga

**Kanyi J & Company Advocates for the Claimant**

**Namada & Company Advocates for the Respondent**

JUDGMENT

1. The Claimant filed his Statement of Claim on 5<sup>th</sup> October 2016. He states, he was employed by the Respondent as a Helper, in December 2014, earning a daily wage of Kshs. 260, later reviewed to Kshs. 300 effective August 2015.

2. He avers, his contract was terminated by the Respondent on 22<sup>nd</sup> July 2016, and was only paid Kshs. 3,555 as terminal dues. He was not heard, and was not given valid reason or reasons, for the decision. He prays for Judgment against the Respondent for: -

- a. Unremitted N.S.S.F contributions at Kshs. 1,600.
- b. 1-month salary in lieu of notice at Kshs. 12,650.
- c. Underpayment of wages December 2014 to April 2015; and May 2015 to July 2016 at Kshs. 89,746.
- d. 12 months' salary in compensation for unfair termination at Kshs. 164,455.
- e. Leave at Kshs. 12,650.
- f. Certificate of Service.
- gg. Costs.
- h. Interest.
- i. Any other relief.

3. The Respondent filed its Statement of Response on 4<sup>th</sup> November 2016. It is admitted that the Claimant was employed by the Respondent, as pleaded. He was a General Worker, employed on fixed term contracts. The first was for 3 months, between 11<sup>th</sup> December 2014 and 16<sup>th</sup> March 2015. This was followed by other fixed- term contracts. The last contract was for 2 months, from 21<sup>st</sup> May 2016 to 21<sup>st</sup> July 2016.

The last contract was not renewed. The Claimant was paid all his dues, and discharged the Respondent. N.S.S.F contributions were deducted and remitted. Notice is not payable, the Claimant having been on a fixed term contract. The Claimant was paid over and above the minimum wage. The contract expired. It was not unfairly terminated to warrant compensation. The Claimant utilized annual leave days, or was paid cash in lieu. Certificate of Service was released to the Claimant. The Respondent prays that the Claim is dismissed with costs.

4. The Claimant gave evidence, as did Osman Yakub, an Employee of the Respondent, on 19<sup>th</sup> February 2020, closing the hearing.

5. The Claimant adopted his Witness Statement filed on 5<sup>th</sup> October 2016. This Statement is a re-run of the Statement of Claim, whose contents are summarized at the beginning of this Judgment. He added that he was injured while in employment. He filed a work injury Claim against the Respondent. He gave evidence in that matter on 21<sup>st</sup> July 2016. When he reported for duty on 22<sup>nd</sup> July 2016, the Respondent terminated his contract. He was not given a hearing, or reason to justify termination.

6. Cross-examined, he confirmed that he worked on fixed-term contracts. He did not recall when the last one expired. He was not advised that there would be no renewal. He was told to go back and collect his terminal dues. He never went on annual leave. He signed leave form, exhibited by the Respondent. He was paid Kshs. 1,365. He was not told it was leave pay. Redirected, he confirmed that he was aware what he was signing the discharge document for. It was explained to him by the Respondent.

7. Osman Yakub adopted his Witness Statement as his oral evidence. It is a replica of the Statement of Response, and need not be restated. He told the Court that he gave fixed-term contracts to Employees. The contracts were renewable. The Claimant's contract expired and was not renewed. The contracts were renewable, running back to back.

**The Court Finds: -**

8. First, the Court must reject in its totality, the evidence of Osman Yakub. The reason for this is that Osman Yakub, in his evidence, described himself as an Employee of the Respondent. He did not establish in what capacity, he was involved in the employment of the Claimant, and in making of the various contracts under which the Claimant served. His name does not appear on the various contracts, either as a Witness or a Party. It is difficult to understand in what capacity Osman Yakub would testify about Claimant's contracts, executed with the Respondent. He did not show himself to have been, a person placed in authority over the Claimant. He was not an Employer to the Claimant, in any hue or colour, or by any stretch of the definition of the term 'Employer', contained in Section 2 of the Employment Act. He did not have any authority of the Respondent, to act on its behalf. The Court cannot place reliance on the evidence of a Co-Employee, whose designation at the workplace is undisclosed, and whose acquaintance with the human resource issues in controversy, is unknown. The evidence of Osman Yakub is rejected.

9. Second, Claimant was employed on various fixed-term contracts. His last contract expired on 27<sup>th</sup> July 2016. It was not terminated by the Respondent. It expired. There was no expectation that it would be renewed. The Claimant alluded to work injury litigation he initiated against the Respondent, as the probable cause of termination. There was no proof that such litigation existed. No case number, pleadings or proceedings in the alleged litigation was exhibited. No link between such litigation, and expiry of the Claimant's last contract, was established. At the close of the contract, the Claimant signed a form, titled 'Disclaimer.' He indicated that he had received all his dues. He stated, he had no further claim or demand whatsoever, against the Respondent. In his evidence before the Court, he affirmed that he understood what he was signing, and the Respondent explained to him everything, before he appended his signature.

10. It is therefore wasteful, to turn around and present this Claim, having discharged the Respondent from future demands, in unequivocal language. **It is ordered that the Claim is dismissed in its totality, with no order on the costs.**

**Dated, signed and released to the Parties electronically, at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 15<sup>th</sup> day of December 2020.**

**James Rika**

**Judge**