



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT MOMBASA  
CAUSE NUMBER 54 OF 2018

BEYWEEN

1. MICHAEL MANYEKI KARIUKI

2. JOHN RANDU KAZUNGU.....CLAIMANTS

VERSUS

STEEL MAKERS LIMITED.....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Chamwada & Company Advocates for the Claimant*

*Alwenya & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimants filed their joint Statement of Claim, on 29<sup>th</sup> January 2018. They state they were employed by the Respondent as Blundler and Tongs Man respectively. The 1<sup>st</sup> Claimant was employed in 2011, the 2<sup>nd</sup> in March 2003. Their contracts were terminated by the Respondent without notice and justifiable cause, in March 2015. The 1<sup>st</sup> Claimant last earned a daily wage of Kshs. 496, equivalent of Kshs. 14,880 monthly; and the 2<sup>nd</sup> Claimant Kshs. 739 daily, translating to Kshs. 22,170 monthly. They were not accorded a hearing and were not given valid reason. They were not paid house allowance. They pray for Judgment against the Respondent, in the following terms: -

a. Michael Manyeki Kariuki: 1 month salary in lieu of notice at Kshs. 14,800; annual leave pay of 5 years at Kshs. 52,080; years of services and house allowance at Kshs. 2,200,000; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 177,000- total Kshs. 2,464,480.

b. John Kazungu Randu: 1 month salary in lieu of notice at Kshs. 22,170; annual leave pay of 12 years at Kshs. 186,228; years of service and house allowance at Kshs. 7,981,200; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 266,040 – total Kshs. 8,455,638.

c. Certificates of Service to issue.

d. Costs, Interest and any other suitable reliefs.

2. The Respondent was served with the Notice of Summons and Statement of Claim, and filed Notice of Appointment of Advocates on 19<sup>th</sup> February 2018. There was no Response to the Claim filed. The Claim was heard by way of formal proof on 12<sup>th</sup> February 2019. Evidence was given by the 2<sup>nd</sup> Claimant, on authority of the 1<sup>st</sup> Claimant filed on 29<sup>th</sup> January 2018.

3. The 2<sup>nd</sup> Claimant restated the contents of the Claimants' Pleadings and Witness Statements on record, in his evidence on formal proof.

**The Court Finds:-**

4. There is on record uncontested evidence, establishing the Claimants were employed by the Respondent. They worked as Blundler and Tongs Man Operator respectively. It is not clear from the Claimants' evidence, what a Blundler and a Tongs Man Operator do, in a steel industry. The 1<sup>st</sup> Claimant was employed in 2011, the 2<sup>nd</sup> in March 2003.

5. It is not contested that they earned daily rates of Kshs. 496 and Kshs. 739, translating respectively, to Kshs. 14,880 and Kshs. 22,170 monthly.

6. There is unchallenged evidence that their contracts were terminated in the month of July 2015 by the Respondent. There was no notice, no hearing and no valid reason, or reasons preceded termination.

**7. The Claimants are granted the prayers for notice pay and compensation for unfair termination as pleaded.**

8. Similarly there is oral evidence to show that the Claimants did not utilize their annual leave entitlement. The Respondent has not availed their annual leave records to contradict them. **Annual leave pay is allowed as sought.**

9. The prayer pleaded as 'years of services and house allowance' is too murky and bloated, to be allowed. It is pleaded jointly. It is not shown which amount comprises service pay, and which relates to house allowance. The 2<sup>nd</sup> Claimant who assumed the responsibility of making the Court understand details of the Claim, did not say much about this obscure, highly inflated prayer, which is jointly pleaded. The figures shown in Claimants Closing Submissions on this item, are completely different from the figures shown in the Statement of Claim. The Claimants were paid daily wages, which under the Regulation of Wages General Order, ordinarily include housing allowance. The prayer for 'years of services and house allowance is rejected.'

10. **Certificates of Service to issue.**

11. **Costs to the Claimants.**

12. **Interest allowed at 14% per annum from the date of Judgment, till payment is made in full.**

IN SUM, IT IS ORDERED:-

***The Respondent shall pay to the Claimants-***

***[a] Michael Manyeki Kariuki: 1 month salary in lieu of notice at Kshs. 14,800; annual leave at Kshs. 52,080; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 177,600 – total Kshs. 244,480.***

***[b] John Randu Kazungu: 1 month salary in lieu of notice at Kshs. 22,170; annual leave at Kshs. 186,228; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 266,040 - total Kshs. 474,438.***

***[c] Certificates of Service to issue.***

***[d] Costs to the Claimants.***

***[e] Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

**Dated and delivered at Mombasa this 21<sup>st</sup> day of June 2019.**

**James Rika**

**Judge**