



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 273 OF 2018

BETWEEN

BAKARI MERI MUKUNDYA.....CLAIMANT

VERSUS

TOP STEEL KENYA LIMITED.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Mboku & Company Advocates for the Claimant

Respondent in Person

JUDGMENT

1. The Claimant filed his Statement of Claim on 25th April 2018.
2. He claims he was employed by the Respondent Steel Company as a Welder between 14th May 2016 and 30 March 2017.
3. He was informed by the Human Resource Manager John Mwalya, on 30th March 2017 that his services were no longer required, as the Respondent had excess Employees.
4. He was paid Kshs. 630 daily, worked 12 hours a day, and 6 days a week.
5. The Claimant avers he was paid the incorrect rate applicable to a Welder under the Regulation of Wages [General] Amendment Order 2015; he was denied notice or pay in lieu thereof; he was not paid pro-rata leave for the period of 10 months worked; he did not receive severance pay; and demands he is entitled to compensation for unfair termination. His total claim is computed at Kshs. 361,772. He prays also for costs, interest and any other suitable order.
6. The Claimant adopts his Witness Statement on record and Documents which include various Wage Orders, Certificate of Service and National Trade Certificates.
7. The Respondent initially instructed the Law Firm of V.N. Okata to respond to the Claim, who later withdrew from representing the Respondent, citing lack of instructions. Subsequently the Claim was fixed for hearing and the Respondent notified in person, but did not attend Court upon hearing, or file Response. The Claimant was heard and rested his case on 2nd July 2019.
8. He restated the contents of his Statements of Claim and Witness, in his evidence before the Court. He adopted as exhibits, documents filed alongside the Claim.

The Court Finds:-

9. The Claim has not been responded to. It is unchallenged. The Claimant has shown that he was employed by the Respondent Company as a Welder for 10 months. His contract was terminated by the Respondent ostensibly on the ground that the Respondent had excess Employees.

10. The Respondent has not shown that termination was based on valid reason, or reasons. He merits compensation for unfair termination and notice pay.

11. The Wage Orders, availed to the Court by the Claimant, support his assertion on underpayment of salary. He was denied pro-rata leave.

12. He did not complete 1 year in service as claimed, to be entitled to severance pay at the rate of not less than 15 days', for each completed year of service. Section 40 [1] [g] of the Employment Act 2007 does not have a provision for pro- rata severance pay. There is no basis for the Claimant to seek severance pay based on an incomplete period of service. This prayer is rejected.

13. He worked for 10 months. Compensation as prayed, equivalent of 12 months' salary appears to the Court disproportionate to the length of service. He did not have long service, and did not show how long he expected to go on working, if the Respondent had not terminated his contract. He nonetheless had a clean record, and the reason offered in justifying termination, had nothing to do with his conduct or performance at work. **He is granted equivalent of 5 ½ months' salary in compensation for unfair termination at Kshs. 122,776.**

14. There shall be Judgment in favour of the Claimant for compensation, notice pay, underpayment of salary, and pro-rata leave, costs and interest.

IN SUM, IT IS ORDERED:-

a) Termination was unfair.

b) The Respondent to pay to the Claimant: notice at Kshs. 22,323; leave days at Kshs. 13,021; underpayment of salary at Kshs. 34,230; and equivalent of 5 ½ months' salary at Kshs. 122,776 – total Kshs. 193,350.

c) Costs to the Claimant.

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

Dated and delivered at Mombasa this 26th day of September 2019.

James Rika

Judge