



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 373 OF 2017**

**BETWEEN**

**CHAKA NYANDO CHIDUNGA .....CLAIMANT**

**VERSUS**

**CARGILL KENYA LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Omondi Waweru & Company Advocates for the Claimant No appearance for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 10<sup>th</sup> May 2017. His Statement of Claim is erroneously indicated as Cause Number 373 of 2016. *The Court amends this, and the record shall uniformly indicate the correct Cause Number as 373 OF 2017.*

2. He states he was employed by the Respondent Company on 2<sup>nd</sup> April 2010. He blended and loaded tealeaves. He was paid a monthly salary of Kshs. 27,000 throughout. His contract was terminated by the Respondent on, or about, 22<sup>nd</sup> August 2015. He was not given notice of, or reasons for, termination. He was not heard. He was not paid terminal dues. He prays for Judgment against the Respondent for:-

- a. 1 month salary in lieu of notice at Kshs. 10,954.
- b. Annual leave pay for 11 years at Kshs. 84,351.
- c. Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 131,456.
- d. Service pay at Kshs. 297,000.

Total....Kshs. 523,762

- e. Unpaid salary up to the date termination letter is issued.

f. Costs.

3. Notice of Summons and copy of the Statement of Claim, are indicated in the Affidavit of Service sworn by Process Server Michael Otieno on 24<sup>th</sup> August 2017, to have been served upon the Respondent on 16<sup>th</sup> May 2017. The Respondent's Human Resources Manager received the Court Processes, signed and stamped on the Return Copies, in acknowledgment of receipt. The Respondent did not file any Response. Hearing went on *ex parte*, on 11<sup>th</sup> December 2017.

4. The Claimant testified he was employed by the Respondent as pleaded in the Statement of Claim. He weighed tea, in addition to blending and loading. He was paid Kshs. 900 per day or Kshs. 27,000 monthly. N.S.S.F and other statutory obligations were not honoured by the Respondent. He testified he was not given notice of, or valid reasons for, termination. He was not paid terminal dues.

**The Court Finds:-**

5. There is no Response filed. The Statement of Claim is unchallenged. The evidence given by the Claimant is unquestioned. The Court has no reason to disagree with the Claimant's position that: he was employed by the Respondent Company as a tea Loader/Blender/Weight Officer; his contract was terminated by the Respondent on, or about, 22<sup>nd</sup> August 2015; there was no notice of termination issued upon the Claimant; no reasons were given for the decision; and the Respondent did not pay any terminal benefits to the Claimant.

6. There are however, inconsistencies in the Claimant's recollection of his employment history and his terms and conditions of service.

7. Paragraph 8 of his Statement of Claim indicates 1 month salary in lieu of notice at Kshs. 10,954. The Claim was not amended. The amount pleaded in compensation for unfair termination is pegged on a monthly salary of Kshs. 10,954. The Claimant did not explain to the Court why he revised this figure to Kshs. 27,000 in his evidence and submissions.

8. The figures itemized and totaled in the Submissions, are not consistent with those contained in the Pleadings. It is submitted at page 1 of the Claimant's Submissions that, the Claimant relies on his Statement of Claim filed on 10<sup>th</sup> May 2016, in establishing his Claim.

9. The date of employment is not clearly stated. Annual leave pay is sought based on 11 years of service. The date of termination is in 2015, which would place the date of employment 11 years back, in 2004.

10. Elsewhere, the date of employment is shown as 2<sup>nd</sup> April 2010, giving the Claimant a service period of 5 years, rather than 11 years. The inconsistencies were not addressed by the Claimant in his oral evidence.

11. The Claimant acknowledges termination of employment took place on or about 22<sup>nd</sup> August 2015. He is not entitled to arrears of salary "*up to when a termination letter will be issued.*" He is aware termination decision was made, notwithstanding that no formal communication of the decision has been made to him.

12. The Court takes guidance from the Pleadings and allows the Claim in terms below:

IT IS ORDERED:-

***a. Termination was unfair.***

***b. The Respondent shall pay to the Claimant 1 month salary in lieu of notice at Kshs. 10,954; equivalent of 12 months' salary in compensation for unfair termination at Kshs. 131,448; annual leave pay of 5 years [105 days] at Kshs. 44,237; and service pay at 15 days' salary for 5***

*complete years of service at Kshs. 31,598- total Kshs. 218,937.*

*c. Costs to the Claimant.*

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

**Dated and delivered at Mombasa this 8<sup>th</sup> day of March 2018.**

**James Rika**

**Judge**