



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

CAUSE NUMBER 372 OF 2017

BETWEEN

EINSTEIN JOSEPH APOPO.....CLAIMANT

VERSUS

CARGILL KENYA LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Omondi Waweru & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 10th May 2017. He states he was employed by the Respondent around April 2004. He loaded and blended tea, and also did general cleaning. He was lastly paid a monthly salary of Kshs. 18,000. His contract was terminated by the Respondent on, or about, 22nd September 2015. He was not notified about termination, or given an opportunity to be heard. Termination was unfair. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 10,954.
- b) Unpaid annual leave of 11 years at Kshs. 92,091.
- c) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 131,456.
- d) Service pay at Kshs. 216,000.

Total....Kshs. 450,430

- e) A declaration that termination was unfair.
- f) Costs and interest.

2. There is an Affidavit of Service filed by Process Server Michael Otieno, indicating the Respondent was served with the Notice of Summons and Statement of Claim. The Respondent did not file anything in response. The Claimant gave evidence in the absence of the Respondent, on 11th December 2017.

3. He restated the contents of his Pleadings and Witness Statement, in his oral evidence. He had gone prepared to do his routine duty on the material day, when he was told by a Security Guard there was no more work. He was not given any reason for termination.

The Court Finds:-

4. The dispute in this Cause is similar to the dispute in this Court's ***Cause Number 373 of 2017, Chaka Nyando Chidunga v. Cargill Kenya Limited***. Both Claims are unchallenged. The Court has no reason not to believe that the Claimant was employed by the Respondent as Tea Loader/Blender/Cleaner. His contract was terminated by the Respondent without notice and just cause.

5. Like in Cause Number 373 of 2017 however, there are inconsistencies in this Claim. Paragraph 9 of the Statement of Claim pleads 1 month notice pay of Kshs. 10,954. Compensation is based on a monthly salary of Kshs. 10,954.

6. The Claimant testified his salary was Kshs. 18,000 monthly, which he states, without reliance on any wage instrument, was below the minimum wage. He submits this was the monthly salary. He does not explain to the Court the figure of Kshs. 10,954 given in his Statement of Claim.

7. At paragraph 3 of the Statement of Claim, the Claimant asserts he worked for the Respondent for 5 years. Elsewhere, he alleges to have worked from 2004. His prayer for annual leave is based on a period of 11 years. In these 11 years, annual leave claimed is for 60 days, which would translate, to annual leave of 5.4 days for every year worked.

8. The figures contained in the Submissions filed by the Claimant have been revised, without explanation, and do not agree with the figures contained in the Pleadings. The Claimant treats his Submissions as an Amended Statement of Claim. The demand letter issued by the Claimant before filing the Claim, states Claimant's monthly salary was Kshs. 10,954 monthly. Why should it be revised to Kshs. 18,000?

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 over a period of 5 years at Kshs. 44,237; and service pay at 15 days' salary for each complete year of service at Kshs. 31,598- total Kshs. 218,937.

c) Costs to the Claimant.

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

Dated and delivered at Mombasa this 8th day of March 2018.

James Rika

Judge