



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 371 OF 2017

BETWEEN

JOHN KITEMA.....CLAIMANT

VERSUS

CARGILL KENYA LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Omondi Waweru & Company Advocates for the Claimant

No appearance by the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 10th May 2017. He states he was employed by the Respondent, as a Tea Blender/Loader in May 2005, earning a monthly salary of Kshs. 18,000 as of the date of termination, 22nd September 2015. His contract was terminated by the Respondent without notice and just cause. He was not paid terminal benefits. He prays for Judgment against the Respondent for:-

- a) Declaration that termination was unfair.
- b) 1 month salary in lieu of notice at Kshs. 10,954.
- c) Annual leave pay of 60 days at Kshs. 92,019.
- d) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 131,456.
- e) Service pay at Kshs. 216,000.

Total....Kshs. 450,430

- f) Costs and interest.

2. There is an Affidavit of Service on record, sworn by Process Server Michael Otieno on 24th August 2017, indicating the Respondent was served with the Notice of Summons and copy of the Statement of Claim. Service was acknowledged. The Respondent did not file any response. The Claimant was heard in the absence of the Respondent, on 11th December 2017.

3. He restated the contents of his Pleadings and Witness Statement, in his evidence. He alluded to introduction of machines at the workplace which rendered him jobless. He at the same time states no reason was given to him for the decision to terminate his contract. He was not given notice of termination.

The Court Finds:-

4. The Claimant was employed by the Respondent as a Tea Blender/Loader, in May 2005. He left employment on 22nd September 2015.

5. He testified he was not given reason for termination of his contract. He however states also, that the Respondent introduced machines at the workplace, rendering him jobless. The reason why Claimant's contract was terminated, in the absence of evidence from the Respondent, is not clear. It is the obligation of the Respondent under Section 43 and 45 of the Employment Act 2007, to prove the reason or reasons, justifying termination of employment.

6. The Respondent did not justify termination. The Claimant is not shown, to have been taken through a fair procedure, whether termination was under Section 40 or 41 of the Employment Act 2007.

7. It is declared termination was unfair.

8. In his demand letter to the Respondent attached to the Statement of Claim, the Claimant states his monthly salary was Kshs. 10,954. He made demand for compensation based on a salary of Kshs. 10,954.

9. On filing the Claim, he adopted a monthly salary of Kshs. 10,954 at paragraph 9 of the Statement of Claim. The prayers are pegged on a monthly salary of Kshs. 10,954. There were no amendments to the Statement of Claim filed on 10th May 2017.

10. In his evidence and submissions, he revises his monthly salary to Kshs. 18,000. Closing submissions do not serve the same purpose as Amended Pleadings. Revision of the salary by the Claimant is rejected by the Court.

11. The Claimant is granted 1 month salary in lieu of notice at Kshs. 10,954.

12. He is allowed the prayer for compensation for unfair termination, at the equivalent of 12 months' salary, at Kshs. 131,448.

13. He was clear in his evidence that he worked from 2005 to 2015, a period of 12 years. He pleads for annual leave over a period of 12 years under paragraph 9 of the Statement of Claim. In his main prayers however, he reduces the years to 2 years. He states the actual days owed are 60 days, implying that he most likely, was entitled to 30 days annually. There is no evidence however, of 30 days' annual leave entitlement. The minimum number of annual leave days under the Employment Act is 21 days. **The Court shall allow the prayer for annual leave pay over a period of 2 years, at 42 days, amounting to Kshs. 17,694.**

14. The prayer for service pay is allowed at 15 days' salary, for every completed year of service at Kshs. 75, 835.

15. Costs to the Claimant.

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

IN SUM 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 2 years at Kshs. 17,694; and service pay at 15 days' salary for every completed year of service, at Kshs. 75,835- total Kshs. 235,931.

[c] Costs to the Claimant.

[d] Interest granted at the rate of 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