



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 171 OF 2015

BETWEEN

JOHN SIMIYU WEFWAFWA CLAIMANT

VERSUS

KRYSTALLINE SALT LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

IRB Mbuya & Company Advocates for the Claimant

Federation of Kenya Employers for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed his Statement of Claim, on the 27th March 2015. He states he was employed by the Respondent Salt Manufacturing Company as Salt Miner, on 10th September 1999. He was initially employed on casual terms. His terms were later converted into regular employment. He worked up to 22nd November 2014, a period of 15 years and 2 months. His contract was terminated at the instance of the Respondent. He was earning Kshs. 298 per day or Kshs. 8,940 monthly, as at the time of termination. He states he worked without rest for the entire period. He states termination was on the ground that the Claimant had instigated a Claim for work injury compensation against the Respondent, at Malindi SRMCC Number 302 of 2013. He was not given notice of termination, and was denied a hearing. He was not registered to any Social Security Plan. He prays for the following orders against the Respondent:-

a) 1 month salary in lieu of notice at Kshs. 12,148.

- b) Accrued annual leave pay at Kshs. 148,847.
- c) Service pay at Kshs. 105,128.
- d) Compensation for wrongful dismissal at Kshs. 147,777.
- e) Underpayment at Kshs. 188,461.
- f) Punitive damages.
- g) Certificate of Service.
- h) Costs and Interest.

2. The Respondent filed its Statement of Response on 25th May 2015. Its position is that the Claimant was employed on Piece Work terms. He was paid Kshs. 100 for breaking 1 block of crystallized salt. He was paid Kshs. 220 for every piece of salt unloaded from a Trailer. He would be assisted by friends and family, and payment made on the amount of work done, regardless of the time taken to complete the work. He did not work continuously. He did not work when it was raining. He is not entitled to the remedies sought, as he was a Piece Worker. He was not dismissed, and is free to continue serving on piece work rate.

3. Parties agreed to have the dispute considered and determined on the strength of their Pleadings, Submissions and Documents on record. The dispute was last mentioned on 23rd June 2016, when Parties confirmed the filing of their Submissions and the Award of the Court reserved for 5th September 2016.

Upon evaluation of the respective positions of the Parties; and upon consideration of similar factual and legal arguments in this Court's Cause Number 176 of 2015, between Garama Karisa Masha v. Krystalline Salt Limited; the Court Finds:-

4. The Claimant in the current Cause was a Piece Worker, as defined under Section 2 of the Employment Act 2007.

5. He was paid Kshs. 100 for breaking 1 piece of salt, and Kshs. 220 per every piece loaded onto the Trailer. He was not limited in time, and was not paid a daily, weekly, or monthly rate. He was neither a Casual nor a Regular Employee. Casual Employees are paid a defined wage per day. Regular Employees are paid at regular intervals. The Claimant was paid a specific rate for quantified deliverables. He was a Piece Worker.

6. His claim that he was initially a Casual Employee, who later converted into regular employment, is not supported by the evidence. There are Breaking Petty Cash records attached to the Statement of Response, showing the quantities delivered by the Claimant on specific months, and the rates paid to him. Nowhere do these records show he was in casual employment, earning Kshs. 298 per day. He did not challenge the records availed by the Respondent.

7. The claims for underpayment of wages; notice pay; annual leave pay; outstanding house allowance; service pay; compensation; and punitive damages are unwarranted. He earned a piece rate which he negotiated and agreed upon with the Respondent, before he went salt mining and loading. It has also been advised upon him by the Respondent, that he is free to return and work under the Piece Work arrangement. His assertion that he was dismissed because he sued the Respondent for work injury is improbable. ***The Claim has no merit and is rejected with no order on the costs.***

Dated and delivered at Mombasa this 5 day of September, 2016.

James Rika

Judge