



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO 1605 OF 2013**

**ISAAC ONSARE OBONDI.....CLAIMANT**

**VS**

**VALUE PAK FOODS LIMITED.....RESPONDENT**

**AWARD**

**Introduction**

1. On 4th October 2013, the Claimant sued the Respondent for unfair termination of employment. Alongside the Memorandum of Claim, the Claimant filed a Notice of Motion under certificate of urgency seeking orders for reinstatement and payment of salary arrears, leave allowance and other benefits. When the Notice of Motion came before me on 4th October 2013 I certified it urgent and directed the Claimant to serve the Respondent.

2. On 25th November 2013, Mr Ochako appearing for the Claimant and Mr. Kaka Kamau appearing for the Respondent notified the Court that the parties were exploring the possibility of an out of court settlement. The parties filed a consent on 27th November 2013 in the following terms:

a) That the Claimant's entitlements from the date of employment to the date of termination would be calculated and paid to the Claimant within 14 days.

b) That the Respondent would file their Response within the next 21 days.

c) That thereafter the parties would proceed by way of written submissions on the issue of whether the termination of the Claimant's employment was lawful.

3. This award is therefore limited to the issue of legality of the termination of the Claimant's employment.

**The Claimant's Case**

4. The Claimant was employed by the Respondent in various positions from July 2007 until 17th September 2013 when his employment was terminated on the ground that the Respondent was experiencing low season in production and delivery of raw materials from farmers. The Claimant's salary at the time he left the Respondent's employment was Kshs. 16,259.

**The Respondent's Case**

5. In its Reply filed on 31st January 2014, the Respondent stated that the Claimant was employed on

18th September 2008 as a casual worker.

From May 2012, the Claimant was issued with a monthly contract. According to the Respondent, the Claimant's employment record was poor and he had been given several verbal warnings by his supervisors.

6. From January 2013, the Respondent began experiencing low deliveries of raw materials from farmers. The Respondent therefore decided to release some employees who had disciplinary cases, including the Claimant.

### **Determination**

7. The single issue for determination in this award is whether the termination of the Claimant's employment was lawful. The termination letter dated 17th September 2013 states *inter alia*:

***“We are experiencing low season in our production and delivery of Raw Materials from our farmers, therefore the company has decided to terminate your services with immediate effect from 17/09/2013 as stock data controller assistance.”(sic)***

8. A plain reading of this letter indicates that the termination of the Claimant's employment was based on what is commonly referred to as redundancy. The law recognises redundancy as a valid mode of termination of employment subject to the following conditions which are set out in Section 40 of the Employment Act, 2007:

- a) ***Where the employee is a member of a trade union, the employer notifies the union of which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for and the extent of the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;***
- b) ***Where the employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;***
- c) ***The employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;***
- d) ***Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;***
- e) ***The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;***
- f) ***The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and***
- g) ***The employer has paid an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.***

9. In its Reply and written submissions, the Respondent alluded that the Claimant's employment record may have been a consideration in his selection among the employees to be declared redundant.

10. However, the Court finds that the definition of redundancy in Section 2 of the Employment Act, 2007 and the corresponding section in the Labour Relations Act, 2007 excludes any fault on the part of the employee declared redundant. Additionally, apart from an unsigned attendance register for 2008 to 2010, no evidence was rendered to prove the Respondent's allegation that the Claimant had a poor

employment record. The Court has therefore ignored this allegation in reaching its decision.

11. From the record, there is no evidence that the Respondent complied with any of the conditions set out in Section 40 of the Employment Act, 2007. The Court therefore finds the termination of the Claimant's employment to have been unfair within the meaning of Section 45 of the Act and makes an award in favour of the Claimant for the sum of Kshs. 97,554 being 6 months' salary in compensation.

12. Since part of the Claimant's claim was settled by agreement of the parties, I direct that each party will bear their own costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF MARCH 2014**

**LINNET NDOLO**

**JUDGE**

*In the Presence of:*

.....*Claimant*

.....*Respondent*