



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 457 OF 2015**

**BETWEEN**

**HAMISI MADZUNGU .....CLAIMANT**

**VERSUS**

**PRIDE INN HOTELS & INVESTMENT LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mwangi Njenga & Company Advocates for the Claimant*

*Morara Apiemi & Nyangito Advocates for the Respondent*

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 9<sup>th</sup> July 2015. He states he was employed by the Respondent Hotel as a Cleaner, on 1<sup>st</sup> July 2003. He was issued with a 30 day notice of termination of employment dated 1<sup>st</sup> May 2015. His last salary as shown in his pay slip, was Kshs. 11, 248 monthly. The Respondent explained it was no longer able to sustain all staff in its payroll due to hard economic times. He would exit on redundancy. The process did not adhere to Section 40 of the Employment Act 2007. He was denied paternity leave while in employment. He prays for Judgment against the Respondent for:-

- a. Severance pay.
- b. 1 month salary in lieu of notice.
- c. Paternity leave pay.
- d. Declaration that termination was unfair.
- e. Compensation for unfair termination.
- f. Costs, Interest and any other suitable relief.

2. The Respondent filed its Statement of Response on 12<sup>th</sup> August 2015. Its position is that Claimant's contract was terminated fairly and lawfully. His Certificate of Service is ready for collection. The Respondent urges the Court to dismiss the Claim with costs to the Respondent.

3. Parties were heard and closed their respective cases, on 13<sup>th</sup> December 2016. The Claimant gave evidence, as did Respondent's Group Human Resources Manager Nicholas Odhiambo Ochieng'. The dispute was last mentioned in Court on 2<sup>nd</sup> February 2017, when the Claimant confirmed filing of his Submissions and Judgment scheduled for delivery.

4. The Claimant was issued a 30-day notice of termination of employment by the Respondent, dated 1<sup>st</sup> May 2015. He was told the Respondent was not able to retain all staff due to hard economic times. Redundancy was the sole ground, in justifying termination.

5. It is quite clear that the Respondent did not follow the law of termination of employment on the ground of redundancy, under Section 40 as read together with Section 45 of the Employment Act 2007.

6. The Claimant was not issued with a notice of intended redundancy under Section 40[1] [b] of the Employment Act 2007. Instead, he was given a direct notice of termination, which could be argued to have issued under Section 40 [1] [f] or Section 35 [1] [c] of the Employment Act. It is noted the Respondent later paid the Claimant Kshs. 30,000 which was explained to represent service, rather than severance pay.

7. There was no notice of intended redundancy, stating the reasons for, and extent of the intended redundancy, issued to the Local Labour Office. Instead, the notice of termination of employment was indicated as being copied to the Labour Officer.

8. There was no consultation in any form, involving the Respondent, the Claimant and the Labour Office. The letter of 1<sup>st</sup> May 2015, merely communicated a decision already made by the Respondent, to terminate its relationship with the Claimant.

9. It was not shown what measure was applied, in selecting the Claimant alone, from the entire labour force. There were 13 Cleaners. Only the Claimant was chosen. The Respondent needed to satisfy the demand of Section 40[1] [c] of the Employment Act on seniority in time, skill, ability and reliability of each of the 13 Cleaners. It is noted the Claimant had worked for 12 years.

10. He was not paid terminal dues as of the date he left employment. Section 40 requires the Employer *has* paid redundancy dues, before terminating the contract of employment. Severance, notice, and any outstanding annual leave days, should be paid to the Claimant before he has exited the workplace. Redundancy package is meant to cushion the Employee against the vagaries of lost employment. The Claimant was paid nothing until Ochieng' was employed. He advised the Claimant is paid service pay of Kshs. 30,000.

11. Section 28 [8] of the Employment Act 2007 allows new Fathers paternity leave of 2 weeks with full pay. It does not however give any guidance, unlike in the case of maternity leave, on how the Father is to go about applying for such leave. A Female Employee is guided to give the Employer not less than seven days' notice of her intention to go on maternity leave on a specific date, and return to work thereafter. The Female Employee shall, if required by her Employer, produce a medical certificate issued by a qualified medical practitioner, confirming her pregnancy. There are no rules of engagement between an Employer and a new Father who wishes to take paternity leave.

12. The Claimant was not able to show that he made an application for paternity leave, and provided the Respondent with evidence that he was a new Father. Ochieng testified the Claimant did not supply the Respondent with the notification of birth. The existence of a notification of the birth of a Child, without evidence that such notice has been availed to the Employer, is not sufficient to warrant an order for paternity leave pay.

13. There is need however to relook into the law on paternity leave, and define the process that a new Father and his Employer should follow, in exercising the right of, and discharging the obligation to grant, paternity leave.

14. In the end the Court is satisfied termination on account of redundancy was unfair. The Claimant is entitled to severance pay at 15 days' salary for every complete year of service and 1 month salary in lieu of a proper notice. He is granted the equivalent of 12 months' salary in compensation for unfair termination. The prayer for paternity leave pay is declined. He is granted the prayers for Certificate of Service, Costs and Interest.

IN SUM, IT IS ORDERED: -

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

***b. The Respondent shall pay to the Claimant: the equivalent of 12 months' salary in compensation for unfair termination at Kshs. 134,976; 1 month salary in lieu of a proper notice at Kshs. 12,248; and severance pay based on 15 days' salary for each complete year of service at Kshs. 84,793- total Kshs. 232,017.***

***c. Certificate of Service to issue.***

***d. Costs to the Claimant.***

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

Dated and delivered at Mombasa this 27<sup>th</sup> day of June 2017.

**James Rika**

**Judge**