



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NO. 413 OF 2014

**BETWEEN**

MARSHAL WANDERA OUMA ..... CLAIMANT

**VERSUS**

TRANSOCEANIC PROJECTS & DEVELOPMENT KENYA ..... RESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

Mr. Were Advocate, holding brief for Mr. Wasuna Advocate instructed by Wasuna & Company  
Advocates for the Claimant

Mr. Otieno Advocate instructed by Omondi Waweru & Company Advocates for the  
Respondent

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ISSUES IN DISPUTE: REDUNDANCY BENEFITS

AWARD

(Rule 27(1) (a) of the Industrial Court (Procedure Rules 2010)

1. Mr. Marshal Wandera Ouma was employed by the Respondent Logistics and Project Management Company as the Human Resource Manager, on the 10th October 2008.
2. He worked in different Projects within East and Central Africa. Clause 5 of his contract of employment gave him a monthly salary of Kshs.125,000, which was subject to review from time to time.
3. On 27th May 2014, the Respondent notified the Claimant that due to continuous decline in business, coupled with continuous losses and continuous retrenchment of Employees over the months, the Respondent was left with no alternative but to terminate the Claimant's services. Termination became effective 1st June 2014.
4. The validity of the redundancy is not contested. The Claimant faults the redundancy dues offered and paid to him. He filed this Claim on 29th August 2014, seeking redundancy benefits made up as follows:-

(a) Severance pay based on the period October 2008 to 1st June 2014 at a total of Kshs.8,598,311.

(b) Pay for 45 days of annual leave

(c) 2 months' salary in lieu of notice at Kshs.175,000 per month. He claims Kshs.8,748,311 in total.

5. The Claimant received from the Respondent:-

a) 1 month salary in lieu of notice at Kshs.125,000.

b) 32 days of annual leave encashed at Kshs.133,333.

c) Severance pay at 15 days salary for 5.5 years, based on the monthly salary of Kshs.125,000.

The Claimant was paid a net sum of Kshs.322,798 through a Cheque dated 4th June 2014, which cleared from the Respondent's Barclays Bank Account on 5th June 2014.

6. The Respondent filed its Statement of Response on 27th September 2014. Parties agreed to have the Court consider and determine the dispute on the strength of their Pleadings, Bundle of Documents and Closing Submissions. They confirmed the filing of the Closing Submissions to the Court on the 27th February 2015.

#### *The Court Finds*

7. The Claimant's known salary was Kshs.125,000 per month. This is what is shown in his contract of employment. Although the rate was subject to review under Clause 5 of the contract, there is no evidence review was carried out, and the Claimant awarded a pay hike to Kshs.175,000 per month.

8. His evidence of pay hike at page 256 of his Bundle of Documents, is a piece of paper, with some picture at the centre with the printed name COFTEA TEA TIME. The name Marshal appears by the side, handwritten with the figure of Kshs.125,000 shown to have been cancelled, and Kshs.175,000 inserted below it. It is not known who authored the impressions at page 256. This evidence is supplemented by email messages at page 257, where the Claimant requests for adjustment of records, to show his new monthly gross pay, effective 1st August 2012. No figures are mentioned.

9. These documents do not assist in establishing the claim that the Claimant's salary was reviewed from Kshs.125,000 to Kshs.175,000. The Claimant was in employment between 1st August 2012 to 1st June 2014, during which period he should have obtained Pay Advice indicating a salary of Kshs.175,000. The papers brought to Court by the Claimant at best, show there perhaps were some discussions with his Employer, to adjust the salary. They do not in the least capture any adjustment.

10. The recalculation by the Claimant of his redundancy benefits based on the monthly salary of Kshs.175,000, instead of the rate of Kshs.125,000 per month adopted by the Respondent, is incorrect. The claims for severance pay, leave pay and notice pay based on the sum of Kshs.175,000 per month are refused.

11. The contract of employment allowed the Claimant to have 1 month notice of termination, or 1 month salary in lieu of notice under Clause 9(b). There was no other document shown to the Court, granting the Claimant 2 months' notice or 2 months' salary in lieu of notice. The Claim for additional notice pay is declined.

12. The Claimant was paid Kshs.133,333 for 32 days of annual leave. The Claimant has not established how an additional 12 days comes about. The claim for additional annual leave pay is refused.

13. It seems to the Court, the Claimant was unsure about what he should have claimed from the Respondent at the time of filing the Claim.

14. This is shown in his Closing Submissions, where he expands his grievance against the Respondent to include payment of per diem of US Dollar 186 for 256 days; gratuity; relocation fees; and underpayment of Kshs.10,000 for 33 months. These are claims raised in the Closing Submissions in afterthought, and have no legal or factual foundation. His Claim in the Statement of Claim is a total of Kshs.8,748,311. He appears to have calculated severance pay, not only on the assumption that his basic salary on termination was Kshs.175,000, but also on the mistaken formula of 15 days' salary for each month completed in service, instead of each year completed in service. This resulted in the bloated figure of Kshs.8,598,311 computed by the Claimant as severance pay. In the Submissions, the total figure claimed as redundancy benefits is Kshs.25,283,636.

15. The Court is convinced the Respondent acted fairly, legally and within the terms of the contract regulating the employment relationship. The correct redundancy benefits, under Section 40 of the Employment Act, were paid. The Claimant has received his dues, and should let go.

IT IS ORDERED:-

**(a)        *The Claim has no merit and is dismissed in its totality.***

**(b)        *Costs to the Respondent***

Dated and delivered at Mombasa this 13th day of May, 2015

**James Rika**

**Judge**