



REPUBLIC OF KENYA  
 IN THE INDUSTRIAL COURT AT MOMBASA  
 CAUSE NUMBER 501 OF 2014

**BETWEEN**

- 1. SALIM IBRAHIM
- 2. REHEMA MALI ABDILLAHI
- 3. SEBASTIAN KASHERO .....CLAIMANTS

**VERSUS**

OCEAN SPORTS 2006 LIMITED .....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

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*Claimants in Person*

*Ms. Muyaa Advocate instructed by Muli & Ole Kina Advocates for the Respondent Absent*

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ISSUE IN DISPUTE: REDUNDANCY

AWARD

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

1. The 3 Claimants were employed by the Respondent Hotel in various capacities, and on diverse dates. Salim was employed on 1<sup>st</sup> August 2010 as the Head Maintenance, earning a gross monthly salary of Kshs. 35,000 as of the date he left employment. Rehema was employed on 1<sup>st</sup> April 2008. She was the Human Resource Manager, earning a gross monthly salary of Kshs. 40,000 as of the date she left employment. Sebastian was employed on 1<sup>st</sup> August 2009, earning a gross monthly salary of Kshs. 64,419 on exit. He was the Chief Accountant.

2. All the Claimants left employment on the ground of redundancy. They were issued notices of redundancy dated 19<sup>th</sup> September 2014, to take effect on the 19<sup>th</sup> October 2014. They were disaffected, and filed this Claim on the 16<sup>th</sup> October 2014, seeking the payment of 6 months' salary in compensation for unfair termination; pending annual leave days; notice pay; traveling allowance; severance pay; arrears of salary; costs; and certificates of service. The Respondent filed its Statement of Response on 18<sup>th</sup> November 2014, stating its redundancy decision was justified and carried out fairly.

3. On 3<sup>rd</sup> November 2014, Parties informed the Court they had settled on most of the items. Salim was paid Ksh. 176,973; Rehema Kshs. 246,781; and Sebastian Kshs. 322, 642 in redundancy packages. The only outstanding item for the determination of the Court is whether redundancy was carried out fairly and lawfully, and whether the Claimants merit compensation for unfair termination.

4. The Claimants gave evidence on the 6<sup>th</sup> July 2015. The Respondent and its Advocates did not attend Court on the hearing date. The Claimants basically adopted their Statement of Claim. Salim testified the minutes of the meeting between Management and Staff on the subject, held on 22<sup>nd</sup> September 2014, states there were 3 Management Employees to leave on redundancy. However, 4 were listed under paragraph 1, to include the 3 Claimants and Emily, the latter named as the General Manager. The listing of Emily was meant to conceal the discriminatory nature of the process, as she was not affected by the redundancy. Emily could not as alleged, ensure terminal benefits were paid, if she too had left on redundancy. Rehema told the Court Florian Biziere was the Chief Chef. He was not the General Manager. She had the Personnel Files. She knew he was the Chief Chef, not the General Manager. Florian could therefore not terminate the Claimants' contracts; he did not have the capacity to do so. Sebastian concluded the testimony by the Claimants, stating he was in Management and had no information on the impending redundancy. He had attended Board of Directors' meetings. There was no mention of a redundancy situation. Work is still available at the Respondent Hotel. The Claimants pray the Court to find termination was unfair, and grant them 6 months' salary in compensation for unfair termination.

#### ***The Court Finds:-***

5. From the above evidence, documents and pleadings filed by the Parties, there is no reason to doubt the Respondent Hotel experienced a genuine redundancy situation. The Staff were involved in meetings with the Management prior to the declaration of redundancy. There was common understanding in the meetings that the Respondent was in financial distress. The Management had gone as far as seeking Bank Loan to meet its obligations to the Staff. Management had attempted to reduce the working days. It was suggested the Employees take un-paid leave of 15 days each month. Rehema who is one of the Claimants is quoted in the meeting of 4<sup>th</sup> July 2014, asking all Employees to take the situation positively, as the situation was beyond the Management's control. The genuineness of the redundancy situation can therefore not be questioned.

6. The procedure in arriving at the redundancy decision met the threshold under Section 40 of the Employment Act 2007. The Employees were consulted as early as July 2014. Notices issued only in September and became effective in October 2014. There were consultations at every turn. Rehema as the Human Resource Manager was indeed central to these consultations. It is difficult to accept the position of Sebastian, that as a Management Employee privy to the Board meetings, he had no inkling of the financial problems rocking the Business, and the need for business reorganization. He was the Chief Accountant. He attended the consultative meeting of July 2014. The Respondent negotiated with the Claimants their exit packages, which have been paid, even though after the Claim was filed. The Claimants do not dispute that any entitlement granted under Section 40 remains un-paid.

7. Selection was not shown to be discriminatory. Emily was the General Manager as of the 22<sup>nd</sup> July 2014, and as explained in the Affidavit of Florian Biziere, was expectant and due to go on maternity leave. It was thought, which the Court does not necessarily endorse, that because she was expectant, she is included in the list of the Employees leaving on redundancy, and Florian Biziere, assumes the role of General Manager. The Claimants were not able to show that the placing of Emily under 'redundancy' while in truth she was supposed to be on maternity leave prejudiced them. They did not say if she has

since resumed her role. Her position did not fall redundant; it continued to be held by Florian. The Parties may have misperceived the nature of redundancy in relation to Emily, but her being categorized as having left on redundancy, prejudiced no one, and is far removed from a colourable act on the part of the Respondent.

8. There is no merit in the Claimants' position that Florian was merely a Chef, not the General Manager, with the authority to drive the redundancy process. It is true the Acting Manager was Emily, and Florian held an Entry Permit showing his profession as Executive Chef. Florian explained in his Affidavit that he had in addition to the role of Chief Chef, been acting as the Assistant Manager to his Wife Emily. Once it was determined she leaves work on maternity-cum-redundancy, Florian took the position of General Manager. He negotiated the redundancy packages with the Claimants. He authorized payments. He appears to have been the face of the Business. The Claimants cannot later on question his authority. His profession as Executive Chef did not bar him from being General Manager. The owners of the Business entrusted their Hotel to the Man and his Wife, and how the 2 were ranked in the organogram, their status in Management, was not an issue that prejudiced the Claimants' terms of exit. There is no material from the Directors, alleging the explanation by Florian was false, or in any way suggesting he acted without authority. In all, the Court finds no fault with the redundancy. It was a genuine redundancy situation, fundamentally carried out in accordance with the process created under Section 40 of the Employment Act. ***The Claim has no merit. It is ordered the Claim is hereby dismissed, with no order on the costs.***

Dated and delivered at Mombasa this 31<sup>st</sup> day of July 2015

James Rika

Judge