



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

**AT NAIROBI**

**CAUSE NO. 1223 OF 2010**

**PAUL MUSILI MUTAMBUKI ..... CLAIMANT**

VERSUS

**HARDWICK LIMITED ..... RESPONDENT**

Mrs Gakoi for the Claimant

Mr. Onyoni Opini for the Respondent

**JUDGMENT**

1. The Claimant alleges to have been declared redundant by the Respondent on 22 March 2010 and ordered to vacate the Respondent's premises.
2. It is his claim that he was employed by the Respondent in August 2008 in the capacity of Human Resource Manager earning a monthly salary of Kshs.58,384.62 as shown in his pay-slip marked Annex B1 to the statement of claim. The Claimant, claims Kshs.765,227.75.
3. The Respondent admits that it employed the Claimant on 6<sup>th</sup> August 2008 and was given a letter of appointment signed by the Claimant on 22<sup>nd</sup> August 2008.
4. It is also not in dispute that the termination of the Claimant was on 23<sup>rd</sup> March 2010 vide a letter of termination of the same date.

The Claimant was paid terminal dues as per Appendix B2 to the Statement of Claim and now claims;

- i. service gratuity calculated as follows:  $(58,384.62 \times 1.66 \times \frac{2}{3})$  in the sum of Kshs.64,612.31; and
- ii. twelve months salary being compensation for unlawful termination.

5. The letter of termination dated 22<sup>nd</sup> March 2010 gives no reason for the termination of the Claimant's service. The Claimant states in his pleadings and in his evidence before Court that he was wrongfully declared redundant.

The Respondent did not testify in this matter but only relied on the pleadings and written submissions.

6. By a letter dated 24<sup>th</sup> June 2010 written to the Advocate for the Claimant, **Mr. Peter K. Kibogo** the Group Human Resource Manager offered to pay the Claimant severance pay equivalent to one month's salary since the Claimant had served for seventeen months only.
7. In terms of **Section 40(1)(g)**, of the **Employment Act, 2007** the employer ought to have paid severance pay at the rate of not less than fifteen days pay for each completed year of service. Accordingly the Claimant is entitled to a month's salary severance pay and the Court awards the Claimant Kshs.58,384.62 accordingly.
8. In terms of the letter of Appeal against termination of the Claimant's services dated 30<sup>th</sup> March 2010, the Claimant states that the reason given to him verbally by the Respondent being, inability to pay his salary was in his view genuine but asked for payment of extra terminal benefits other than the one month's salary in lieu of notice that had been paid.
9. The Court finds that this was a genuine case of declaration of redundancy and the loss suffered by the Claimant is well mitigated by the terminal benefits already paid. The Award of severance pay in the sum of Kshs.58,384.62 suffices.

The Award is payable with interest at Court rates from the date of this judgment to payment in full.

The Respondent is also to pay the costs of this suit.

**Dated and Delivered at Nairobi this 16<sup>th</sup> day of July, 2014.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**