



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

**CIVIL APPEAL NO. 106 OF 2006**

**PATRICK MUSALI.....APPELLANT**

**VERSUS**

**KENYA WILDLIFE TRAILS LTD.....RESPONDENT**

*(An appeal from the judgement of Hon. S. Were,*

*resident Magistrate delivered on 26<sup>th</sup> January 2006 in*

*CMCC No. 205 of 2004 at Milimani Commercial Courts, Nairobi)*

**JUDGEMENT**

1. Patrick Musali, the Appellant herein, filed a suit against

Kenya Wildlife trails Ltd, the Respondent herein, before the Chief Magistrate’s court at Nairobi Milimani commercial Court vide the plaint dated 5<sup>th</sup> January 2004. In the aforesaid plaint the Appellant sought for payment of kshs.88,666/80 plus costs and interest. The respondent filed a defence to resist the appellant’s claim. The Appellant testified without summoning independent witnesses. The Respondent summoned two witnesses to buttress its defence. In the end Hon. Were, learned Resident Magistrate found that the Appellant’s dismissal was lawful and that he was not entitled to severance pay nor 1 month salary in lieu of notice. The learned Resident Magistrate however awarded the Appellant the following:

i. Leave pay and allowance	-	ksh.8,500
ii. 15 days salary	-	ksh.3,750
iii. Salary arrears	-	<u>1,416</u>
 Total	 -	 <u>13,666/=</u>

The Appellant was dissatisfied hence this appeal.

2. On appeal, the Appellant put forward the following grounds

in his Memorandum of Appeal

1. *The learned trial magistrate erred in law and fact in reaching a decision which was against the weight of the evidence on record.*
2. *The learned trial magistrate erred in law and fact in finding that the appellant’s dismissal from*

*employment was lawful.*

3. *The learned trial magistrate erred in law and fact in failing to find that the circumstances surrounding the dismissal of the Appellant from employment amounted to redundancy and further erred when he failed to award the Appellant damages equivalent to what the Appellant would have been entitled to had he been declared redundant.*
4. *The learned trial magistrate erred in law and fact in failing to find that the Appellant was entitled to severance pay and/or one month's salary in lieu of notice.*

3. When the appeal came up for hearing, the Appellant was the only party who turned up. Therefore this court did not get the arguments of the Respondent in response to the appeal.

4. Mr. Amuga learned advocate for the Appellant argued that

the trial magistrate erred by failing to hold that the Appellant should have been declared redundant instead of being unlawfully sacked. It is Mr. Amuga's submission that the Respondent took the option to sack the Appellant with the intention of avoiding paying the Respondent his redundancy dues.

5. This being the first appellate court, this court is enjoined to

re-evaluate the case that was before the trial court. It is the evidence of the Appellant that he was sacked because of his involvement in Trade Union affairs and particularly the idea of rallying the office employees to reject the Respondent's intention to reduce their salaries by 20% or reduce the workforce by 20% due to the falling fortunes in the tourism sector in 2003. The Appellant's argument is that since he was among the shop stewards who led the other employees in resisting the respondents proposals, he was targeted for dismissal. He relied on the letter he was given dated 28.6.2003.

6. The Respondent countered the Appellant's evidence by stating

that the Appellant was dismissed for gross misconduct. The Respondent produced various correspondences which were given to the Appellant. Some were warning him for various offences he committed. The respondent stated that the Appellant had been put on notice for eminent summary dismissal. The Respondent stated that the Appellant did not change as warned hence it became necessary to sack him summarily. After a careful perusal of the letters issued to warn the Appellant on various occasions, it is clear that those correspondences date way back before the year 2003. Those letters also involved a myriad of issues not related to the activities of a trade union. In fact the letters are in respect of issues related to neglect of duty, negligent performance of duty and insubordination. The warning letters began long before the Appellant became a shop steward.

7. Taking into account all the evidence and the circumstances

facing the Respondent, I am of the view that the Respondent

was entitled to summarily dismiss the Appellant. Therefore the learned Resident Magistrate cannot be faulted over her decision.

8. In the end I see no merit in this appeal. It is dismissed. Since

the Respondent did not turn to contest the Appeal, I deny it

costs.

**Dated and delivered in open court this 19<sup>th</sup> day of June, 2015**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant