



REPUBLIC OF KENYA

High Court at Nakuru

Cause 24 of 2012

(Formerly Nairobi Cause No. 651 of 2011)

DOUGLAS KARIUKI KAGAI.....CLAIMANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

PYRETHRUM BOARD OF KENYA.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd March, 2013)

JUDGMENT

The claimant, **Douglas Kariuki Kagai** filed the statement of claim dated 20.04.2011 through Kaniaru & Kaniaru Advocates. The claimant prayed for orders against the respondent for orders:

- a) **The respondent releases a breakdown of the claimant's entitlement obviously taking into full account the long service rendered to the 2nd respondent; allows him a period of 40 days to consider and within that time to challenge the level of the award, if necessary.**
- b) **The 2nd respondent releases the claimant's package with immediate effect on complying with prayer (a) here above if the claimant does not challenge the award.**
- c) **Given the pain, suffering and depression endured since the claimant left employment, award such compensation as the court may deem fit.**
- d) **Costs of the claim with interest until payment in full.**

The respondents through the Attorney General filed the memorandum of defence on 27.06.2011 and the amended memorandum of response on 26.07.2011. The respondents prayed that the claim be dismissed with costs.

On 19.02.2013, and upon agreement of the parties, the case was fixed for hearing on 11.03.2013. At the hearing counsel for the respondent was absent for reasons that were not known to the court and the court directed the hearing to proceed ex-parte. The claimant gave evidence to support his case. He stated that he was at the time of the hearing in self-engagement as a farmer. That he was previously employed by the respondent as a mechanic from 1979 to until 7.08.2009 when the respondent served him with the letter of termination on account of redundancy being appendix 3 on the memorandum of claim. The letter addressed to the claimant stated as follows:

“Dear Mr. Kagai,

RE-ORGANIZATION OF PYRETHRUM BOARD OF KENYA

The Government is in the process of reviving the Pyrethrum Board of Kenya where you have been a valued employee for a number of years. The revival plan adopted by the Government calls for the release of a number of staff to reduce the wage bill and provide funds to be meet payments to farmers that are critical to turning around the Board.

You have been identified for the redundancy package detailed below:

- Notice or pay in lieu of notice.
- Severance pay.
- Lump-sum Golden Handshake.
- Transport expenses.

This will be paid less any indebtedness to the Board.

You will be paid a total redundancy package of Ksh. 326,654/= over the next 2 months subject to usual clearance formalities. This includes submission of a written report and handing over of the Board’s documents and property in your possession to your Head of Department. 7th August, 2009 will be your last working day.

On behalf of the Board, I would like to thank you for the valuable contribution you rendered to the pyrethrum industry and wish you good luck in your future endeavours.

Yours Sincerely,

Signed

DR. ISAAC MULAGOLI

A G. MANAGING DIRECTOR”

The witness testified that he was not satisfied with the contents of the letter. Accordingly, he wrote his letter dated 3.12.2009 being **appendix 4** on the memorandum of claim and addressed to the respondent’s managing director. In that letter, the claimant requested the respondent to provide the details of the redundancy package for each of the headings of payment as outlined in the redundancy letter. The claimant stated that once the details were provided, he would then be able to react to the letter. The respondent did not respond and after repeated demands by the claimant’s Advocates, the respondent wrote to the Advocates the letter of 9.04.2010 being **appendix 7** on the memorandum of claim. The letter stated:

“Dear Sirs,

**RE: RE-ORGANIZATION OR THE PYRETHRUM BOARD OF KENYA MR. KAGAI
DOUGLAS KARIUKI (MEMBER NUMBER 1830)**

This is with reference to your previous letters No. KK/DK/1/04 dated 20th January, 2010 and 23rd March 2010 on the above subject.

The letter dated 7th August 2009 was addressed personally to Mr. Kagai. He is at liberty to come to our offices for any enquiries.

The package has since not been paid and when funds are available; your client will be paid his dues

upon being satisfied with the computation that spells out the processes used to arrive at the package. It is in bad faith on his part to engage in this kind of correspondences.

Yours faithfully,

Signed

Isaac J.W. Mulagoli, PhD

MANAGING DIRECTOR

The claimant's Advocates wrote further letters seeking the details and explaining the justification for the respondent to provide the information as requested. The 2nd respondent did not reply, hence the filing of this case.

The court has considered the pleadings, the documents on record, the claimant's evidence and submissions made for both parties and, the court makes the following findings:

1. The first prayer is that the respondent releases a breakdown of the claimant's entitlement obviously taking into full account the long service rendered to the 2nd respondent. Further, it is prayed that the respondent should allow the claimant a period of 40 days to consider and within that time to challenge the level of the award, if necessary. The respondent has filed in court and served upon the claimant the breakdown as prayed for. The breakdown is appendix 9 on the amended memorandum of response filed on 26.07.2011. It is obvious that the claimant has had enough time to consider that breakdown and if desirous to challenge it both administratively and before this court. Accordingly, the court finds that the claimant is not entitled as prayed and the prayer shall fail as the respondent has already purged the injury. While making this finding, the court has observed the attempt by the claimant to purport to challenge the package in the submission. The court considers that attempt as unprocedural and an ambush against the respondents and shall not be considered. The court has noted that the claimant has received the pension of Ksh.725,340 under the superannuation scheme. The claimant is entitled to the **Ksh.326,654** redundancy package as offered by the respondent.
2. The second prayer is that the 2nd respondent releases the claimant's package with immediate effect on complying with prayer (a) here above if the claimant does not challenge the computation. The court has found that the claimant has had sufficient time to challenge the computation of the redundancy package. The court is not aware of any challenges the claimant has raised and the court finds that the claimant is entitled to an order that the 2nd respondent releases the claimant's package with immediate effect.
3. The next prayer is that given the pain, suffering and depression endured since the claimant left employment, award such compensation as the court may deem fit. In determining if the claimant is entitled as prayed, the court considers that it should be guided by the provisions of the Employment Act, 2007 on redundancy. If the provisions were breached, then the claimant would be entitled to compensation. The statutory procedure for termination on account of redundancy is in section 40 of the Act. The respondent was required to notify the claimant or the claimant's trade union and to have due regard to, as between the claimant and other employees in the claimant's class, seniority in time and to the skill, ability and reliability of the employees. There is no evidence that the respondent complied with that statutory provision. Instead, without any notice and due preparation, the respondent handed the claimant the termination on account of redundancy by the letter dated 7.08.2009 and to take effect the same date. The respondent obviously acted in the most highhanded and unlawful manner with the natural consequence that the respondent suffered serious pain and depression. It was an excessive unfair action by the respondent and the court finds that the claimant is entitled to **Ksh.612,228** being 12 months gross salary at the rate of the undisputed last gross pay of Ksh.51,091 per month.

In conclusion, judgment is entered for the claimant against the respondent for orders that:

- a) **the respondent to pay the claimant a sum of Ksh. 938,882 plus interest at court rates till full payment;**

- b) **the respondent to pay the claimant the money in (a) forthwith; and**
- c) **the respondent to pay the costs of this cause.**

Signed, dated and delivered in court at Nakuru this Friday, 22nd March, 2013.

BYRAM ONGAYA
JUDGE