



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE 2 OF 2003

SAMUEL JUMA SHIFUOKO.....PLAINTIFF

V E R S U S

1. PUBLIC SERVICE COMMISSION

2. THE PERMANENT SECRETARY, MINISTRY OF AGRICULTURE

3. THE ATTORNEY GENERAL..... DEFENDANTS

J U D G E M E N T

The plaintiff was employed by the Government of Kenya on 1st June, 1970 and was attached to the Ministry of Agriculture. On 7th April, 1997 he was transferred from Kapsokwon station Mt. Eldon District to Vihiga District in the office of the District Agriculture officer. On 12th June, 1998 he got a letter from the Provincial Director of Agriculture at Kakamega instructing him to report on duty at his office at Kakamega which he did. He worked at the Provincial Director of Agriculture office at Kakamega as a driver until 9th March, 2007 when he got a letter dismissing him from employment for absenting himself from duty.

The plaintiff's testimony is that unknown to him, the Vihiga District Advisory Committee had met on 5th November, 1998 and recommended his dismissal on grounds of desertion and wrote to the Permanent Secretary communicating their recommendation. On 4th May, 1999 the Provincial Advisory Committee met at Kakamega and recommended that the plaintiff's case be reconsidered.

The plaintiff appealed to the Ministry of Agriculture and later to the Public Service Commission but in both occasions his appeals were dismissed. He contends that he had problems with the Vihiga District Agriculture officer who was the one who initiated his dismissal. The plaintiff denies that he absconded duty and produced documents to show that he was working at the Provincial Agricultural head office until when he got his dismissal letter.

The defendants called one witness, Mr. Richard Ngetich who confirmed that the plaintiff used to work for the Government and was attached as a driver at the Vihiga District office. He was accused of deserting duty and was dismissed with effect from 12th June, 1998. The defence witness further testified

that the plaintiff was given an opportunity to defend himself and was given a letter dated 16th February 2000 which he responded. The plaintiff's Appeal was heard by the Ministerial Advisory Committee and it was disallowed. The plaintiff also appealed to the Public Service Commission but the appeal was dismissed and this was communicated to the plaintiff.

The defence witness confirmed that according to the termination letter, the plaintiff was to lose all his retirement benefits which were payable had he retired normally. The witness further confirmed that the letter by the Provincial Director of Agriculture indicating that the plaintiff had not deserted and that he was on duty was received at the Ministry Headquarters. The Vihiga District Agricultural office was under the Kakamega Provincial office and the plaintiff was expected to obey the directive to work at the Provincial office by the Provincial Director of Agriculture. The witness acknowledged that the plaintiff was on duty when he was dismissed.

From the evidence adduced, it is confirmed that the plaintiff was employed by the Government of Kenya and attached to the Ministry of Agriculture. His appointment was confirmed by the Public Service Commission on 28th October, 1986 and he was admitted to the permanent and pensionable establishment with effect from 1st November 1985. On 18th April, 1996 he was promoted to the grade of Driver Grade 1 Job Group "F".

By a letter dated 7th April, 1997 from the Western Province Director of Agriculture the plaintiff was transferred from the District Agricultural office, Kapsokwony, Mt. Elgon District to the District Agricultural office, Vihiga. By a letter dated 12th June, 1998, the plaintiff was retained at the Provincial Director of Agriculture's office and this letter was copied to the Vihiga District Agricultural office.

It is further established from the evidence adduced that the plaintiff continued to work at the Western Province Provincial Director of Agriculture's office with effect from 12th June, 1998 until when he got his dismissal letter. Work tickets to prove this status were produced and the plaintiff continued to draw traveling and subsistence allowances when traveling out of the station.

The letter dismissing the plaintiff is dated 9th March 2007 and it states that the plaintiff "***is hereby dismissed from the service with effect from 12th June, 1998 on account of absence from duty without lawful Authority***".

The minutes of the meeting of the Vihiga District Advisory Bench held on 5th November, 1998 state as follows:

"MR. SAMUEL J. SHIFUOKHA – P/NO.81121821

DRIVER 1 JG 'F' – DEPARTMENT OF AGRICULTURE

The Committee noted that Mr. Shifuoka's main file was not available for perusal on his personal and past service records. The Committee further noted that besides Mr. Shifuokha being a chronic absentee who had become immune to warnings issued to him, he deserted his duty station with effect from 12th June 1998 and his whereabouts is unknown todate. It was also noted that he had not responded to a registered show cause letter No. FY 8112182/12 dated 24TH September, 1998 yet the reply was now long over due.

RESOLUTION:

He be recommended to the Permanent Secretary for dismissal with effect from 12th June, 1998 on grounds of desertion."

The Western Province Disciplinary Committee held its meeting on 4th May, 1999 and recommended that the Plaintiff's salary be released and the Plaintiff be officially transferred from Vihiga District without

any conditions. The Committee noted that the Plaintiff had no disciplinary case and his file showed a clean record.

On 19th September, 2001 the Western Province Director of Agriculture wrote to the Permanent Secretary, Ministry of Agriculture indicating that the Plaintiff had been retained in his office after discovering that his relationship with the District Agricultural Officer at Vihiga had deteriorated. The letter did confirm that indeed the plaintiff was working until the time he received his dismissal letter.

Given the above background and evidence on record, I am satisfied that the plaintiff has proved his case against the defendants. His dismissal was unlawful and was tainted with malice and ill-will on the part of the Vihiga District Agricultural Officer.

I do find that the Plaintiff's dismissal from employment on allegation of absence from duty was illegal. I do order that the Plaintiff is entitled to his unpaid salary from 12th June, 1998 until 29th March, 2001. I do further order that the Plaintiff is to be paid all his retirement benefits that he would have been entitled to had he retired normally upto the 29th March, 2001. The Plaintiff is awarded costs and interest. Judgement is hereby entered against the defendants jointly and severally as herein above ordered.

Delivered, dated and signed at Kakamega this 15th day of October, 2009

S. J. CHITEMBWE

J U D G E