



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 63 of 1997

EPHANTUS KIRUHI.....PLAINTIFF

**VERSUS**

NANYUKI MUNICIPAL COUNCIL.....DEFENDANT

JUDGMENT

The Plaintiff was employed by the Defendant under the Public Service Commission (Local Authority Officers) Regulation 1984. He became a suspect for theft of money belonging to the Defendant in the course of the Plaintiff's employment. He was therefore charged in Criminal case No. 3171 of 1993 in Magistrate's Court at Nanyuki and in accordance with the Public Service Commission (Local Authority Officers) Regulation 1984, he was suspended pending the outcome of the criminal case the relevant letter dated 14<sup>th</sup> October 1993 addressed to the Plaintiff by the then Town Clerk, B.M. Mugo, stating:

***“ Pursuant to section 24 (2) of the Public Service Commission (Local Authorities) Regulation Act, 1984 I suspend you from 7<sup>th</sup> October, 1993 pending determination of your criminal case No. 755/633/93.***

***While under suspension, you will not receive any salary allowance and you must keep away from your office.”***

The Town Clerk then was Mr. B.M. Mugo. While the criminal case was still pending, a letter dated 12<sup>th</sup> June 1995 from the Acting Town Clerk's Office, who told this court in his evidence that his name was Mr. Francis Ndungu Kihumba, summoned the Plaintiff to appear before the Finance, Staff and General Purposes Committee on 13<sup>th</sup> June 1995 in the Council Chamber without revealing to the Plaintiff why he was wanted to go there. That is the time things started going wrong because when the Plaintiff appeared before the finance, Staff and General Purposes Committee, that Committee, and Mr. Kihumba Confirmed it in his evidence, passed a resolution summarily dismissing the Plaintiff. That was on 13<sup>th</sup> June 1995

when the criminal case was still pending. Yet Regulation 25 (2) states that :

***“If criminal proceedings are instituted against a local authority officer, proceedings for his dismissal on any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal thereof.”***

That dismissal was not officially communicated to the Plaintiff until the Defendant’s letter dated 17<sup>th</sup> August 1995, written by Mr. F. N. Kihumba as the Acting Town Clerk, informed the Plaintiff that he was summarily dismissed at the meeting he said was held on 15<sup>th</sup> June 1995 and that the summary dismissal took effect from the date of the Plaintiff’s suspension which was 7<sup>th</sup> October 1993 according to the Defendant’s letter dated 14<sup>th</sup> October 1993.

The dismissal letter indicated action was being taken against the Plaintiff under Regulation 26 but it appears the writer was looking at 26 (1) without looking at 26 (2) which was telling him that.

***“No punishment shall be inflicted on any local authority officer which would be contrary to any law.”***

What the defendant was doing was clearly contrary to the law as the terms of the letter of suspension dated 14<sup>th</sup> October 1993 had been ignored as well as Regulation 25 (2), and on 21<sup>st</sup> June 1995 the Plaintiff was acquitted in the criminal case under section 210 of the Criminal Procedure Code thereby making the Defendant be bound under Regulation 25 (4) which says:

***“ A local authority officer acquitted of a criminal charge shall not be dismissed or otherwise punished on any charge upon which he has been acquitted.”***

If he has to be dismissed or otherwise punished, that has to be done after consultation with the Attorney General:

*“on any other charge arising out of his (officer’s) conduct in the matter, unless*

*the charge raises substantially the same issues as those on which he has been acquitted.”*

In that respect, I do not see how the contents of the Defendant’s letter of summary dismissal dated 17<sup>th</sup> August 1995 can pass that test. In any case, there is no evidence that the Attorney General was consulted, meaning that Regulation 25 (4) was wholly ignored by the Defendant.

From the above therefore, there is no doubt that in their enthusiasm to summarily dismiss the Plaintiff, the Defendant failed to observe the relevant law and that made the said summary dismissal unlawful. It follows that the said summary dismissal cannot be said to have been done under the Public Service Commission ( Local Authority Officers) Regulations, 1984 as envisaged in Regulation 23 (3). The Plaintiff was “ neither dismissed nor otherwise punished under these Regulations.” He therefore qualifies for

***“the whole of the salary withheld under paragraph (1)”***

of Regulation 23 which must be restored to him as should have been done under sub regulation (3) of Regulation 23.

I have no evidence what salary is due to the Plaintiff per month. I have no evidence whether he was entitled to any allowances. I have no evidence concerning his terms and conditions of service other than what I can find in the Public Service Commission (Local Authority Officers) Regulations, 1984.

But I do find that the dismissal of the Plaintiff was unlawful. Since he has been away from the employment for a considerable length of time and it may not be proper to impose his presence on the job upon the reluctant and unwilling employer, the appropriate order to make is for the payment of the

Plaintiff's salary by the Defendant to the Plaintiff. Normally, there are no damages paid in claims of this nature.

Accordingly, the Plaintiff's prayer for reinstatement in the service and the prayer for general damages are each hereby dismissed.

Further, judgment be and is hereby entered for the Plaintiff against the Defendant for the said Defendant to pay the said Plaintiff the whole of the Plaintiff's salary so far held, including any other dues or allowances, from the date payment of that salary dues or allowances to the Plaintiff were stopped up to and including the date of this judgment, increments and adjustments which have taken place in relation to that salary, dues and allowances being taken into account. The total sum to earn interest at court rate from the date of this judgment till payment in full.

Finally, the Defendant to pay costs of this suit to the Plaintiff.

Dated this 16<sup>th</sup> day of March 2006.

**J. M. KHAMONI**

**JUDGE**