



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CIVIL SUIT NO.193 OF 1996**

**WILLIAM K. CHEMOSIT .....PLAINTIFF**

**VERSUS**

**KENYA FARMERS ASSOCIATION LTD.....DEFENDANT**

**J U D G M E N T**

**The Pleadings**

1. The plaintiff herein WILLIAM K.K. CHEMOSIT filed a plaint dated 01/11/1996 wherein he sought for various reliefs against the Defendant KENYA FARMERS ASSOCIATION. On the 21/09/1999 the plaintiff filed an amended plaint praying for judgment in his favour and for ORDERS:-

1. a) A declaration that the plaintiff's dismissal by the defendant amounts to wrongful dismissal.
- b) Reinstatement of the plaintiff by the defendant to full employment and payment of past salary arrears and full benefits in accordance with defendant's scheme of service.
- c) General damages for false prosecution and imprisonment.
- d) Exemplary damages for false prosecution and imprisonment.
- e) Costs and interest.

**IN THE ALTERNATIVE**

2. a) A declaration that the plaintiff's dismissal by the Defendant amounts to wrongful dismissal and hence the defendant is liable in damages.
- b) General damages for wrongful dismissal, false imprisonment and false prosecution.
- c) Exemplary and punitive damages for wrongful dismissal, false imprisonment and false prosecution.
- d) Special damages for loss of salary benefits and other entitlement the plaintiff was entitled to by virtue of his employment under the scheme of service and pursuant to as per rules of equity and natural justice. (sic)

e) Cost of the suit plus interest

2. There is a further Amended plaint filed in Court on 21/06/2002, but the same though dated is not signed. There is also a Further Further Amended plaint dated 14/06/2008 and filed in Court on 16/06/2008. It is not indicated on the Further Amended Plaint and the Further Further Amended Plaint whether any leave was granted to the plaintiff to make the amendments. In the Further Further Amended Plaint, the plaintiff prays for judgment against the defendant for:

a) deleted

b) deleted

c) deleted

d) Exemplary damages for false prosecution

aa) A declaration that the plaintiff's dismissal was unlawful and  
contrary to the contract of employment.

bb) A declaration that the plaintiff was entitled to half (50%) salary for the 1<sup>st</sup> 90 days of his suspension and full salary expiry of the 90 days up to the date he was dismissed.

cc) Payment of the said salary amounting to kshs.

dd) A declaration that the plaintiff was entitled to full benefits as if he was retired normally and the payment of the same to him.

ee) Salary arrears from the date he was wrongfully dismissed to the date he would have retired.

ff) Costs and interest on (cc) and (dd) above.

### **The Defence**

3. The defendant's amended defence was dated 30/09/2008 and was filed on 02/10/2008. The defendant denied all the plaintiff's claims as per the Further Further amended plaint and also averred that the Further Further amended plaint was incurably defective in all material respects and further that the same discloses no cause of action. The defendant put the plaintiff on notice at paragraph 6 of the Amended Defence that it would take the earliest opportunity to raise a preliminary objection on a point of law to the effect that the Further Further amended plaint was incurably defective.

### **The Plaintiff's Evidence**

4. The plaintiff testified as PW1. He produced his letter of employment – Pexh 1 showing that he was employed on 07/06/1977 as a non-clerical officer. He rose through the ranks when in 1995 he was appointed Depot Manager in Kapenguria as per PExhibits 2 and 3.

5. In March 1986 a new salary scheme was approved by the Defendants Board of Directors and by a letter dated 08/08/1986 – Pex 4 the plaintiff's salary was increased accordingly. The new salary scheme was produced as Pexh 5. By a letter dated 31/01/1986 – Pexh 6, the Plaintiff was confirmed as Depot Manager and his salary accordingly adjusted to Kshs.7220/= as seen from PEXh 7. The plaintiff's salary including allowances was kshs.8720/=. On 19/10/1992 while the plaintiff was Branch Manager at Kakamega, he was suspended vide a letter of the same date –

Pexh 9 – on half salary. He was on suspension for 8 months. He was finally dismissed on 17/05/1993 as per PExh 11. On 24/05/1993, he was arrested and arraigned before the Chief Magistrate’s Court at Kakamega in Cr. Case No.1205 of 1993 on a charge of stealing contrary to Section 275 of the Penal Code. On 23/07/1996, the plaintiff was acquitted of the charges under Section 215 of the Criminal Procedure Code. See Pexh 12. He claims he was not paid his terminal benefits and claims the same as per the Further Further Amended Plaintiff.

6. During cross examination, the plaintiff stated that when the defendant was liquidated, he was paid his dues, but that when the defendant was revived, he was not re-employed. The plaintiff produced documents and in particular PExh 15 to prove that the defendant was properly sued. The total claim by the plaintiff amounts to kshs.1,684,295/95 made up of the following:

- half pay for 90 days kshs.15,330/=
- salary from January 1993 to 2004 kshs.1,039,680/=
- house allowance kshs.216,000

Total 1,255680/=

- Annual adjustment of salary from 7,220/= pm to 7670/= pm difference being kshs.450/=
- From August 1993 to 2004 the figure he claims is kshs.61650/=
- Earned leave at 17% of basic pay from 1994 to 2004

Kshs.99134/75

- Special terminal benefits for 3 calendar months at the rate of the basic salary kshs.27036/35
- 2 months notice 18,024/50

Total kshs.1,477,701/05

7. He also prays for retirement benefits and provident fund monies which are over and above the sums and states that he was entitled to kshs.24,240/= plus kshs.16,160/= which is a third of what had been retained at dismissal. He adds that under the retirement benefits (which comprises 5% of his salary) he is entitled to kshs.40,400/= contributions by employer plus his own contributions which amounts to kshs.80,800/= plus interest as from the date of dismissal on 17/05/1993.
8. He prays that the interest should run from January 1993 when his salary was stopped and at commercial rates until payment in full. He adds that there was also the provident fund under which he contributed kshs.62892/45. He claims that his employer was also to pay him a similar amount which would translate to kshs.125,794/90. The fund was run by Barclays Bank Kenya a Trustee. His claim is for the sum of kshs.1,684,295/95 from the defendant together with costs and interest from time of filing suit. The plaintiff closed its case at this juncture.

### **The Defence Case**

9. Apart from filing the amended Defence on the 30/09/2008, the defendant did not give any evidence during the trial. Further, since the defendant was in contempt of the Court orders issued on the 18/06/2005, this Court ordered that the defence case be closed. Counsel for the defendant was in Court when the order for closure of the defence case was made.

### **Issues for Determination**

10. After carefully considering the plaintiff’s evidence, the pleadings by the parties and the submissions by the plaintiffs above, the issues for determination are the following:-
- a. Whether the termination of the plaintiff by the Defendant was wrongful and unlawful.

- b. Whether the plaintiff is entitled to compensation and the entitlements claimed.
- c. Whether the plaintiff merits the terminal benefits serialized.

### **Issue 1**

11. It is not in dispute that the plaintiff was an employee of the defendant herein and that he rose through the ranks to become a Depot Manager at Kakamega. It is also not in dispute that the plaintiff was suspended on the 19/10/1992 and eight (8) months down the line he was dismissed on the 17/5/1993 (see PExh 9 and PExh 11). A look at the said letters reveals that the suspension through PExh 9 came about because the defendant was to investigate malpractices at their Kakamega Depot. The dismissal letter (PEX 11) gave reasons as to why the plaintiff was dismissed. It stated among other things that investigations had revealed that the plaintiff deliberately flouted the laid down procedures and misappropriated Unions Funds and stocks at the Kakamega Branch. The defendant considered the said infringement as poor work performance coupled with dishonesty on the part of the plaintiff and went ahead and dismissed the plaintiff. It is clear to me that the defendant had a valid reason for terminating the plaintiff's contract of employment. The terms and conditions of service of the plaintiff are contained in the scheme of service (PEX 5) which was tendered in evidence by the plaintiff.
12. In the said scheme of service Section 1,10 (e) provided for instant dismissal where an employee misappropriates or is deemed to have misappropriated or embezzled the union funds which shall be without prejudice to any other action taken against the employee in accordance with the law.
13. The plaintiff was charged with the offence of stealing contrary to Section 275 of the Penal Code in SPM Kakamega Cr. Case 1205/1993. This action to charge the plaintiff was without prejudice to the plaintiff being dismissed. The defendant had the right under the scheme of service to have the plaintiff charged. Even though the plaintiff was acquitted of the offence under Section 215 of the CPC, the trial Court found that from the evidence of PW2 there were all intentions from the branch manager to run down the branch of KGGCU. The trial Magistrate also concluded that "Although I would not believe an inch of the defence of the accused I feel I do not have solid base which can sustain a conviction from the prosecution side."
14. The plaintiff was acquitted for lack of evidence from the Police who handled the matter on behalf of the Defendant. The investigations by the defendant led to them dismissing the plaintiff and preferring the charges against him.
15. I find from the foregoing that the defendants were within the law and the scheme of service to dismiss the plaintiff from his employment. The dismissal was not unlawful or wrongful as investigations showed that there was misappropriation of union funds and deliberate flouting of the laid down financial procedures.

### **Issue 2**

16. On whether the plaintiff is entitled to compensation and the entitlements claimed the scheme of service provides at Section 1 (10) (f) that during such period of suspension, the employee shall be paid 50% of salary for the first 90 days and thereafter receive no salary until the case is determined. The plaintiff is therefore entitled to 50% of salary for the first 90 days during the suspension period.

### **Issue 3**

17. The Plaintiff is also entitled to one month's pay in lieu of Notice. Having found that the plaintiff was not wrongfully or unlawfully dismissed he is only entitled to his own contributions under the Pension and Provident Fund scheme same not yet paid, earned leave plus costs and interest.

### **Conclusion**

18. In view of the above, I enter judgment for the plaintiff as follows:-

1. 50% salary for the first 90 days during the suspension period at the appropriate salary for the

- period totaling Kshs.15,330.
2. Plaintiff's own contributions under the Pension being Kshs.40400/=.
  3. Provident Fund of kshs.16160/=.
  4. Costs and interest

19.Orders accordingly.

Judgment delivered, dated and signed at Kakamega in open Court on this 7<sup>th</sup> day of April 2016.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mr Getanda for Mukisi For Plaintiff

N/A For Defendant

Mr. Lagat - Court Assistant