



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C.C.CIVIL CASE NO.597 OF 1990**

**JANE WANJA MWANGI ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COMMISSION ..... DEFENDANT**

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

The Plaintiff, Jane Wanja Mwangi, filed this suit against the Defendant, Nairobi City Commission praying for Judgment for

- " (a) Damages for wrongful dismissal, defamation and other benefits
- (b) Costs of the suit
- (c) Interest on damages and Costs of the suit."

Naitobi City Commission is the present Nairobi City Council or City Council of Nairobi. The Plaintiff was an employee of the Defendant in various capacities from 26th January, 1977 till 3rd August, 1989 when her services were terminated by the Defendant. She contends that her employment was unlawful and in breach of her contract of service with the Defendant. She further contends that the Defendant defamed her in various notes and memoranda addressed to her.

In the consequence the Plaintiff states that she suffered loss and damages being:-

- (a) Loss of earning for ten years
- (b) Loss of acting allowance for six months
- (c) Loss of Local Government Officers  
Supernuation Funds together with interest thereon
- (d) Loss of house owner occupier allowance or house allowance in lieu
- (e) Loss of leave accrued and to accrue
- (f) Loss of Medical Benefits.

From her evidence she was on 26th January, 1977 appointed by the Defendant to work as Community Development Officer in the Housing Development Department of the City Council of Nairobi and was posted to work at the Dandora Division of the Department and her immediate senior

officer was the Senior Community Development Officer.

The evidence before me is not clear on the titles of officers and the name of the department or division of the City Council under which the Plaintiff worked. Various titles descriptions have been used in the evidence. The titles I am using here may therefore not be very correct but I think they reflect the general position.

The Senior Community Development Officer was under the Assistant Director Community Development who was in turn under two Deputy Directors. One Deputy Director Technical and the other Deputy Director Administration. The two Deputy Directors were under the Director, Housing Development Department. This last named officer was the head of the department.

Under the Plaintiff when she was a Community Development Officer, were Community Development Assistants, four in number in the Dandora Division of the Department.

By the time the Plaintiff was sent on Compulsory leave on 15th April, 1986 she was a Senior Community Development Officer whose duties included assisting the Assistant Director, Community Development Services in the general administration and supervision of Community Development services. She was also assigned duties on plot allocation. Further she was the Acting Assistant Director, Community Development in the place of a Mrs Monica Mutuku. The Plaintiff was still stationed at Dandora.

It was the Plaintiff's duties on plot allocation that landed her into problems with her employers the defendant. From the evidence, these duties included supervision of plot allocation whereby the Plaintiff would sale application forms to prospective applicants who would fill the forms and return them to the Plaintiff. The Plaintiff would then check the applications to see the requirements.

The position is not quite clear from the evidence, but I can say in short that the Plaintiff headed the plot allocation team which had a lot to do in plot allocation. She has even talked of heading the third panel which was making the final allocation after comparing the recommendations made by the first and the second panels. She said:

" If they tally, we pass. If they don't, we take our own decision." At the same time evidence indicate that other groups like the full council of the City Hall, the Housing Development Committee, and the town Clerk-were also involved in the allocation"

However the Plaintiff's plot allocation duties were confined to the plots at Kayole, Mathare and Dandora. In the process therefore, members of the public had complained to the Provincial Commissioner Nairobi and as a result he had taken the matter to the Housing Development Committee. Other complaints had been lodged at the Ministry of Local Government. The matter reached the City Council as the complaints were raised after minutes of the full Council which had approved the plot allocations were published and before letters of allocation were issued.

The process was, as a result of the Complaints, suspended. A probe Committee was appointed to investigate the matter. This was a Ministerial Committee appointed by the Ministry of Local Government. P.W. 2 Gilbert Jafred Njau who was by then the Director, Housing Development Department told the Court that when the probe Committee was appointed, he did not know much about the irregularities people, were Complaining about. According to him and the Plaintiff, they were only aware of mistakes or errors which were by then being corrected and did not therefore warrant the attention the matter was receiving.

However after the probe Committee was appointed, the Plaintiff and Mr. Njau were among the people who were summoned by the Committee and gave evidence before the Committee. The Plaintiff told the Court that a part from giving her evidence and being examined on it, she had the opportunity of listening to those who were making adverse allegations against her and she cross examined them.

But that was outside the disciplinary proceedings which the Defendant was taking against the Plaintiff. On the disciplinary front, the Plaintiff was sent on compulsory leave.

" in order to facilitate certain investigations which" were by then " going on concerning allocation of plots in Kayole site and Services Scheme."

She was to remain on compulsory leave until further advised. That is contained in a letter addressed to her by the secretary/Town Clerk on 15th April, 1986 and has been produced by the Plaintiff as exhibit 4.

On, or by letter dated 29th January, 1987, the Plaintiff was sent on leave. That was a decision by the Defendant who said in the letter that during her leave the Plaintiff was to continue receiving her salary and other emoluments in the normal way. The number of leave days to be taken was not specified. The letter is Plaintiff's Exhibit No.5

Next was the letter of interdiction dated 27th July, 1987 also signed by the Town Clerk. The heading indicates action was being taken in accordance with Regulation, 1984. The letter charged that a review of the Plaintiff's work performance had been concluded and a number of shortcomings had been found. It added:

" You were in charge of among other duties, the programming and supervision of interviews of applicants for plots in the Kayole and Mathare Valley North Site and Service Low Costs Housing Projects, and deal with the allottees day to day problems. In this capacity it was your responsibility to ensure that the allocation of plots was processed smoothly and in accordance with set guidelines. In the contrary however, you handled these duties carelessly with serious inconsistencies as confirmed by many complainants received from the public. You are specifically charged with:-

1. Being arrogant when dealing with the members of the public, thereby tarnishing the good name of the Commission.
2. Using your position in the Commission you attempted, in July 1985 to deny Mr. Peter Njiru Njagi his lawful possession of plot No.3-1-83, Mathare North, by entering him into an agreement to exchange the plot with your 1 1/2 acres land in Embu."

The letter goes on to list applicants it says were disqualified by the interviewing panel but the Plaintiff still included them in the list of successful applicants. It gives 14 names.

The letter then lists seven more people whom it is alleged were listed as qualified to get plots yet they did not normally reside in Nairobi. The letter further alleges that in the final lists of successful plot allottees, the Plaintiff substituted the names of successful applicants with the names of unsuccessful applicants.

The letter refers to the Plaintiff's previous suspension from duty on 10th October, 1980 for being involved in irregular allocation of plot and says that the Plaintiff's suspension appears to have been lifted on 29th July, 1981 prior to and contrary to the recommendation of the staff Committee Meeting of 17th July, 1981.

The letter concluded that in view of the above and under the power conferred upon the Town Clerk by Paragraph 37(1) of the Public Service Commission (Local Authority Officers) Regulations 1984, the Town Clerk required the Plaintiff to show cause why disciplinary action should not be taken against her including dismissal from the service of Nairobi City Commission on the grounds of misconduct, incompetence and negligence. The Town Clerk required the Plaintiff's letter to reach him not later than 10th August, 1987 failure to which it was to be constructed that the Plaintiff had no grounds on which she intended to exculpate herself.

At the same time, the Town Clerk, through that letter, interdicted the Plaintiff from the exercise of her duties with effect from the date of the letter which was produced during the hearing as exhibit No.6 for the Plaintiff. The letter is marked as having been received on 24th August, 1987. It was however replied through a letter dated 4th September, 1987 by the Plaintiff advocate.

That letter was acknowledged by the Town Clerk in his letter dated 11th November, 1987 by which he suspended the Plaintiff from the Commission of the plaintiff's case by the Public Service Commission. She was not to receive any salary during the period of her suspension.

The suspension was slapped on the Plaintiff although she had by her letter dated 4th September, 1987, answered the Defendants' letter dated 27th July, 1987 thereby showing cause why disciplinary action should not be taken against her. Although the heading indicated that the Defendant's letter dated 27th July, 1987 was also a letter to show cause why the Plaintiff should not be dismissed.

As I have said above, the Plaintiff had by her advocate's letter dated 4th September, 1987 shown cause why she should not be dismissed. The Defendant kept quiet, apparently baffled by the contents of the letter which appears to have been received after the Defendant had decided to dismiss the Plaintiff with effect from 3rd August, 1989 but had not communicated that decision.

The Defendant regretting the delay hit on the idea of writing another letter asking the Plaintiff to show cause why she should not be summarily dismissed. The addition of the word " Summarily" may have been made to make it appear the letter dated 17th August, 1989 was having a different effect from the letter dated 27th July, 1987 in so far as the showing the cause was concerned. Otherwise I doubt whether the reason was that a letter to show cause had not been sent to the Plaintiff.

In any case the letter dated 17th August, 1989 was addressed by the then acting Secretary/Town Clerk to the Plaintiff requiring her to show cause why she should not be summarily dismissed. The letter, Plaintiff exhibit No.10 gave the Plaintiff four days only. Thus the Defendant gave a strategically very short time of four days and made itself ready to act swiftly to avoid the kind of situation it found itself in after receiving the letter dated 4th September, 1987 from the Plaintiff's advocate.

Clearly things started going wrongly on the side of the Defendant with its letter dated 17th August, 1989 if up to that time Defendant had not been doing anything wrongly. A part from the fact that the Plaintiff was, by the 17th August, 1989, if upto to that time the Defendant had not been doing anything wrongly. A part from the fact that the Plaintiff was, by the 18th August, 1989, being required to show cause for the second time even after she had shown such cause, that same letter 17th August 1989, being required to show cause for the second time even after she had shown such cause, that same letter of 17th August, 1989 contained fresh and additional charges against the Plaintiff. The letter is marked as having been received at 5.00 p.m. on 21st August, 1989. It was received by the Plaintiff to whom it was addressed. It was difficult for her to meet the deadline of 22nd August, 1989 and by August, 1989 he strategically waiting Permanent Secretary in the Ministry of Local Government was writing his letter of that date advised the acting Town Clerk to dismiss the Plaintiff with effect from 3rd August, 1989 on grounds of gross misconduct because the Plaintiff had failed to meet the deadline of 22nd August to exculpate herself from the charges made against her in the Defendant's letter dated 17th August, 1989 produced as Defence exhibit No.1. The Town Clerk wrote his letter dated 12th September 1989, Defence exhibit No.5, dismissing the Plaintiff with effect from 3rd August, 1989.

The Town Clerk wrote stating he was conveying the decision of the Public Service Commission through the Ministry of Local Government. A part from the Permanent Secretaries letter dated 23rd August, 1989, no other correspondence was produced as exhibit from the Ministry of Local Government. The letter dated 23rd August, 1989 does not say anything about the Public Service Commission. I cannot therefore see how the Town Clerk said in his letter dated 12th September, 1989 that he was conveying the decision of the Public Service Commission and I cannot help coming to the conclusion that all correspondence and action taken against the Plaintiff in this matter were from the Town Clerk thereby constituting actions of the Defendant local authority.

The Plaintiff, at the time of disciplinary proceedings in the hands of the Defendant held the substantive post of Senior Community Development Officer in the Housing Development Department. Evidence has therefore been adduced that she was one of the senior officer of the Defendant whose disciplinary proceeding had to be handled by the Public Service Commission (Local Authority Officer) Regulations 1984.

Under that Rule a Clerk to Counsel has to carry out preliminary investigations first if he considers after such investigation that disciplinary proceedings should be instituted and is of the opinion that the misconduct alleged if proved, would justify dismissal, the Town Clerk will frame charges against the officer and shall invite the officer to state in writing, if he so desires, before a specified date, any grounds on which the officer relies to exculpate himself. Thereafter the Town clerk has to put the case before the local authority to deliberate on the matter. That is where the officer has failed to give his grounds or where he has given but the Town Clerk does not think the officer has exculpated himself.

If the Local Authority after deliberation is not satisfied with the conduct of the officer, the Town Clerk will forward the matter to the Public Service Commission. Copies of the report on the case, the charges, the officer's reply, if any, the comments of the Local Authority, are all forwarded.

If the Commission on consideration find that no further investigation is necessary, the commission will decide the case including the punishment to be given. If the Commission decides the matter should be further investigated, it may request the Minister to appoint a Public Officer or Public Officers to conduct the further investigation in which case the Officers being investigated will be afforded the opportunity of being heard and cross examine witnesses and examine documents.

Additional charge are dealt with under sub rule eight.

The report of the Public Officer or Public Officers conducting the Investigation is given back to the Public Service Commission which shall decide on the punishment, if any, to be given.

Clearly that is not what happened in the Disciplinary proceedings taken by the Defendant against the Plaintiff. In fact it is difficult to see how the Plaintiff could have been showing cause on 17th August, 1989 or on 22nd August, 1989 when had already been dismissed with effect from 3rd August, 1989 before she was even charged with additional or new charge on 17th August, 1989. I do not see why the Senior Officers handling this case could not even see a simple fact that with regard to the new charges in the letter dated 17th August, 1989, the Plaintiff had not been given any practicable opportunity to render an explanation exculpating herself and that even if she failed to do so that did not give them power to proceed to dismiss the Plaintiff.

From what I have outlined above, I hold the view that what the Defendant did was arbitrary and unlawful. I said the Ministerial Probe Committee was something outside the disciplinary proceedings against the Plaintiff in any case, there has been no evidence to show that the two were connected and that the provision of Rule 35 of the Public Service Commission (Local Authority Officers) Regulations 1984 were complied with.

In the process therefore the Plaintiff's dismissal was unlawful. Having come to that conclusion, I do not think I need to be specific about compulsory leave, interdiction and suspension.

With regard to defamation, I note that allegations upon which the Plaintiff relied are contained in Paragraph 8 of the Plaintiff's Complaint. Those allegations are not the allegations she has relied upon in her evidence where she talked of publication in daily newspaper cannot be

"Various notes and Memoranda addressed to the Plaintiff by the Defendant."

The evidence the Plaintiff has adduced on the issue of defamation does not therefore support her allegations in the Plaintiff's Complaint. Moreover, the memoranda and notes are alleged to have been sent to the Plaintiff and not to members of the public. In the circumstances therefore the claim for defamation cannot stand.

Having said all that, the question I should now answer is whether the Plaintiff is entitled to relief as sought or any relief.

In the case of Rift Valley Textile Limited V. Edward Onyango Oganda, Civil Appeal No.27 of 1992 (unreported), the Court of Appeal said:-

"The rule of national justice have no application to a simple contract of employment, unless the parties themselves have specifically provided in their contract that such rules shall apply. Where a notice period is provided in the contract of employment --- - then an employer needs not assign any reason for giving the notice to terminate, the contract and employer is not obliged to assign a reason, the question of offering to the employee a chance to be heard before giving the notice does not and cannot arise. Again if the employee were to be minded to leave his employment, say for a better - paid job, and he gives notice of his intention to leave, the employees is not obliged to assign any reason for his intention to terminate the contract and it would be ridiculous for the employer to insist that given a hearing before the employee leave."

I adopt that reasoning. The Plaintiff's contract of employment with the Defendant provided that either party could give the other three month's notice or three months' salary in lieu of notice to terminate employment. Had that happened, no party would have required to give the other reasons for the termination. Such termination could take place at any stage of the contract of Service and the contract does not provide for payment of any other money. I have been given no evidence.

It is not in dispute that when the Plaintiff was dismissed , she was paid. She was paid her full salary upto 3rd August, 1989. She was paid her leave days. She was paid her contribution of the superannuation Fund and there is evidence that payment of medical allowance was not automatic as it was based on a medical claim. By the time she left she had no outstanding medical claim.

It appears to me therefore that the Plaintiff was paid everything lawfully due to her, with the exception that since her dismissal was unlawful, she was also entitled to payment of three months salary in lieu of notice. Secondly, since it was not possible for her to have been dismissed on 3rd August, 1989 when by 17th August, 1989 she was still being charged with additional or new charge and being asked to show cause why she should not be dismissed I delcalred that the date of her dismissal was 12th September, 1989 seen in Plaintiff exhibit No.12 and Defence exhibit No.5 She should therefore be paid her full salary up to and including 12th September, 1989 together with house allowance.

Her salary as at July, 1989 appears, from the evidence, to have been Shs.9770/= per month. I will make it Shs.9780/= for easy calculation. Her house allowance was Shs.1380/= per months. Accordingly, Judgment is hereby entered for the Plaintiff against the Defendant for a total sum of Kshs.43,730/= being:-

(a) Kshs.29,310/= three month's salary in lieu of notice

(b) Kshs.13,040/= salary from 4th August to 12th September 1989

Otherwise the Plaintiff's claim for damages based on particulars given in paragraph 10 of the Plaintiff and on defamation in paragraph 11 is hereby dismissed. The Defendant will pay costs of this suit.

Dated and Signed this 24th of February, 1997.

J.M. KHAMONI

JUDGE