



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL CASE NO 706 OF 1992**

**DIONYSIUS OMAMBIA ONYINKWA.....PLAINTIFF**

**VERSUS**

**KENYA PORTS AUTHORITY.....DEFENDANT**

**RULING**

The plaintiff herein alleged in his plaint that he was so unlawfully dismissed from his employment with the defendant that he should be awarded compensatory damages by this Court.

In the course of his evidence he vehemently denied or rejected the defence's contention that his conduct had eminently justified the dismissal and that he can not be entitled to any of redress sought. It is the defence that the plaintiff had acted contrary to his job description.

In more specific terms it is common ground that the dismissal culminated from an inquiry by a committee which had been set up to inquire into an allegation that the plaintiff had received bribes from potential candidates seeking to be interviewed for employment by the defendant. The plaintiff appeared before that committee and heard and challenged the accusations which were levelled against him. The defence seeks to produce the committee's report in the proceedings in a bid to augment their contention to the effect that in the course of performance of his duties the plaintiff had totally fallen from grace by accepting bribes from those candidates he interviewed for jobs and so did not deserve to continue in his employment and they should not be ordered to pay compensation to him. They contend that the scrap lously adhered to the procedure or regulation governing such matters.

In his evidence the plaintiff has already made two specific complaints. One was that the procedure adopted at the committee was manifestly unfair to him. So, the defence thinks that in order to counter this allegation and vindicate them they should be allowed to produce the report so as to demonstrate that the right procedure stipulated in the Employment Regulations was adhered to. The second complaint by the plaintiff is that he did not see and cross-examine the principal witnesses upon whose evidence the charge of bribery was founded and proved to the committee.

Mr Waiyaki for the plaintiff very strongly objected to the admission of the report in evidence.

The report in question was made (recorded) by the witness who is currently in the witness stand.

It was certainly his duty as the secretary of the committee to make the record in question. Does the sole fact that the people who supplied information some of which constituted the report will not be called and witnesses render the report inadmissible? In the case of *Edmonds v Edmonds* [1947] 63 the Times L R 327 a husband was bringing divorce proceedings against his wife in England on the ground of his wife's adultery with the co-respondent which he alleged had resulted in the birth of an illegitimate child there. In India the wife had brought bastardy proceedings against the co-respondent in respect of such illegitimate child.

In Indian proceedings a Mrs Ingles had given evidence which supported the wife's claim, and hence the hypothesis of the wife's adultery. Such evidence was given on commission and taken down by commissioner who signed the document. The English Court of Appeal held that the document so signed recording Mrs Ingles evidence, was admissible in the English suit.

I find the ruling in that case more pertinent to the present situation. In that case, it must be noted. Mrs Ingles evidence had been given in the Indian proceedings was subsequently, necessary before the document could be admitted.

Furthermore, it is also pertinent to remember that the plaintiff herein has premised his suit on the allegation that the commission did not accord him a fair hearing on the bribery allegations levelled against him before he was dismissed. In that regard he has made substantial assertions against the defendant on their part the defendants have vehemently denied that there is any truth in his allegations. To that extent they seek to produce the report in order to refute the plaintiff's allegations. I accept their arguments on this point. The plaintiff cannot have his cake and eat it.

For all these reasons, I disallow the objection and order that the report is admissible in these proceedings.

**Dated and delivered at Mombasa this 11th day of October 1995**

**I.C.C WAMBILYANGAH**

**JUDGE**