



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL CASE NO. 615 OF 1991

FRANCIS M.N.MUINDI.....PLAINTIFF

VERSUS

1.KENYA PORTS AUTHORITY

2. AGRICULTURAL FINANCE CORPORATION.....RESPONDENTS

JUDGMENT

This action arises out of a breakdown of the employment relationship between the plaintiff on one hand and KPA as the 1st defendant on the other hand. In prayer (a) of the plaint the plaintiff seeks a declaration to the effect that “he is still an employee of the 1st defendant and that he is entitled to payment of his salary by the 1st defendant. I will deal with other prayers later on.

It is not in dispute that the plaintiff started working with KPA in March 1986. He had been transferred there from AFC. Initially he worked as the Administrative Manager. This was a new post which was specifically created for him. He testified that in 1988 he acted for 5 months in the post of Personnel and Administration Manager. That was when the holder of the post was on leave. In May 1989 the plaintiff was appointed Personnel Manager. This is the post he held until March, 1990 when he was sent on compulsory leave. When he was sent on this leave he was on the grade of post executives 3. It is relevant to note that the letter dated 26th March 1990 from the Managing Director of KPA stated that the decision to send him on compulsory leave was prompted by changes which the Government was poised to introduce in the port personnel. Then in the letter dated 8th May, 1990 the permanent secretary in the Ministry of Transport and Communication said:

“I wish to inform you that arising from the reorganisation of the management and operations of Kenya Ports Authority, it has been decided that you be transferred back to the Agricultural Finance Corporation as Personnel Manager. You should therefore immediately arrange to report back to the Ministry of Agriculture for further instructions. In the meantime the Managing Director of Kenya Ports Authority should arrange to transfer all your records to the Permanent Secretary Ministry of Agriculture, through this office as soon as possible.”

In his evidence the plaintiff said that he obeyed that letter and reported to AFC as had been directed. But there he was rejected. He was told that “the transfer was not valid” and he should return to KPA. He says that when the went to KPA he was reminded that he was still on compulsory leave. So he stayed away until more than one year had elapsed when he received a letter from KPA. It was dated 29th April, 1991. I prefer to read its parts which I consider material to the arguments which at this stage:

“You are aware that this transfer has not taken place. Further consideration has therefore been given to this matter, and it has been decided that your services with the Authority be terminated with effect from 25th April, 1991.”

In the first place it is evident that in none of the letters which the plaintiff was given by his employer (KPA) was he accused of weakness or breach in the performance of his duty. The letter dated 29th April, 1991 only adverted to the issue of the unsuccessful bid to transfer the plaintiff to the AFC. But it does not blame him of any wrong-doing. The plaintiff has testified that he did go to AFC but he was rejected on the ground the transfer was invalid. It has to be recalled that the reason which was cited when the plaintiff was sent on compulsory leave was that monitoring of the performance of the port personnel was taking place. But the letter purportedly tiring the plaintiff did not link him with the alleged monitoring nor did it allege any impropriety on the part of the plaintiff which was discovered during that alleged monitoring.

After a careful analysis of the evidential materials which were presented before me I hold that the plaintiff had unattractive traits in his personality which were loathed by the Managing Director. And obviously these traits generated vendetta between him and the Managing Director. It seems to me that the Managing Director merely created a pretext for getting rid of the plaintiff from employment. I accept the view that if he had been guilty of any wrong-doing in his duties the regulations would have been invoked; a board of inquiry would have empanelled; the charges would have been levelled against him; he would have been given time to defend himself and to present his version before a decision to retire him in the public interest was reached.

In my view it is only the board inquiry which had the power to determine whether any accusations levelled against an employee of KPA were proved and constituted such violation of the rules pertaining to his employment that deserved to be punished by retirement in the public interest. On the

evidence before me I am satisfied that no such procedure was ever invoked before the plaintiff was retired.

The employment regulations are meant to safeguard situations where a capricious managing director turns himself into a tyrant and acts on his whims. Megalomaniacs are many. The mere fact that an employee's looks are quite unattractive does not at all justify his being retired in public interest. This obviously a draconian measure was taken by the Managing Director of KPA. It is one which cannot be justified since the conduct of the employee had never disclosed intention of any sort to disregard the essential requirements of his contract of service. It would appear that his performance was beyond reproach. It must be borne in mind that from the very outset there was no allegation made against the plaintiff's conduct or performance of his duties. Nor has evidence been led to justify the drastic step which was ultimately taken against him (the plaintiff). From whichever angle the matter is approached one cannot escape from reaching the conclusion that the employer acted most unreasonably.

The question of redress is the one that I must now deal with.

In the first plaintiff said – and I accept it as true that because of the stigma given to his sort of retirement he became unemployable. A prospective employer would naturally be interested to know what sort of employee he had previously been and on learning that the candidate lost his previous job by being retired in public interest that would immediately spell the end of the interview. So it must be borne in mind that the plaintiff was exposed to this traumatic experience for no apparent reason. The only fair and reasonable compensation which he can be given is to be placed in a position where he would have retired normally. The fundamental principle which applies to a case of this nature is that an employee who has been wrongfully dismissed is entitled to damages, not reinstatement. (See *East African Airways v Knight* [1975] EA 165). The plaintiff has worked out his emoluments and pension in a document which was produced in these proceedings as Exh 11.

I have no reason for rejecting his figures. The only aspect in the document which I find untenable are claims for house allowance and leave allowance. In my view he is no longer entitled to these allowances since they are privileges enjoyed by those in actual employment, and not those who have been retired. But

I award him his pension – computed at Shs 1,320,494/40, and his unpaid salary of Shs 590,772/-

In the ultimate analysis I award the plaintiff Shs 1,911,266/40 against Kenya Ports Authority.

Accordingly judgment is entered for that figure with costs and interest.

It was proved that the AFC could not in any way be held liable for the plaintiff's problems with KPA. Accordingly the suit against the AFC is dismissed. But I make no orders as to costs.

Dated and Delivered at Mombasa this 9th day of March 1994.

I.C.C.WAMBILYANGAH

JUDGE