



**REPUBLIC OF KENYA**  
**THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 3591 OF 1982**

**CHARLES MAINA NJUNGUNA.....PLAINTIFF**

**AND**

**GLAYWORKS LTD.....DEFENDANT**

**JUDGMENT**

In this case Charles Maina Mjuguna (herein after referred to as "the plaintiff") has sued Clayworks Ltd. (herein after referred to as "the defendant") to claim general damages, terminal and fringe benefits^ costs of the suit and any other relief this court may deem fit to grant. According to the plaintiff's evidences-he was employed by the defendant as Tanner and fitter on 6th August 1976 at a salary of shs.850 plus a house allowance of shs.40 (see exhibit 1).

He continued that during 1977 terms of his employment as regards housing were changed in that he was not paid house allowance. That his salary then was shs.1300 and he believed that he would get owner occupied house allowance when his own house was assessed and valued. This was never done.

The plaintiff said that amongst his fringe benefits was free water drawn from the defendant's factory leave allowance and petrol allowance.

By a letter dated. 10th January 1978 (exh. 2) the plaintiff was appraised, by the then Managing Director Mr Njeru for his good work and indeed promoted to the rank of Assistant Chief Mechanic and given a salary of shs.1500. He said he attended a maintenance course at Nairobi and obtained a certificate there for. He also went to Italy to study maintenance of a new production plant. He went there on 13.9.31 and came back on 22.12.31. That he received a letter to proceed -on leave on 27.1.82 from the General Manager though he did not wish to.

The plaintiff said the problem started with the withdrawal of water in a memo dated 30th January 1932. That this problem went up to the group chairman who called the plaintiff and the defendant's general Manager in his office. That despite the [www.kenyalawreports.or.ke](http://www.kenyalawreports.or.ke) agreement reached in the office of the group chairman^ the general manager used this reason amongst others to terminate his , the plaintiff's services on 17th March 1932. The plaintiff was not satisfied that his services had been validly terminated, and so he filed this suit.

Stephen Kagiri Ngamiya a defence witness told the court on the other hand that the plaintiff's performance at the defendant company was not satisfactory. That though at one time the plaintiff was sponsored for studies on new production in Italy he did not improve his skill. That when plaintiff resumed duty after the course in Italy and leaved he aid very little work and had to be warned one time and intact

deducted 10 days salary.

He continued that the plaintiff's wife had been allowed to draw water from the defendant's premises during plaintiff's absence in Italy but that the facility was withdrawn through the memo from him dated 30th January, 1932 (exh 6). That despite this the plaintiff continued drawing water from the defendant premises. He complained that the plaintiff was rude and said to other employees that the general manager had no authority to dismiss his the plaintiff and so on and so forth.

Stanley Iregi Njeru (P W 1) supported the plaintiff's case. He had been Managing Director of the defendant from 1975 to October/ 1979. It is this witness who had employed the plaintiff in the services of the defendant. According to him the plaintiff was employed as a mechanic man and later promoted to Assistant Chief Mechanic. That only one person was ahead of the plaintiff in the department and that according to the witness the plaintiff was more qualified than his immediate boss.

According to this witness all staff staying in owner occupied houses were entitled to free water as a fringe benefit which benefit extended to junior staff staying in rented houses. He said that the benefit could only be discontinued by a resolution of the board and that if this was done all employees could be affected and not only the plaintiff. As far as this witness was concerned the plaintiff was entitled to free water and owner occupied house allowance. This is the evidence adduced in this case for consideration and decision. Three issues arise in this case:

1. Were plaintiff's services with the defendant terminated?
2. Was the termination unlawful? and
3. If so what damages has the plaintiff suffered?

As to the first issue there is no dispute that this was done (see exhibit 10). As regards issue 2 one needs to look at the reasons given in exhibit 10 to decide whether the plaintiff's services were terminated wrongfully.

According to exhibit 10 the general manager said:- "On 30th January, 1932 I instructed you in writing to stop drawing water from the factory for your personal use. You totally ignored this instruction and continued drawing water."

True in the memo dated 30th January, 1982 the General Manager wrote to the plaintiff and said:

"In the past we have allowed you to draw

water from the factory free of charge This f

acility will not be extended to you any longer

with effect from 1st February, 1982

The plaintiff says he did not receive this memo until he came back from leave, but the defence witness says this memo reached the plaintiff as it was done under delivery book. Whether the plaintiff received this memo on 30th January 1982 or not the truth is that he did receive it and the matter was discussed between him, the general manager and the group chairman Hon Njenga Kareme. The court has no clear picture of what transpired in that meeting but according to the plaintiff he understood as if the facility was withdrawn temporarily while he was on leave and that on resumption of duty he was to continue drawing water as was the case previously (see exh.D4). The general manager insisted that the plaintiff had contravened his instruction in the memo of 30th January 1982.

It was, however, agreed by both parties that all employees housed in defendant's houses were entitled to free water and electricity and according to P W 1 this facility extended to staff owned their own houses

and those junior staff staying in rented houses. and so on and so forth.

Though the defence witness told the court that he had only allowed the plaintiff's wife to draw water from the factory during the plaintiff's absence in Italy, this [www.kenyalawreports.or.ke](http://www.kenyalawreports.or.ke) is not what the memo dated 30th January 1982 said. It clearly said that the facility for drawing water from the factory free of charge had been extended to the plaintiff previously and that it was being withdrawn from 1st February 1982. In any event if as the defence witness put it the facility was only extended to the plaintiff's wife during the plaintiff's absence abroad then the same would have been withdrawn as soon as the plaintiff returned to Kenya, that is to say 22nd December 1981 and not continue up to 1st February, 1982.

It would therefore seem that all along the plaintiff was entitled to and used to draw free water from the factory of the defendant but for some unexplained reason the defence witness decided to withdraw the facility with effect from 1st February, 1982.

Then in the same letter the General Manager talked of how the plaintiff had told a number of people that the same General manager had no power to sack him – the plaintiff; how the plaintiff had refused to sign the delivery book to indicate that he had received the memo dated 11th March, 1982 and how the General Manager had been informed by 2 departmental heads that the plaintiff had not been doing any work during the month. He also talked of how the plaintiff had contemptuously told one Gonella, that he, the plaintiff could teach him Gonella how to mix clay or told one Donotti that he, the plaintiff could teach him Donotti how to modify their machines while he – the plaintiff was in Italy and so on and so forth.

In the same letter the General Manager complained of how the plaintiff had been trying to corrupt the defendant internal Auditor in order not to disclose loss of some wires from the store. On these reasons recorded in the letter dated 17th March 1982 the plaintiff's services with the defendant were terminated as the General Manager contented that;

"The office of the General Manager of this company or any other company must be given the respect that it deserves. I cannot sit down and allow the office to be ridiculed; or allow the rule of the jungle to reign in this company. I must take a firm stand and swift action on such behaviour. Consequently your services with this company have been terminated summarily....."

Of course the office of the General Manager would, be ridiculed if he issued lawful instructions which were disobeyed by workers.. The issue of the water I have already dealt with. There were not lawful reasons given for the withdrawal of the facility to the plaintiff which he had been enjoying since joining the defendant or from whatever period he was allowed to enjoy the privilege. What about when a person tells another in passing the general manager has no power to sack me How is the office affected and. ridiculed if the general manager is invested with such power to hire and fire that employee anyway? In any event where was the evidence that the plaintiff uttered such words; to whom and where!! There was none.

Or for that matter the plaintiff told Gonella that he could teach him how to mix clay or told Dr. Donotti and others in Italy that he could teach them how to modify their machines! How was the defendant or the office of the General Manager affected and/or ridiculed? There was no evidence to

establish this.

As when the defendant failed to do some work as per the memo of 10th arch, 1932 - his 10 day's salary for that month was deducted where is other evidence that the plaintiff continued to do absolutely no work? And where was the rule of the jungle that the General Manager was speaking about which he could not allow; to reign in the company? I am not able to find evidence of any of these.

Given that the plaintiff did not sign a delivery book to indicate receipt of memo from the general Manager there is no evidence that he was asked to explain why he did not sign such delivery book

As far as the evidence goes, the plaintiff had his privilege of drawing water from the defendant factory withdrawn by the General Manager from 1.2.32. He had his petrol allowance of shs.500 also withdrawn from 1.2.82 . No sufficient reasons were given for the withdrawal of these privileges, The plaintiff was forced to go on leave on 23.1.32 though here the defence witness says the defendant did not allow local leave for its employees accumulate. And would appear that from the time defence witness became General Manager of the defendant, things did not go well with the plaintiff.

Somehow the two agreed to disagree.

Evidence adduced so far, and after the court has evaluated the same it is not possible to find the real or sufficient reason why the plaintiff was summarily dismissed from the services of the defendant. All the allegations made against him, as far as I can see did not account to acts of gross insubordination to warrant summary dismissal. As I have already stated it would seem the plaintiff rightly believed he was entitled to free water from the factory since he had been allowed to draw it for along time. And as he was a technical staff and staying outside the defendant's premises he was bound to be called on duty at odd bourse thus necessitating petrol allowance being paid to him. So for the general manager to decide to withdrawal these facilities without sufficient explanation left room for queries.

The plaintiff was a hard working man who was keen to improve his capability in the field and which he had been employed and this is why he attended a course .in \cf1 ^ maintenance management sponsored by Technical Consultants International Limited and obtained a certificate; and also another course sponsored by the defendant in Italy. Though defence witness had his views on these courses, I was satisfied the defendant had a great part to play therein and did indeed sponsor the plaintiff there. Neither do I believe when the defence witness says the plaintiff did not improve in his work despite these courses. I note that the plaintiff was employed by the defenant on 6.8.76 at salary of shs.850 per month. By May 1977 he was earning shs.1200 plus house allowance of shs.100. And by September, 1981 the plaintiff's salary – consolidated as defence witness says was shs2240. This surely shows signs of advancement and not otherwise. Complied with this is a letter addressed to the plaintiff on 10th January, 1973 by the then managing Director of the company appraising him. This could not mean the plaintiff was not improving in his work as the defence witness would wish the court to believe! My belief therefore, is the action taken by the General Manager of the defendant to summarily dismiss the plaintiff was not lawful. In any event, defence witness did not satisfy court that he had the power to dismiss a member of the management staff summarily.

Having decided on issue two, I now turn to issue 3. Plaintiff, at the time of summary dismissal was earning a consolidated salary of shs.2240. I am not sure he was [www.kenyalawreports.or.ke](http://www.kenyalawreports.or.ke) entitled to owner occupied house allowance. The evidence adduced does not establish that the plaintiff ever took an action in this direction. He should therefore be deemed to have accepted a consolidated salary of shs.2240 inclusive of house allowance. Petrol allowance to which the plaintiff was previously entitled was not paid to him for February and part of March 1982. This, I am sure ought to have been done in (shs.500 x 275 = \$£.775 It is not easy to award anything for lost water for 11/2 months as court was not told how much water in terms of money the plaintiff was using per month.

Then comes the crucial point; damages. In evidence the plaintiff said since his services were terminated he has never secured any other employment. Of course, the defendant says it worked out plaintiff's benefits as at the time of dismissal which the plaintiff refused to collect. What would this help

the plaintiff who was unlawfully dismissed from his work and who has remained out of employment to date? Nothing much. The plaintiff has suffered substantial damages for which there can be no adequate award. Perhaps what this court can do to give some token relief to the plaintiff is to award him 12 months salary at shs.2240 per month which will be added to the award of £775 in form of petrol allowance for February and part of March, 1932 and the benefits worked out by the defendant.

This I hereby do and award plaintiff costs of the suit and interest on the sum of damages so awarded. Order accordingly.

Delivered by me this 25th day of May 1934.

D.K.S. AGANYANYA

JUDGE

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