



**Dolo v Kenya Defence Forces & another (Cause 282 of 2018)
[2025] KEELRC 196 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 196 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 282 OF 2018
J RIKA, J
JANUARY 31, 2025**

BETWEEN

GEORGE ODHIAMBO DOLO CLAIMANT

AND

THE KENYA DEFENCE FORCES 1ST RESPONDENT

THE HON. ATTORNEY - GENERAL 2ND RESPONDENT

JUDGMENT

Representation:

M/S J.A Guserwa & Company Advocates for the Claimant

A.K. Tuitok, Special State Counsel for the Respondents

1. The Claimant filed his Statement of Claim, on 8th March 2018.
2. He avers that on or about the year 1988, he was recruited as a Private, in the Kenya Armed Forces [now KDF]. He was later promoted as a Corporal. His salary as at 2018, was Kshs. 71,399 all-inclusive.
3. He was issued a discharge letter by the Respondent dated 9th March 2017. It was to take effect from 2nd March 2017. He was dismissed, without reason. He was not paid his lawful dues.
4. He prays for: -
 - a. Reinstatement without loss of rank, and benefits.
Alternatively,
 - b. Salary for the period March 2017 to-date at Kshs. 856,788.
 - c. Notice at Kshs. 71,399.



- d. Accrued leave at Kshs. 45,000.
 - e. Compensation equivalent of 12 months' salary.
 - f. General damages for wrongful and /or unfair termination.
 - g. Costs and interest.
5. The Respondents filed their Statement of Response, on 27th January 2020. They concede that the Claimant was employed by the 1st Respondent as a Soldier, for 28 years. He was a habitual offender. He was discharged through the letter dated 9th March 2017, after a summary trial. He was informed of the decision of the Appropriate Superior Authority.
 6. His discharge was fair and lawful, executed in accordance with the KDF Act. He did not challenge the decision of the Commanding Officer.
 7. The incident leading to his discharge was thoroughly investigated by the Military Police. The abstract of evidence was served upon the Claimant. He was brought before his Commanding Officer. He was asked to elect, if he wanted to be tried by the Court Martial, or by his Commanding Officer. He elected the latter.
 8. At his trial, the Claimant stated that he had enough time to prepare. He did not wish to be represented. He cross-examined witnesses.
 9. The Respondents state that the Court does not have jurisdiction to entertain the Claim, and they undertook to argue this as a point of preliminary objection. They urge the Court to dismiss the Claim with costs.
 10. The Claimant gave evidence and closed his case, on 31st October 2023. Colonel Frank Omuse, Staff Officer in charge of personnel records at KDF Head Office, gave evidence for the Respondents on 17th July 2024, closing the hearing.
 11. The Claimant relied on his witness statement and documents [1-5] on record. He was charged with the offence of stealing. He was not told who the complainant was. He was alleged to have broken into a box belonging to one Komen, and stolen Kshs. 1,000. He was also charged with the offence of guarding without a firearm.
 12. Cross-examined, he told the Court that he was dismissed with effect from 2nd March 2017. He was paid his salary for February 2017. His Commanding Officer was Oduori. The Claimant appeared before him. He was charged with 3 offences. The Military Police investigated the offences. He received the charges, before he appeared before Oduori. He cross-examined Corporal Nyakundi. Captain Githnji and Oduori were present. Proceedings were recorded. The Claimant signed the proceedings. He was told that he was guilty. He was discharged. He did not know why he was discharged. He cleared and received instructions for his clearance. He did not give names of witnesses he intended to call, who he was not allowed to call. He was not to continue earning his salary, after dismissal.
 13. Colonel Omuse confirmed that the Claimant was dismissed on disciplinary grounds. He was charged with stealing, damage to property, and conduct contrary to good order. The 1st Respondent followed its summary disciplinary procedure. Investigations were carried out by the Military Police. They compiled an abstract of evidence. It was presented to the Claimant, before he appeared for hearing. There was a charge sheet with all the details, based on the abstract of evidence. Colonel Omuse relied on his witness statement and documents filed by the Respondents [exhibits 1-3]. The Claimant was found guilty on all the charges, and dismissed from service.



14. Cross-examined, Colonel Omuse told the Court he was not the Claimant's Commanding Officer. Part 8 of the KDF Act, regulates disciplinary procedure. It reflects the requirements of *the Constitution* of Kenya and the *Fair Administrative Action Act*. There must be a complaint. There was no complaints form exhibited by the Respondents. There was a charge sheet. There was no evidence, of a complaint forwarded to the Military Police to investigate. The Military Police would forward abstract of evidence and the charges. The Respondents only exhibited the charges. They also exhibited the proceedings. The Claimant was cross-examined. He confirmed that he went through the abstract of evidence. There is a provision for administrative review. A Superior Commander is supposed to review and communicate his findings to the accused, within 14 days.
15. Review was done within 7 days. Colonel Omuse did not know if the outcome was communicated to the Claimant. The offences were reported by 3 individuals. Major Leariwala was one of them. Colonel Omuse did not know why Leariwala was not called as a witness. Guarding without a weapon, fell under the charge of conduct prejudicial to good order. This charge was not preceded by a specific complaint. It did not feature in the proceedings. The Claimant was found guilty of the charge. He was advised, through the abstract of evidence, of his right to bring witnesses. He was not shown the box he was alleged to have broken. He did not request for its production.
16. Redirected, Colonel Omuse told the Court that he relied on the documents from the abstract of evidence. Investigations commence when there is a complaint. Major Leariwala was from the Military Police. He investigated. He would therefore not appear as a witness. The decision against the Claimant was reviewed and upheld.
17. The issues are whether the Court has jurisdiction; whether the Claimant's dismissal from service was carried out fairly, and based on valid reason; and whether the Claimant merits the remedies sought.

The Court Finds: -

18. The Claimant's recruitment and deployment as a KDF serviceman, for 28 years, is not disputed. He was discharged on 9th March 2017, following summary trial proceedings against him, which took place on 8th February 2017.
19. The trial record shows that the Claimant faced 3 charges: stealing cash totalling Kshs. 40,300 from recruits within the Eldoret Barracks, on 31st December 2016, contrary to Section 88[1] [a] of the KDF Act; damage to a box belonging to his colleague L.K. Komen and stealing Kshs. 1,000 from the box, at Eldoret Barracks, contrary to Section 87 [c] of the KDF Act; and performing his guard duties without a weapon, amounting to conduct to prejudice of good order, contrary to Section 121 of the KDF Act.
20. He was heard by his Commanding Officer George Dolo Odhiambo. The proceedings indicate that the Claimant was found guilty of charge 1, and fined half-a –month's salary, and found guilty of charge 2, and recommended to be dismissed from service.
21. It is not clear what the finding or verdict, on the 3rd charge was.
22. Procedure: The offences were reported to the Military Police by 3 Officers – Major Leariwala, Corporal Nyakundi and Captain Githinji.
23. The Military Police investigated, and generated the charge sheet and an abstract of evidence which were availed to the Claimant prior to the hearing.
24. A record of the hearing shows that the Claimant was advised on his option to be tried by the Court Martial or his Commanding Officer. He elected his Commanding Officer. He was read the charges by



the Adjutant. He stated that he understood the charges. He confirmed that he had sufficient time to go through the charge sheet and the abstract of evidence. He confirmed that he had adequate time to prepare his defence.

25. Corporal Nyakundi, who found the Claimant interfering with the recruits' personal boxes, gave evidence and was cross-examined by the Claimant.
26. At the close of the trial, the Claimant conceded guilt stating that, "based on the evidence alluded against me, I think the case points more at me. I cannot explain myself further than this."
27. The Commanding Officer then asks the Claimant, " will you accept my verdict? " The Claimant answers, " yes sir."
28. The Claimant signed the proceedings, attesting to their correctness.
29. He was issued the letter of discharge dated 9th March 2017. The record indicates that proceedings were subject of review by Formation Commander, and the decision of the Commanding Officer was upheld.
30. The Court is not able to find fault with the procedure adopted by the Respondent. It was in conformity with the KDF Act. Corporal Nyakundi having given evidence, it was not necessary for other officers, including the recruits from whom the Claimant stole, to give evidence.
31. Reason. The Claimant himself confirmed that based on the evidence brought against him, " the case points more at me. I can't explain myself further..."
32. There was more than reasonable suspicion against the Claimant, which would amount to valid reason, to justify dismissal. The Claimant was found alone, in the recruits' accommodation unit. Theft was reported from the same facility. The recruits were all away on firing exercises. The Claimant did not have a plausible reason why he was at the premises alone, when questioned by Corporal Nyakundi. He attempted to soften Nyakundi's suspicions, by addressing him as 'bro,' something uncommon within the regimented life of soldiers. When Nyakundi did not soften, he alleged before the Commanding Officer that Nyakundi was inebriated, when he found him stealing from the recruits. There was more than a reasonable suspicion against the Claimant, on the charge of stealing from recruits.
33. The Court is persuaded that the 1st Respondent dismissed the Claimant from service following a fair procedure, and based on valid reasons.
34. The Claim has no merit.

It is ordered: -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

James Rika

Judge

