



**Masinde v Nairobi City County (Cause 587 of 2016)  
[2024] KEELRC 346 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 346 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 587 OF 2016  
SC RUTTO, J  
FEBRUARY 23, 2024**

**BETWEEN**

**RICHARD K. MASINDE ..... CLAIMANT**

**AND**

**NAIROBI CITY COUNTY ..... RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim dated 11<sup>th</sup> April 2016 which was subsequently amended 10<sup>th</sup> January 2019 and further on 19<sup>th</sup> May 2022, the Claimant avers that he was deployed to the Respondent’s Environment Management and Planning Section as a Public Health Officer II. That on or about 15<sup>th</sup> April 2015, he was promoted by the Respondent to the position of Acting Director Environment Monitoring Compliance and Enforcement. He avers that despite taking up more duties, his remuneration remained the same at Kshs 83,630.00. He further avers that he served the Respondent throughout his employment term with diligence and honesty.
2. The Claimant further avers that on 30<sup>th</sup> March 2016, he was issued with a show cause letter which also suspended his service. He was subsequently retired in public interest through a letter dated 14<sup>th</sup> June 2016. Following his appeal to the Public Service Commission, he was reinstated through a letter dated 9<sup>th</sup> July 2018.
3. The Claimant further states that during his suspension, he was struck off from the payroll hence was denied remuneration including the house allowance and medical allowance that was indicated in the suspension letter.
4. It is the Claimant’s case that upon reinstatement, he served diligently but was once again unlawfully, irregularly and unfairly retired in July 2020.
5. On account of the foregoing, the Claimant seeks the following reliefs against the Respondent:



- a. An order directing the Respondent to unconditionally lift the suspension of the Claimant from employment and order for his immediate reinstatement.
  - b. A declaration that the Claimant's suspension was unfair and unlawful.
  - c. An order for the payment by the Respondent the Claimant's withheld emoluments during this period of his suspension and the purported retirement in 'public interest' amounting to Kshs 2,425,270/= together with interest thereon. Maximum compensation for wrongful suspension and retirement in Public Interest and Lost Income for 12 months in the sum of Kshs 1,003,560/=
  - d. An order of injunction restraining the Respondent either by themselves, employees, servants and/or agents from terminating the employment of the Claimant.
  - e. Special damages amounting to Kshs 1,464,794.64 as at 10<sup>th</sup> May 2022.
  - f. Unpaid Acting Allowance of Kshs 3,110,310/=
  - g. The sum of Kshs 2,155,147/= as particularized in paragraph 34 of the Further Amended Claim.
  - h. Maximum compensation for unfair Retirement process for 12 months in the sum of Kshs 1,003,560/=
  - i. The sum of Kshs 151,130/= as particularized in paragraph 14 of the Further Amended Claim.
  - j. General, punitive and exemplary damages.
  - k. Costs of this suit with interest on the above till payment in full.
6. The Respondent countered the Claimant's Further Amended Statement of Claim through its Further Amended Memorandum of Response dated 3<sup>rd</sup> August 2022, in which it avers that the Claimant's remuneration was strictly provided for under the contract of employment which the Claimant is well aware of.
  7. The Respondent has further denied the Claimant's assertions that he served diligently and avers that he failed to perform his duty and mandate of investigating health hazards within Nairobi County. The Respondent further avers that the Claimant made complaints that are unfounded to the Inspector General of Police against the Respondent instead of facing the County Secretary and Head of Public Service, a body in charge of complaints within county departments. The Respondent further contends that the Claimant was not entitled to any salary due to gross misconduct save for full house allowance and medical insurance premium which was remitted to his account.
  8. The Respondent further states that the Claimant's suspension was lawful and due process was followed as he was issued with a Notice to Show Cause why he should not be dismissed.
  9. It is the Respondent's further contention that the suspension was a genuine procedure pending the ongoing investigations against the Claimant. That the same was with a view to instituting disciplinary proceedings against the Claimant.
  10. In the Respondent's view, the Claimant is not entitled to any salaries as well as the general, special and punitive damages claimed. Consequently, the Respondent has asked the Court to dismiss the claim with costs.



11. During the hearing which proceeded on 7<sup>th</sup> December 2023, the Claimant testified in support of his case while the Respondent elected not to call oral evidence.

### **Claimant's Case**

12. At the outset, the Claimant asked the Court to adopt his Further Amended Memorandum of Claim, witness statement, the initial list and bundle of documents, supplementary list and bundle of documents as well as his further supplementary list and bundle of documents to constitute his evidence in chief.
13. It was the Claimant's testimony that the minimum salary for the job scale of Assistant Director with the Respondent is Kshs 109,370.00 whereas his basic salary was Kshs 59,630.00.
14. Under the Collective Bargaining Agreement, he was entitled to an Acting allowance of Kshs 49,740.00 per month amounting to Kshs 3,110,310.00.
15. He further averred that retiring him in public interest amounts to being declared unfit to hold a public office which was damaging to him. He holds the Respondent wholly liable for the loss of reputation and mental anguish.
16. The Claimant further stated that the Respondent unlawfully denied him remuneration hence he defaulted on loans and other expenses that the Respondent was well aware were guaranteed by his pay slip.
17. That further, the default on loans damaged his Credit rating and he holds the Respondent wholly liable.
18. Concluding his testimony in chief, the Claimant asked the court to allow his claim as prayed.

### **Respondent's Case**

19. As stated herein, the Respondent elected not to call oral evidence hence its case remained as per its Further Amended Response.

### **Submissions**

20. The Respondent submitted that the Claimant's suspension and retirement was fair and lawful. According to the Respondent, the Claimant's action amounted to gross misconduct and insubordination.
21. It was the Respondent's further submission that the Claimant was well aware that according to its policy when an employee is under suspension, they are not entitled to any salary save for full house allowance and medical insurance premium which were remitted to him.
22. Placing reliance on the case of *Kenya Revenue Authority v Menginya Salim Murgani* (2010) eKLR and *B. A Imonikhe v Unity Bank PLC*. S.C 68 of 2003, the Respondent maintained that the Claimant was retired in public interest after due process and procedure was followed.
23. The Claimant did not file written submissions despite being granted a further extension of three days to comply, on 19<sup>th</sup> January 2024.



## **Analysis and Determination**

24. It is noteworthy that the Claimant has sought to declare his suspension unfair and unlawful. Indeed, he seeks maximum compensation for wrongful suspension and retirement in public interest.
25. From the record, the Claimant was cited for gross misconduct and insubordination through a letter dated 16<sup>th</sup> March 2016. Through the said letter, he was asked to show cause why he should not be dismissed from service. He was further suspended from exercising the duties of his office pending finalization of his case.
26. The Claimant responded to the allegations contained in the Notice to Show Cause and asked that the same be withdrawn.
27. On 14<sup>th</sup> June 2016, he was issued with a letter titled “Reinstatement and Retirement”. Through the said letter, he was notified that he had been reinstated back to the payroll and retired on grounds of public interest. He successfully appealed to the Public Service Commission, and through a letter dated 9<sup>th</sup> July 2018, he was notified of his reinstatement by the Respondent.
28. In as much as the Claimant avers in his Statement of Claim that upon reinstatement, he was once again retired unlawfully in July 2020, he did not adduce any evidence to that effect.
29. This being the case, I am of the view that following the Claimant’s reinstatement by the Public Service Commission, the question as to whether his suspension and retirement in public interest was fair and lawful, does not arise at this juncture. Simply put, the issue is spent and is now water under the bridge.
30. In light of the foregoing, to my mind the singular issue for determination is whether the Claimant is entitled to the reliefs sought.
31. That said, I will now proceed to consider the reliefs sought by the Claimant hereunder.

## **Reliefs**

32. The Claimant has sought to be paid the sum of Kshs 2,425,270.00 being withheld salary during the period he was on suspension and retirement in public interest. On its part, the Respondent has maintained that the Claimant is not entitled to salary during his suspension. The Respondent’s position is at variance with Clause 30(d) of the Collective Bargaining Agreement (CBA) dated 12<sup>th</sup> October 2012, executed between the Respondent and the Kenya County Government Workers Union. The said Clause 30(d) provides as follows:

“Where an officer who has been suspended is subsequently reinstated, he shall be entitled to receive full pay in respect of the period of suspension.” Underlined for emphasis
33. As stated herein, the Claimant was reinstated by the Public Service Commission. Indeed, it is the Respondent who notified the Claimant of his reinstatement through a letter dated 9<sup>th</sup> July 2018. It thus follows that in light of Clause 30 (d) of the CBA, the Claimant is entitled to receive the salary withheld during the period he was on suspension and retirement in public interest.
34. The Claimant has further sought to be paid the sum of Kshs 151,130.00 being salary for March 2016, unpaid house and medical allowance. In support of his claim, the Claimant exhibited copies of his pay slips indicating that his earnings during the period in question was “0”. It is thus evident that he was not paid salary for March 2016 as well as house allowance and medical allowance during the period he claims. He is therefore entitled to be paid accordingly.



35. As the Court has found that the fairness and lawfulness of the Claimant's suspension and retirement in public interest is already spent, his claim for maximum compensation in that regard does not lie.
36. The Claimant has further prayed for the sum of Kshs 2,155,147.00 being salary for July 2020, unpaid leave for 5 years, salary in lieu of 6 month retirement notice and County Retirement Benefits.
37. It is not in doubt that the said claims are in the nature of specific claims. The law is settled that a claim for special damages must not only be specifically pleaded but must also be strictly proved with as much particularity as the circumstances permit. In this case, the Claimant did not place before Court evidence to support his claim. For instance, there was no evidence in the form a pay slip to confirm that he was not paid salary for July 2020. Further, he did not lay a basis for claiming salary in lieu of 6 month retirement notice. Additionally, he did not demonstrate how he arrived at the sum of Kshs 970,000.00 being County Retirement Benefits. Further to the foregoing, he did not specify the period of 5 years for which he is claiming unpaid leave.
38. Accordingly, the Claim for the sum of Kshs 2,155,147.00 cannot be sustained as the Claimant did not discharge his legal burden of proof to strictly prove his claim.
39. Similarly, the claim for unpaid acting allowance in the sum of Kshs 3,110,310.00 is declined. Here is why. The letter dated 15<sup>th</sup> April 2015 which the Claimant sought to rely on for purposes of this claim does not state that he was appointed in an acting capacity. With respect to this, Clause 8 of the CBA which provides for acting allowance is couched in the following manner:
 

“An officer shall be eligible to be paid acting allowance if he/she is temporarily appointed by the establishment Committed to act for a period of at least one month provided that he/she meets the following conditions:...” Underlined for emphasis
40. In this case, there is no evidence that the Claimant was temporarily appointed in an acting capacity as per Clause 8 of the CBA. Therefore, there is no basis for his claim of acting allowance.

**Orders**

41. Against this background, I enter Judgment in favour of the Claimant against the Respondent and he is awarded: -
  - a. The sum of Kshs 2,425,270.00 being withheld emoluments during the period he was on suspension and retirement in public interest.
  - b. The sum of Kshs 151,130.00 being unpaid salary for March 2016, unpaid house and medical allowance.
  - c. The total award is Kshs 2,576,400.00.
  - d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.
  - e. The Claimant shall also have the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2024.**

.....  
**STELLA RUTTO**

**JUDGE**

Appearance:



For the Claimant Mr. Akech

For the Respondent Ms. Nyakundi

Court assistant Millicent Kibet

### **Order**

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

