



**Maina v Attorney General & another (Employment and Labour Relations Cause 1403 of 2018) [2024] KEELRC 1016 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1016 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1403 OF 2018**

**MN NDUMA, J**

**APRIL 18, 2024**

**BETWEEN**

**MICHAEL M MAINA ..... CLAIMANT**

**AND**

**THE HONOURABLE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY, OFFICE OF THE PRESIDENT, PROVINCIAL  
ADMINISTRATION AND INTERNAL SECURITY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The suit was filed by the plaintiff, Michael Maina on 21<sup>st</sup> July 2011 at the High Court. The suit was subsequently transferred to the Employment & Labour Relations Court and registered as ELRC Cause No. 1403 of 2018.
2. The plaintiff sought for orders:-
  - a. That the defendant do pay the plaintiff his terminal dues (to be calculated at the hearing hereof) and be reinstated in his employment without loss of any benefits.
  - b. General damages
  - c. Interest on (a) and (b) at court rates till payment in full
  - d. The cost of this suit
  - e. Any other or further relief as it be deemed just and proper by this honourable court.
3. The plaintiff (PW1) adopted a witness statement filed together with the suit on 21/7/2021 as his evidence in chief in which he testified that he was employed by the Public Service Commission of Kenya in 1996 as an executive officer in the Ministry of Agriculture.



4. That in the year 2003 the plaintiff was transferred to Kisii District in the office of the President, Provincial Administration and Internal Security as a personnel officer in the Kisii District Commissioner's office.
5. That in July 2007, the plaintiff received a letter from the permanent secretary in the office of the President, Provincial Administration and Internal Security requiring the plaintiff to show cause over alleged leaking of confidential information in the District Commissioner's office. That the plaintiff replied to the letter showing his innocence.
6. That by a letter dated 25<sup>th</sup> October 2005, the plaintiff was dismissed from employment without notice and opportunity to be heard.
7. That the plaintiff made appeal to the Public Service Commission to have the decision reversed but the plaintiff was not given a hearing nor receive any decision reversing the dismissal from the Public Service Commission.
8. The plaintiff was cross-examined by counsel Oure for the respondent. PW1 explained that he was informed by the District Commissioner that he had leaked information regarding appointment of an Assistant Chief before the appointment was formally announced by the District Commissioner.
9. PW1 explained that the file containing the appointment letter was under lock and key in the plaintiff's drawer however, the secretary to the District Commissioner and the District Commissioner were in possession of the file before the plaintiff locked it in the office drawer and he did not know how and by whom the appointment was leaked to the media before formal announcement. The plaintiff denied having leaked the information.
10. The plaintiff said that he was not called to a disciplinary hearing to defend himself. That the dismissal was not for a valid reason and the respondent dismissed him without notice and without following a fair procedure. That the suit be allowed as prayed.
11. The respondent did not call any witness to refute the evidence adduced by the plaintiff despite having filed a statement of defence to the suit.
12. The plaintiff and the defendants filed submission upon closure of their respective cases.

### **Determination**

13. The court has carefully considered the testimony by the plaintiff in the absence of any rival testimony by the defendant. The court has also considered the submissions by both parties. The issues for determination are:-
  - a. Whether the plaintiff has proved his case on a balance of probability.
  - b. Whether the plaintiff is entitled to the reliefs sought.
14. In terms of section 107 and 108 of the *Evidence Act* Cap 80 Laws of Kenya, the employee has the onus of proving that his employment was unlawfully and unfairly terminated by the employer.
15. The employer has the onus of rebuttal and demonstrate that the dismissal was lawful and fair.
16. The defendant herein failed to adduce any evidence to rebut the evidence adduced by the plaintiff that the defendant did not have any valid reason to dismiss him from employment.



17. The claimant testified that he was not guilty of leaking to the media, information on the appointment of an assistant chief before the formal announcement by the District Commissioner. The defendant did not adduce any evidence to contradict the clear and credible evidence adduced by the plaintiff.
18. The plaintiff also testified that he was not called to a disciplinary hearing to explain his innocence and the dismissal was effected without following any fair procedure.
19. The court finds that the dismissal of the plaintiff was unlawful and unfair and was in violation of the repealed *Employment Act* Cap 26 Laws of Kenya which was applicable as at the date of dismissal. The plaintiff is entitled to an award of damages for the breach of his right to fair hearing.
20. The court relies on the decision in *Mary Chemweno Kiptui versus Kenya Pipeline Company Limited* [2014] eKLR where the court emphasized that an employer must follow a fair procedure before terminating the employment contract of an employee. These principles were still applicable in the repealed *Employment Act* cap 226 laws of Kenya.
21. In *Pius Machafu Isuindu versus Lavington Security Guard Limited* [2017] eKLR the Court of Appeal held that:-

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on the employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for the termination/dismissal (section 43); prove that the reasons are valid and fair (section 45); prove that the grounds are justified (section 47(5))...”
22. The court has considered that the plaintiff had an illustrious career with the respondent from 1996 up to the year 2007 when his employment was unlawfully and unfairly curtailed. The court finds that the plaintiff was innocent of any misconduct and did not contribute to the dismissal. The defendant aggravated the matter by summarily dismissing the plaintiff without any notice and without payment of any terminal benefits. The court finds that the plaintiff suffered loss and damage and was not compensated for the loss. The defendant failed to render a decision upon appeal by the plaintiff and has kept the plaintiff in limbo to date. The defendant therefore denied the plaintiff full and equal benefit of the law and this is also a further aggravating circumstance in general.
23. The court has considered the long period the plaintiff served the defendant from the year 1996 to May 2007. The court has considered the cruel manner in which he was summarily dismissed without hearing, without notice and without payment of terminal benefits.
24. The plaintiff suffered loss of income and support of himself and family. The plaintiff had not obtained alternative employment for a long time and suffered loss and damage. The court has considered the passage of time and depreciation of currency value since 2007 to date. The court has also considered that the plaintiff had sought to be reinstated to his employment without loss of any income which is now not plausible due to passage of time.
25. The court has considered principles of award of general damages as enunciated in various cases including: -
  1. *Kenya Ports Authority and Joseph Makau Munyao and 4 others* Petition E008 of 2023 KESC 112 (KLR ) (Civ) Kenya.
  2. Civil Appeal No 352 of 2017, *Kenya Broadcasting Corporation versus Geoffrey Wakio* (2019) eKLR



and award the plaintiff a lump sum of Kshs. five (5) million in general damages for the unlawful and unfair dismissal from employment and damage suffered as a result thereof.

26. The damages are payable with interest at court rates from date of judgment till payment in full.

26. The respondent to pay the costs of the suit.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL, 2024**

**MATHEWS NDERI NDUMA**

**JUDGE**

**Appearance:**

Mr. Ondieki for claimant

Mr. Oure for respondent

Mr. Kemboi, Court Assistant

