



Letambul v Samburu County Government & another (Cause E038 of 2022) [2023] KEELRC 372 (KLR) (15 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 372 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E038 OF 2022
ON MAKAU, J
FEBRUARY 15, 2023**

BETWEEN

SIMON LETAMBUL CLAIMANT

AND

THE SAMBURU COUNTY GOVERNMENT 1ST RESPONDENT

THE SAMBURU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

JUDGMENT

1. The claimant was employed by the 1st respondent on 1st May, 2013 as the principal information officer in the office of the Governor. Vide the letter dated 2nd April 2015, he was appointed Director of Lands, Survey and Mapping effective 1st May, 2015. The second appointment was on permanent and pensionable basis. His salary was Kshs.156,089.00 but it was later increased to Kshs.246,110.00.
2. On 2nd September, 2020 the 2nd respondent summarily dismissed the claimant for alleged gross misconduct. He was aggrieved and brought this suit contending that the dismissal was unfair and it violated his right to fair labour practices and fair administrative action. The suit seeks the following reliefs:-
 - a. A declaration that the termination of the claimant's employment was unlawful and illegal.
 - b. A declaration that the 1st and 2nd Respondent breached and/or violated the claimant's Constitutional rights under Articles 27 (1); 35 91) (b), 47 and 50 (1) of *the Constitution* of Kenya, 2010.
 - c. An order for compensation for violation of the claimant's constitutional rights in particular Articles 27 (1); 35 91) (b), 47 and 50 (1) of *the Constitution* of Kenya, 2010



- d. The immediate reinstatement of the claimant to the position he held before the unfair dismissal or re-engagement of the claimant to other reasonable suitable work with not less than the previous wages.
 - e. 12 months' gross salary as compensation for unfair termination in the sum of Kshs.2,953,320/-
 - f. The withheld half salary of Kshs.123,005/- from May, 2020 when the claimant was interdicted to August, 2020 when he was last paid all totaling to Kshs.492,020/-.
 - g. The claimant's gross monthly salary of Kshs.246,110/- from September, 2020 when his employment was unfairly terminated until the date of the judgment delivery distress of Kshs.9,000,000/-
 - h. The general costs, exemplary damages and expenses for causing mental anguish and distress of Kshs.9,000,000/-
 - i. Special damages and costs of Kshs.12,800,000/- for defamation.
 - j. Costs of this suit and interest at court's rate on the awards until payment in full.
 - k. Any other relief that this Honourable court may deem fit and just to grant under the circumstances.
3. The respondents were served with the notice of summons and the claim herein but they never filed defence. They were also served with hearing notices but they failed to attend court and as such the suit was heard by way of formal proof.

Evidence

- 4. The claimant testified as CW1 and basically adopted his written statement dated 17th August, 2022 and 12 documents as his evidence to support the suit. In brief his case is that he performed his duties diligently and no complaint was raised about his performance, professionalism and/or professional ethics by his immediate boss.
- 5. He contended that he treated all his colleague and members of the public with courtesy, respect and professionalism so that no one made any formal complaint supported by substantive evidence to implicate him in any misconduct. He further stated that his appointment as Director of Lands, Survey and Mapping upset some staff of the 1st respondent and they embarked on a campaign to besmirch, frustrate and undermine him. They further made unsubstantiated allegations against him regarding his posts on some WhatsApp groups which were not official communication channels by the 1st respondent.
- 6. He maintained that he was a victim of political and personal attacks from some individuals with the staff of the 1st respondent. Further the allegations made against him were malicious, unsubstantiated and defamatory which renders his dismissal unfair and unlawful.
- 7. He stated that the 1st Respondents' HR Advisory and Disciplinary Committee failed to do any investigation on the allegations made against him and treated the same as if they were factual. He further contended that the committee failed to accord fair hearing as required under *the Constitution* and in a democratic society. He contended that one of the allegation cited for his dismissal letter had



been withdrawn by the complainant by a letter dated 4th November 2015. He further stated that some of his accusers like Mr. Bosco Sambu purportedly did the investigations and also took the disciplinary action against him.

8. He maintained that the allegations that led to his dismissal were not substantiated and they were made by persons actuated with personal vendetta against him. Further, the laid down procedure was not adhered to and the law was disregarded. Therefore he contended that the respondent breached his right to fair labour practices under Article 41, 47 and 50 of *the Constitution* by summarily dismissing him on the basis of rumors and unsubstantiated allegations, and without according a fair hearing based on investigation done by an independent body.
9. Finally he stated that as a result of the unfair dismissal his good reputation was severely damaged and his ability to repay his loan was compromised. Therefore he prayed for the reliefs sought in his claim.

Submissions

10. It was submitted that the reason for the claimant's dismissal was not valid and the procedure followed was not fair. It was further submitted that the respondent did not adhere to the procedure set out under section 41 of the *Employment Act* and the allegations cited for his dismissal have not been particularized and substantiated by evidence.
11. It was therefore contended that the summary dismissal was unfair and it violated claimant's fundamental right to fair labour practices, fair administrative actions and fair hearing under Article 41, 47 and 50 of *the Constitution*. As such the court was urged to award the reliefs sought by the claimant in his suit.

Determination

12. The facts of the case are not contested and therefore it is fact that the claimant was employed by the respondents in different capacities from 1st May, 2013 to 2nd September, 2020 when he was summarily dismissed. The issues for determination are:
 - a) Whether the reasons for the dismissal was valid and fair.
 - b) Whether fair procedure was followed.
 - c) Whether the reliefs sought are merited.

Reasons for dismissal

13. The reasons for dismissal of the claimant were set out in the dismissal letter dated 2nd September 2020 which is copied below:-

“Dear Sir

Re: Dismissal From The County Public Service

The County Public Service Board received a file on your disciplinary case on 10th June, 2020 from the County Human Resource Management and Advisory Committee. The Board reviewed the file, the allegations raised against you and the evidence provided. The Board notes the following:-

- i. You were appointed on 2nd April, 2015 to the position of Director Lands, Survey and Mapping.



- ii. On 18th May, 2015 you received a show cause letter ref: SCG/HR/Disc/Vol.1/3. This was after you insulted and insubordinated Senior County Government Officers in social media (Official County Government WhatsApp group).
- iii. On October 19, 2015 the then CEC Environment and Natural Resources wrote to the Secretary County Public Service Board pointing on your gross insubordination.
- iv. On 26th October, 2015, the chairman of the County Public Service Board Disciplinary Committee wrote to the Chairman County Advisory and Disciplinary Committee through a letter ref. CPSB/DISC/VOL/1/1/10. The chairman pointed to your gross insubordination and that it was not the first time.
- v. On 30th October, 2015 you received another show cause letter ref. SCG/HR/DISC/VOL.1/20. You were again found insubordinating, using abusive or insulting language.
- vi. From the screen shots provided as evidence and specifically your postings on 25th November, 2019 to a WhatsApp page (Samburu County Focus), you used abusive language to engage Mr.Siringa Letinina and Mr.Daniel Lenolkirna.
- vii. On several occasions on WhatsApp group you have insulted the Ag.County Secretary and His Excellency the Governor Samburu County calling them “Bee hive/Bee Keeper” and a “Thug Monkey” respectively.
- viii. You wrote a derogatory letter to the Ag.County Secretary on 28th April, 2020. In the letter you purport that the Ag.County Secretary had malicious interests in summoning you; the County Human Resource Advisory and Disciplinary Committee is an illegal Committee; you attacked the personality of the Ag.County Secretary highlighting about his wife and his personal property; you stated that the Ag.County Secretary is unqualified but appointed by the “gods”; you concluded by saying that you will not honour summon by the Ag. County Secretary and that he should report to his master.
- ix. You did a letter to the Ag. County Secretary and instead of delivering to him you posted to a WhatsApp group which the Ag. County Secretary is not a member. The letter has official Government letter head.
- x. On 27th April, 2020, Mbaringon Group Ranch lodged complains with the CEC lands on alleged impropriety on your part in handling community land in Kisima.
- xi. You were summoned to appear before the Samburu County Human Resource Advisory and Disciplinary Committee to answer allegations of again using abusive language towards other staff on social media. The letter is dated 18th May, 202 ref.SC/HR/PF/20130018423/20.
- xii. When you appeared before the committees you pleaded guilty to the allegations and told the Committee you were acting under intoxications; that saying the Ag County Secretary is unqualified was just a side show; you always



see what you are doing is not right after you have done it due to intoxication. You asked for forgiveness and that you will apologize through same platforms.

- xiii. On 28th April, 2020 you were interdicted through a letter ref. SCG/HR/PF/20130018423/18. This was to facilitate investigations on the alleged misconducts which was done and concluded before you were summoned to appear before the committee.

The county Public Service Board also notes that on 3rd July, 2020 you sent text messages to the Secretary/CEO of the County Public Service Board of Samburu. In your messages you threatened the Secretary to dare obey statutory obligations/recommendations; telling him that you are withdrawing your respect to him and swore to skin him alive. This amounts to a life threat and will be left to the authorities to handle.

The County Public Service Board notes that you have persistently used Abusive and Insulting language; insubordinated Senior County Government Officials; behaved in a manner likely to cause breach of peace in the County Government; inappropriately handled Mbaringon group ranch land issues; you are found to contravene the Public Service Code of Conduct, 2016 Sec.10 9b) which requires that a Public Officer shall treat members of the Public and other Public officers with courtesy and respect and that your general conduct has been unprofessional and brings disrepute to the Office of the Director Lands, Survey and Mapping.

The County Public Service Board vide Min.3 SCPSB/01/09/2020 deliberated on your case and finds that you are guilty of Gross Misconducts and resolves that you be and are hereby Dismissed from the Samburu County Public Service with effect from 2nd September, 2020.

Yours faithfully,

CS.Josphat Lekamario,

Secretary/CEO

Samburu County Public Service Board

Copy to:

H.E The Governor Ag. County Secretary County Head of Human Resource County Payroll Manager”

14. The above letter sets out a legion of allegations against the claimant and the manner in which the misconduct was allegedly committed. However the claimant has denied the said misconduct and blamed his predicament on some staff members who were upset when he got the job of Director Land, Survey and Mapping.
15. Section 43 of the [Employment Act](#) provides that in any legal proceedings where an employee challenges termination of employment, the employer has the burden of proof of the reason for the termination. In this case the employer has not filed any defence to controvert the claimant’s averments and there is no evidence adduced to rebut the allegations by the claimant. Consequently, I find that burden of proof to establish the validity of the reasons for the dismissal has not been discharged by the respondents.



Procedure followed

16. Section 41 of the *Employment Act* provides that:

- “(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

17. There is evidence that the claimant was served with a show cause letters and also got invited to a hearing before the County Human Resource Management Advisory Committee. However he contended that he was not given a fair hearing as the allegation against him were not investigated by an independent body. Further the people who were accusing him like Bosco Sambu were the people who sat to hear his disciplinary case.

18. The respondents have not adduced any evidence to rebut the foregoing allegations by the claimant and to prove that the procedure set out in Section 41 of the *Employment Act* and the claimant’s contract was adhered to before the summary dismissal of the claimant.

Reliefs sought

19. In view of the finding that the respondent have failed to prove the reasons for dismissing the claimant were valid and fair, and that fair procedure was followed, I now proceed to declare that the summary dismissal of the claimant was unfair and unlawful. The foregoing position is fortified by Section 45 (1) and (2) of the *Employment Act* which provides that

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove –
- a. That the reason for the termination is valid;
- b. That the reason for the termination is a fair reason -
- i. Related to the employee’s conduct, capacity or compatibility, or
- ii. Based on the operational requirements of the employer; and
- c. That the employment was terminated in accordance with fair procedure.”

20. The claims founded on violation of the claimant’s rights under Article 27, 35, 47 and 50 of *the Constitution* are declined because they are not pleaded with reasonable precision and they have not been proved by evidence as held by the High Court in *Anarita Karimi Njeru v Republic* [1979]eKLR.



21. Likewise the prayer for reinstatement is declined because the claimant has not established any special circumstances that would warrant an order for specific performance of his contract of employment nor has he shown that a reinstatement would be practicable. In his own admission, there are colleagues who were upset by his appointment into the position of Director Lands, Survey and Mapping. Consequently, I find that it may not be proper to return to a hostile work place.
22. Consequently, I award him damages being 6 months gross pay as compensation for the unfair termination of his contract of service. In awarding the said sum I have considered that he worked for the respondents for 7 years, and he had reasonable expectation to work until the mandatory retirement age. Further the employer did not prove before this court that the alleged misconduct was valid.
23. The claim for half salary during interdiction and salary after the dismissal is declined because it is not founded on the law or contract. The claim for Kshs.9,000,000.00 as for General costs, exemplary damages and expenses for stress and mental anguish is unknown in our labour law and it is also declined. Likewise the claim for Kshs.12,800,000.00 being special damages for defamation is also declined because it has not been established to the required standards.
24. In conclusion, I enter judgment for the claimant;
 - a. Declaring his summary dismissal unfair and unlawful;
 - b. Awarding him;
Salary in lieu of notice.....Kshs. 246,110.00
Compensation.....Kshs.1,476,660.00
Kshs.1,722,770.00
 - c. The claimant is also awarded costs plus interest at court rate from the date of this judgment.
 - d. The award in (b) shall be paid less statutory deductions.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF FEBRUARY, 2023.

ONESMUS N MAKAU

JUDGE

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 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

