



**Mwangangi v Kikima Farmers Cooperative Society Limited (Cause
1992 of 2015) [2023] KEELRC 3081 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1992 OF 2015
J RIKA, J
NOVEMBER 30, 2023**

BETWEEN

BONIFACE KAMAMI MWANGANGI CLAIMANT

AND

KIKIMA FARMERS COOPERATIVE SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 9th November 2015.
2. He states that he was employed by the Respondent in November 1983.
3. He held the position of Manager, as of 1st June 2015, when his contract was terminated by the Respondent.
4. He states that termination was unfair and unlawful. The Respondent alleged that the Claimant was not transparent in the financial report he presented. It was alleged further that, the Claimant's personnel file, did not have his academic and professional certificates.
5. He was not heard. He was not given reasons to justify termination. Rules of natural justice were disregarded. His last monthly gross salary was Kshs. 36,285.
6. He prays for: -
 - a. 3 months' gross salary in lieu of notice at Kshs. 108,855.
 - b. Terminal benefits for 32 years and 7 months at Kshs. 1,189,462.
 - c. 12 months' salary in compensation for unfair termination at Kshs. 436,500.
 - d. Annual leave of 10 days at Kshs. 362,850.
 - e. Declaration that termination was unfair.



- f. Certificate of Service to issue.
 - g. Costs.
 - h. Interest.
7. The Respondent filed its Statement of Response and Counterclaim, on 9th February 2015. The Claimant was employed by the Respondent, and his contract was terminated by the Respondent, on the dates indicated in the Statement of Claim. His contract was terminated on account of the Respondent's members' dissatisfaction [not unsatisfaction as expressed by the Respondent], with the Claimant's service. Termination was fair and lawful.
 8. He was subscribed to N.S.S.F and is not entitled to service pay.
 9. He misappropriated Respondent's finances, in the sum of Kshs. 4,389,546.43. The Respondent counterclaims this amount.
 10. It is the Respondent's prayer that the Claim is dismissed, the Counterclaim allowed, with costs to the Respondent.
 11. The Claimant filed a Reply to the Statement of Claim and Counterclaim, on 11th May 2016. He denies owing the Respondent, the counterclaimed amount.
 12. The Claimant gave evidence and rested his case on 4th February 2021 in the absence of the Respondent. The Respondent's current and former Chairmen, Mathew Kilonzo and Joseph Ngandi respectively, gave evidence on 4th October 2022. Hearing was closed on 7th December 2022, after the Respondent failed to present its last witness. An Application filed by the Respondent to re-open the hearing was declined, in a Ruling dated 26th July 2023. Parties confirmed filing an exchange of their Closing Submissions at the last appearance before the Court, on 20th September 2023.
 13. The Claimant restated that he was employed as Factory Manager. He exhibited his letters of appointment. He worked at different factories. Owing to his good performance, he was promoted to the position of Secretary Manager of the Respondent. He was the Chief Executive Officer. His letter of promotion is dated 4th January 2006.
 14. He was issued a letter of compulsory leave on 5th November 2014. No reason was communicated in justifying compulsory leave. He was invited to the Respondent's offices on 19th January 2015, to avail his academic certificates. He wrote back stating that his certificates were available in his personnel file. He attended a Board meeting on 5th May 2015 and presented his certificates. It was the same certificates he presented on recruitment. He received a letter dated 5th June 2015, stating that he had been dismissed with effect from 1st June 2015. The reasons were outlined.
 15. He did not have warning or caution. He complied with the demand for academic certificates. The Respondent insisted that he had failed to supply the certificates. Inquiry carried out in 2016, did not mention the Claimant adversely. He was not shown the minutes of the meeting where it was resolved that his contract is terminated. His last salary was Kshs. 36,285 as shown in his pay slips.
 16. Mathew Kilonzo told the Court that the Claimant was a former Manager of the Respondent. Kilonzo relied on his Witness Statement and 8 Documents filed by the Respondent in his evidence-in-chief. The Claimant misappropriated the Respondent's finances, as detailed in the Counterclaim.
 17. Cross-examined, Kilonzo told the Court that he was employed by the Respondent on 14th April 2021, while the Claimant left employment in 2015. His evidence was based on the records of the previous



Management Committee. There was an Inquiry, establishing misappropriation. The Respondent did not sue the Claimant for recovery of the funds, until the Claimant moved the Court. The Inquiry Report states that there was no merit, in the claim that the Respondent's officials pocketed Respondent's money; opening of bank accounts was done procedurally; and dismissal of the Respondent's officials did not follow due process. The letter of termination mentioned misappropriation of funds. It was the same funds subject of the Inquiry. It was also alleged that the Claimant was dismissed due to public demand. The Respondent did not exhibit any letter to show cause issued to the Claimant. A disciplinary hearing took place. The record of the hearing was not availed to the Court. The record is too bulky and remained at the Respondent's offices. The Claimant was not paid any dues.

18. Joseph Ngandi adopted his Witness Statement in his evidence-in-chief. Cross-examined, he testified that he became Chairman on 18th September 2018. The Claimant was dismissed in 2015. The Claimant was not sued or charged in Court for misappropriation of funds. Ngandi was not sure about the demand for academic and professional certificates made to the Claimant by the previous Management Committee. There was no evidence of letter to show cause issued to the Claimant. The letter of termination mentions misappropriation of funds. It is not specific on the sum involved. The by-laws required Respondent's Treasurer to make monthly financial reports to the Management Committee. Inquiry concluded there was no evidence of misappropriation.
19. The issues are whether termination of the Claimant's contract was based on valid reason[s] under Sections 43 and 45 of the Employment Act; whether fair procedure was followed under Sections 41 and 45 of the Employment Act; whether the Claimant merits the remedies pleaded; and whether the Counterclaim has been established.

The Court Finds:

20. There is no dispute that the Claimant was employed by the Respondent Cooperative Society, between 1983 and 1st June 2015. He worked as a Factory Manager, and rose to the summit of the Respondent, working as the Secretary Manager and Chief Executive Officer of the Respondent, as of the date of termination. His last gross monthly salary was Kshs. 36,285.
21. The letter of termination dated 5th June 2015 gave 5 reasons to justify the decision: -
 - a. There was no transparency during the handing over for the previous Board Management to the current one, as per financial report presented by the Claimant.
 - b. To-date the Claimant had not presented his academic and professional certificates as requested by the Board and which were not in his personnel file as claimed by the Claimant.
 - c. There was no record of the Claimant's promotion to his last position.
 - d. As per the resolutions passed by members at the last A.G.M requesting for commission of inquiry to investigate the financial status of the Respondent. [Ambiguous. it is not clear at all what the reason here, is intended to be].
 - e. Due to public demand.

Validity of reasons.

(a) Transparency during handover.

22. The Chairman and former Chairman of the Respondent, said nothing in their evidence about lack of transparency, during the handover process, from one Board Management to the other. It was not



explained to the Court what role the Claimant played in this handover, and what his shortcomings in that process was. The ground alludes to a financial report, presented by the Claimant, which showed lack of transparency. The report itself, on handover was not exhibited before the Court, and explained to the Court by the 2 Witnesses for the Respondent. Besides, the responsibility of preparing financial reports, under by-law 43 of the Respondent's by-laws, vested in the Treasurer. This was affirmed by the Respondent's Witnesses. This ground was not in the view of the Court a valid ground.

(b) Academic and professional certificates.

23. The Claimant was employed in 1983, and worked his way up to the top of the Respondent as its CEO. He worked for 32 years, 1983-2015. He served multiple factories as Factory Manager, before becoming the CEO. Did not the Respondent have his academic and professional certificates in 32 years? Why badger the Claimant with a demand for academic and professional certificates in his sunset years? The Claimant told the Court that he wrote to the Respondent, stating that his certificates were in his personnel file. He wrote twice with the same response, and even attended Board meeting, where he presented his certificates. What other academic and professional certificates did the Respondent wish the Claimant to produce? This ground was again unsupported by the evidence of the Chairman and former Chairman of the Respondent. The evidence by the Claimant, that he complied with this unusual demand made by the Respondent, was not challenged in the evidence given by the Respondent's Witnesses. This was not a valid ground.

(c) Promotion.

24. This ground is mind-boggling. How would the Claimant have assigned himself the high office of the CEO, if he was not put there by the Respondent? The Court does not see in what context, the Respondent was demanding that the Claimant provides records of his promotion to the position of CEO. It would take an incorrigibly dysfunctional organization, to have a CEO whose ascendancy to that position, is not documented by the organization itself. If the Respondent did not have records of the Claimant's promotion, the Respondent could only blame itself, not the Claimant. Section 74 of the [Employment Act](#) places the duty of custody of employment records, upon the Employer. It is mind-boggling for an Employer to demand of an Employee, to avail employment records on promotion. This ground was not valid.

(d) Resolutions passed by members.

25. As indicated by the Court at paragraph 21 [d] above, it is difficult to figure out how this was a ground to justify termination, let alone a valid ground. This was just an ambiguous and rambling statement.

(e) Public demand.

26. When did the public demand that the Claimant is relieved of his CEO position? Which public? The 2 Witnesses for the Respondent said nothing about the public. The Respondent is a membership organization, and only members', not the general public's interest, would be involved. There was no evidence given to the Court by any member of the Respondent, establishing that it was due to their demands, or demands by any other section of the public, that resulted in termination of the Claimant's contract. The Chairman and the former Chairman of the Respondent, did not adduce any evidence of public demands, in their respective evidence. This ground was without foundation.
27. Ground [d] alludes to resolution of members, for the setting up of a Commission of Inquiry, to investigate the affairs of the Respondent. The State Department of Cooperatives, Ministry of Trade, Industry and Cooperatives carried out Inquiry, and submitted a report date November 2017. The



report does not support a single ground relied on by the Respondent in terminating the Claimant's contract. On the contrary, the report appears to support the Claimant's position: there was no money, property of the Respondent, which was pocketed by Respondent's officials; bank accounts were opened and closed regularly; and due process was not followed by the Respondent in dismissal of its officials. The Commission of Inquiry alluded to at ground [d] therefore, appears to have sided with the position taken by the Claimant in the proceedings herein.

28. The Respondent did not establish valid grounds, to justify termination under Sections 43 and 45 of the *Employment Act*.

Procedure.

29. Procedural fairness was thrown out of the window from the very beginning. The Respondent's Witnesses agreed with the Claimant, that there was no letter to show cause issued upon the Claimant, exhibited before the Court. There was no record of a disciplinary hearing. The former Chairman could not confirm if there was a record of disciplinary hearing, because the file was too big, to be carried to Court. The evidence placed before the Court does not show that the Respondent accorded the Claimant a fair termination process, based on the minimum statutory standards of fairness, prescribed under Sections 41 and 45 of the *Employment Act*.

Counterclaim.

30. The allegation that the Claimant made away with Kshs. 4,386,546, the property of the Respondent, was not supported by the evidence given by the Respondent's Witnesses. There was no document supporting this allegation. One would expect theft of this large sum by the CEO, would have resulted in criminal prosecution. There was no criminal prosecution against the Claimant. The allegation was not established through the Commission of Inquiry. The Board of Management held a meeting on 30th June 2015. It resolved among other things, that the Claimant's contract is terminated, and if it was proved that he had misappropriated the Respondent's finances, he is sued. At this point there was no proof of misappropriation. The Respondent did not tell the Court at what point proof was obtained, to warrant the Counterclaim. The Counterclaim has no foundation and is declined.

Remedies.

31. The Claimant worked for 32 years, and seeks service / gratuity pay, which he characterizes as terminal benefits, at the rate of 15 days' salary for each complete year of service. The Court grants service / gratuity pay based on the period 1983-2007, a period of 24 years. After the *Employment Act* of 2007 was enacted, it would be deemed that the former CEO was actively subscribed to the N.S.S.F. His pay slip for May 2015 shows he was subscribed to the N.S.S.F. It is however important that the Claimant's long years of service, earned before the enactment of the *Employment Act* 2007, are recognized and rewarded. He merits a social security award, in form of service pay for 24 years, at the rate of 15 days' salary for each of the 24 years, at Kshs. 435,420.
32. The Court has not come across a clause, granting to the Parties a notice period of 3 months, or 3 months' salary in lieu of notice. The Claimant lists in his list of documents, a contract of employment. But there is no such a document exhibited. Instead, what is exhibited is a letter confirming him as the Secretary Manager. He is granted the statutory 1-month salary in lieu of notice, in the absence of a contractual clause granting him the superior notice pay claimed, at Kshs. 36,285.
33. The claim for annual leave pay is jumbled. In the demand letter exhibited by the Claimant, he seeks unpaid leave of 10 years, and leave allowance of 10 years. In the Statement of Claim, and the Witness Statement, the period has changed to 10 days of annual leave, but the amount remains the same, as



demanded in the letter, at Kshs. 362,850. There was clarification in the evidence given by the Claimant, and the prayer for annual leave pay, is declined.

34. The Claimant worked for 32 years. He did not contribute to the circumstances leading to termination. He was a diligent Employee, who had worked his way up, from the position of Factory Manager to CEO. He was paid nothing on dismissal, after years of toil. He is granted equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 435,420.
35. Costs of the Claim, and the Counterclaim to the Claimant.
36. Interest granted at court rate, from the date of Judgment till payment is made in full.
37. Certificate of Service to issue.
38. In sum it is ordered:
 - a. It is declared that termination was unfair.
 - b. The Counterclaim is declined.
 - c. The Respondent shall pay to the Claimant, service at Kshs. 435,420; notice at Kshs. 36,285; and compensation for unfair termination at Kshs. 435,420 – total Kshs. 907,125.
 - d. Costs of the Claim and the Counterclaim to the Claimant.
 - e. Interest granted from the date of Judgment at court rate, till payment is made in full.
 - f. Certificate of Service to issue.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF NOVEMBER 2023.

JAMES RIKA

JUDGE

