



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

ELRC CAUSE NO.E001 OF 2021

(Before D.K.N.Marete)

AGNES WANJA MWENJE.....CLAIMANT

VERSUS

COUNTY SACCO SOCIETY LIMITED.....RESPONDENT

J U D G M E N T

This matter was originated by way of a Statement of Claim dated 13th January, 2021. It does not disclose an issue of dispute on its face.

The Respondent in a Respondent Response dated 1st March, 2021 denies the claim and prays that it be dismissed with costs.

The claimant's case is that she was employed and has been in the respondent service for a period of 8 years since the year 2011. In this period, she has served in various positions including the Respondent's Chief Executive Officer (CEO) as at the time of her dismissal.

The Claimant's further case is that she was employed by the respondent as a casual officer by a letter 10th October, 2010 at a salary of Kshs.10,000.00 coupled with other allowances vide a letter of appointment dated 11th November, 2013 she employed on permanent and pensionable terms in job Group D3 on a salary of Kshs.18,000.00 exclusive of allowances.

Her other case comes out as follows;

- Vide a letter of appointment referenced No.CCSL/SFT/2014 she was appointed as a respondent's operation's manager at Kshs.40,000.00 inclusive of allowances.
- This was approved vide a letter of 23rd October, 2014.
- The claimant applied for the position of CEO or general manager and was appointed in an acting capacity after the interview process.
- She was alleviated to job group J with an entry salary of Kshs.47,000.00 plus other allowances.

The claimant's further case is that the year 2019, she was served with a Notification of Disciplinary Inquiry summoning her to appear before the Staff Advisory Committee and four allegations as follows;

- i) Failed to ensure regulations and procedures that run the County Sacco are effective and free of flaws;*
- ii) Failed to advise the management committee on administrative matters leading to loss of County Sacco money;*
- iii) Failed to develop strategies for profitable ventures; and*
- iv) Misadvising the management committee resulting to recruiting and maintaining unqualified personnel.*

The Respondent's other case is that as a consequence of the disciplinary proceedings, it was agreed that she be re-deployed which decision she questioned. She was subsequently served with a letter on her guilt and notice of retirement on public interest occasioned by the charges against herself. She was awarded 14 days to appeal against this decision.

She did appeal and requested for the meaning of requirement of retiring on public interest. This is as follows;

14. The Claimant states that her rights were infringed upon by the Respondent in that;

- i) The charges framed against her were too general, vague and imprecise and therefore insufficient to enable her know exactly what the Respondent was concerned about to enable her prepare her defence appropriately;*
- ii) No reasons (written or otherwise) that informed the recommendation of the Staff Advisory Committee to deploy the Claimant were advance to her despite seeking to be supplied with the same and her rights under the Fair Administrative Act and the Constitution of Kenya were infringed upon;*
- iii) The Claimant was never afforded the platform to appeal since she was never informed to whom she would appeal and in any case the decision of the Staff Advisory Committee had already been subjected to the Respondent's Board. In the circumstances, the Claimant would never get a fair hearing;*
- iv) The Claimant has been unable to make sense out of the Respondent's decision to retire the Claimant on "public interest" and despite her seeking clarification on the same, this has never been explained to her. Up to date, the Claimant does not know why her services were terminated by the Respondent;*
- v) The Claimant was retired on the so called public interest yet the charges levelled against her were not public interest and she has never received the findings of the Disciplinary Inquiry.*

17. The Claimant's position is that the Respondent's action to retire her from her work and deny her a fair hearing was a well calculated move by the Respondent to dismiss her from work without just cause and that the same was unfair and contrary to the express provisions of the Constitution, the Employment Act, 2007, the Fair Administrative Act, the principles of Natural justice and the general tenets of fair labour practices on the grounds that;

- a) During her term as the CEO the Respondent's performance improved drastically and the Respondent even received awards due to the exemplary performance of the claimant;*
- b) The Claimant has never had any disciplinary issues since the time she was first employed by the Respondent until her untimely dismissal;*
- c) The Claimant has never been issued with a warning letter relating to her line of duty;*
- d) The claimant has never received the outcome of the Disciplinary inquiry she attended before the Staff Advisory Board.*
- e) The Claimant was denied the opportunity to appeal to the Management Board despite her asking;*
- f) The Respondent did not take into consideration the fact that the claimant had served them for a period of 8 years without blemish.*
- g) Due process was thrown out of the window in a haste to constructively dismiss the claimant.*
- h) There was no reasonable cause to terminate her services under the circumstances.*

She prays as follows;

- a) A declaration that the Respondent's action to forcefully retire the Claimant from her employment was unlawful, unfair, inhuman, and in breach of the Claimant's Terms of Service.*
- b) An order directed at the Respondent to reinstate the Claimant to her position as the CEO with her full salary and all allowances accruing to that position as well as salary for the all the time she has been unlawfully retired.*

In the Alternative to prayer (B);

- c) The Respondent do pay the Claimant her salary at the rate of Kshs.90,907.00 made up of her basic pay and allowances from 3rd December, 2019 up to retirement age;*
- d) The Respondent do pay the claimant terminal benefits;*
- e) General damages;*
- f) Exemplary and Aggravated damages*
- g) An order that the Respondent do supply the claimant with a certificate of service;*

h) Interest on the damages awarded at court rates until payment in full.

i) Costs of this suit plus interest thereon.

The Respondent's case and averment is that the claimant appeared before the staff advisory committee and was awarded an opportunity to defend herself. She was unable to address the allegations against her.

The Respondent's further case is that this committee, on hearing the claimant recommended a re-deployment of the claimant as she was under performing. This was adopted by the board.

The Respondent's other case is that the claimant declined this offer of a soft landing and continued service. She also failed to appeal against the decision of the disciplinary committee and therefore has herself to blame.

The Respondent's further case is as follows;

a) The claimant was not performing her duties satisfactorily leading to the loss of funds belonging to the Respondents members and or customers.

b) The claimant failed to ensure competent officers were recruited to work for the Respondent.

c) She failed to maintain surveillance over irregularity and accuracy of the daily monthly and quarterly reports and reconciliation on trial balances.

d) Failing to develop and implement through departmental and branch heads strategies for starting profitable ventures and or schemes. These are some among her duties as per job description that she failed to perform.

This matter came to court various until the 9th December, 2021 when the parties agreed on a disposal by way of written submissions.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of the cause?

The 1st issue for determination is whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful. The parties hold diametrically oppose positions on this.

In their written submissions, they reiterate their cases as pleaded.

The Respondent's case overwhelms that of the claimant. This is both on a balance of probabilities and preponderance of evidence. The Respondent's in her witness statement by Henry Njue Mbogo dated 19th February, 2021 brings out a case of procedural and substantive justification in the termination of the employment of the claimant. Her list of documents is also instrumental in fomenting a case of lawful termination of employment.

The Claimant has not controverted the Respondent's case. She has not adequately addressed the fact and evidence that she was offered a soft landing which she declined. I therefore find lawful termination of employment and hold as such. And this answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination of employment she becomes disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr.Kimaita holding brief for Mondi instructed by Wambugu & Muriuki Company Advocates for the Claimant.

2. Mr.Kathungu instructed Joe Kathungu & Company Advocates for the Respondent.