



**Muchira v Samburu Sacco Limited (Cause 115 of 2015)
[2022] KEELRC 13448 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13448 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 115 OF 2015
HS WASILWA, J
DECEMBER 8, 2022**

BETWEEN

ANNE NYAWEKA MUCHIRA CLAIMANT

AND

SAMBURU SACCO LIMITED RESPONDENT

JUDGMENT

1. The claimant instituted this claim *vide* a memorandum of claim dated April 24, 2015, alleging to have been unfairly terminated and seeking for compensation for the unfair termination. She sought for the following reliefs;
 - a. A declaration and finding that the claimant is still in employment with the respondent and that she was wrongfully, unfairly and unlawfully placed on interdiction and that the said interdiction is null and void for all intents and purposes.
 - b. An order directing the respondent to pay the claimant her monthly salary of Kshs 18,000 from the November 26, 2006 unless and until her contract is lawfully determined.
 - c. Costs and interests at court rates from the date of filling this claim until payment in full.
 - d. Any other further or better relief that this honourable court may deem fit.

Claimant's case.

2. The claimant was employed by the respondent on February 10, 1992 as the Sacco manager and worked till November 26, 2006 when she was interdicted on account of a case that had been filed by member of the respondent's Sacco. The interdiction letter expressly stated that the claimant's employment status will be determined upon the determination of the case against her.



3. The claimant was acquitted of all the charges against her under section 210 of the *Criminal Procedure Code*. That she immediately informed the respondent on the outcome of the criminal case in order to decide on her employment but the respondent remained mum on the issue.
4. The claimant then sought for intervention from various sections including the County Cooperative officer, National Cohesion and Integration Commission and even the Commission on Administrative justice *vide* various correspondences but, she did not get any redress to her employment issue.
5. It is stated that the claimant raised the issue severally with the successive officials of the respondent to no avail. She stated that the actions of the respondent are tainted with malice, bad faith and illegality.
6. That the actions of the respondent of placing him on indeterminate interdiction is unfair and unlawful and the claimant has suffered financial loss and mental anguish from November 26, 2006 when she was placed on the said interdiction.
7. During hearing, the claimant testified as CW1 and adopted her witness statement of March 27, 2017 which reiterated her claim.

Respondent's case.

8. The respondent entered appearance on the June 19, 2015 and filed a response to claim on the June 29, 2015 admitting to employing the claimant as its manager as from February 10, 1992.
9. It is stated that sometimes in November, 2006, the claimant was charged with criminal offense for conspiring to murder one Patrick Leshore and she failed to report to duty from that date she was charged with the aforesaid offense. That even after being acquitted of the criminal charges, the claimant has never reported to work to continue working
10. On August 11, 2007, the claimant wrote a letter to the respondent, requesting to withdraw all her shares from the Sacco. Consequently, she drew a power of attorney conferring all powers to her son, Hope Collins, to collect and sign all her share refund on her behalf. A month later, she was paid all her shares.
11. That the respondent did not at any point interdict the claimant from employment and the letter of interdiction produced is not authentic because all communication from the respondent are through their official letter head. Furthermore, that the signature on the said letter is a forgery and not similar to the signatures of secretary of the respondent.
12. The respondent maintained that the claimant deserted work after being charged with criminal offense and failed to report back to work. Further that the case herein is time barred by dint of section 90 of the *Employment Act*.
13. The respondent's advocate ceased acting after pre-trial and the case herein was not defended during hearing. Therefore, the submissions filed were only by the claimant.

Claimant's submissions.

14. The claimant submitted that she was employed by the respondent from February 3, 1992 on permanent basis as captured in the letter of appointment tendered as evidence in court. She argued that she served the respondent till November 26, 2006, when she was placed on interdiction pending the hearing and determination of Maralal Criminal case number 258 of 2006 which she was charged with conspiring to commit a felony. That after she was discharged of the said charges, she informed the respondent of the court outcome because the interdiction was pegged on the said criminal charges,



which respondent did not take action. She argued that she remained interdicted indefinitely despite seeking solution from various offices on the status of her employment. She argued that the interdiction was unfair and thus urged this court to lift the same and make orders for compensation for the said actions by the respondents.

15. It is submitted that clause 3 of the Employment letter provided for reinstatement to employment upon acquittal as such the respondent ought to be compelled to abide by their own document and pay the claimant all her salary from the time of interdiction to date. In arguing so, the claimant relied on the case of [John Muikiria Waweru v Judicial Service Commission \[2020\] eKLR](#), where the court held that; -

“The claimant contended that his right to fair labour practices was violated by the respondent through the said unlawful suspension. The court has considered the relevant law and the HR Manual and confirmed that indeed the respondent had the power to suspend the claimant to pave the way for investigations on the alleged misconduct. However, the said suspension must be done in compliance with the law and the said HR Manual. In this case, I have already found that the suspension was unlawfully done. The claimant contended that he suffered serious financial stress due to withholding of all his salary and benefits which had implications on his loan obligations. Consequently, for the said reason, the court further makes a declaration that by unlawfully suspending the claimant, his constitutional right to fair labour practices as envisaged under article 41 of the [Constitution](#) were violated. The claimant has however not proved the alleged violation of his right to property. The claimant has also prayed for the release of all his salaries and benefits from February 2019 and in view of the finding that the suspension was unlawful and void ab initio, it is my holding that the claimant is entitled to all the salaries and benefits withheld on account of the unlawful suspension from February 2019 till the date hereof, and the respondent is directed to forthwith release the same to him.”

16. The claimant submitted further that in the event the court finds her services to have been terminated, to orders for the maximum compensation for the said unfair termination as was awarded by this court in [Jeremy Kirimi Rithaa v Technical University of Kenya \[2020\] eKLR](#).
17. I have considered all the evidence and submissions of the parties herein. The claimant’s case is that she was placed on undeterminable interdiction by the respondent on November 26, 2006 to date.
18. She seeks to be paid her salary since then to date. It is true she had been charged in court with a criminal offence but was acquitted accordingly on August 12, 2008.
19. The respondents filed their defence but failed to defend this suit against the claimant when matter came up for hearing.
20. The claimant’s case remained uncontroverted in terms of why the claimant was placed on interdiction for a long time without pay.
1. It is therefore my finding that the claimant is entitled to payment of her salary from date of termination which I declared was on April 27, 2015 when she filed this claim as per this court’s ruling of November 18, 2021.
 2. The amount due would in that case be salary from November 26, 2006 to November 27, 2015 which is 101 months
$$= 101 \times 18,000 = 1,818,000/=$$



21. The claimant is also entitled to compensation for unfair termination and 8 months' salary given the magnitude of injustice by being kept in luibo or interdiction for a long period of time

= 8 x 18,000 = 144,000/=

Total = 1,962,000/=

Less statutory deductions

22. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF DECEMBER, 2022.

HON LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kipchumba holding brief for Elkington for claimant – present

No appearance for respondent

Court Assistant - Fred

