



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 682 OF 2015**

**[FORMERLY MOMBASA H.C.C.C. NO. 179 OF 2000]**

**BETWEEN**

**FREDRICK MIRIGA.....CLAIMANT**

**VERSUS**

**ATTORNEY GENERAL.....RESPONDENT**

**Rika J**

Court Assistant: Benjamin Kombe

Sang & Langat Advocates for the Claimant

State Law Office Mombasa for the Respondent

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**JUDGMENT**

1. The Claimant filed his Pleint at the High Court Mombasa, on 12<sup>th</sup> April 2000.
2. He has subsequently amended his Pleadings, as well as changed Advocates on numerous occasions. He has on various occasions indicated on record that he is pursuing the Claim in person, or through various family members, upon whom he conferred power of attorney.
3. His Claim, which was last amended in a Statement filed on 30<sup>th</sup> May 2018, is that he was employed by the Public Service Commission of Kenya, as Senior Technical Officer, Ministry of Research, Technical Training and Technology, based at Mombasa Industrial Training Centre.
4. He states he was employed in 1967.
5. In sections of his Pleadings, he states he worked for 25 years, and in others, 31 years.
6. The Claimant avers that his service was wrongfully terminated by the Government, on the allegation that he deserted. He did not desert, but was only on scheduled leave.
7. His salary was stopped in December 1992. The Claimant went on serving without a salary from January 1993 to 1998. The Public Service Commission wrote dismissal letter in October 1995, but only availed the letter to the Claimant in 1998.
8. He prays the Court to find termination unfair and unlawful and grant Judgment in his favour, comprising:-
  - a. Salary increments due, between 1992 and 1998 total – Kshs. 5,699,680.
  - b. Annual leave at Kshs. 513,100

- c. Notice pay at Kshs. 105,010
- d. Severance pay at Kshs. 1,627,655
- e. House allowance at Kshs. 9000
- f. Medical Insurance at Kshs. 122,400.
- g. Commuter Allowance at Kshs. 432,000
- h. 12 month's salary in compensation to unfair termination at Kshs. 1,60,120
- i. Pension at lump sum of Kshs. 1,871,550
- j. Retirement benefits
- k. Certificate of Service.

9. He gives the total amount claimed at Kshs.12,531,515. He prays for a declaration that termination was unfair and unlawful. He asks for costs, interest and any other suitable relief.

10. The Respondent filed a Statement of Defence on 22<sup>nd</sup> August 2001. Its position is that the Claimant's contract was fairly and lawfully terminated, on account of desertion. Termination was in accordance with the Service Commissions Act, Cap 185 the laws of Kenya. The Respondent also filed a Notice of Preliminary Objection, 19 years after the Claim was filed, on 16<sup>th</sup> July 2019. It is submitted that the Claim is time - barred under Section 4(1) of the Limitation Actions Cap 22 the Laws of Kenya, and Section 90 of the Employment Act, 2007.

11. The Claimant gave oral evidence, and closed his case on 16<sup>th</sup> July 2019. The Respondent did not present evidence, and its case was closed by the Court on 9<sup>th</sup> October 2019. The matter was last mentioned on 6<sup>th</sup> December 2019, when Parties confirmed filing of their Submissions.

12. The Claimant restated in his oral evidence, the contents of his Pleadings on record. Cross-examined, he told the Court he enquired from the Permanent Secretary in the Ministry, why his salary was stopped. He wrote letters seeking details of stoppage. He was not taken through a disciplinary hearing. He later came to learn that some people were interested in taking over the Government house he occupied, and went about getting the house, by getting rid of the Claimant. He appealed termination decision internally.

**The Court Finds:-**

13. Parties invoke various provisions of the Employment Act 2007, in supporting their respective positions.

14. The Respondent relies on Section 90 of the Employment Act, in submitting that the Claim is time-barred.

15. The Claimant quotes Section 41, 43, 45 and 47(5) of the Employment Act, in urging the Court to find termination was unfair. He also relies on Articles of the Constitution, such as Article 47 on Fair Administrative Action.

16. Reference by Parties to these laws is misguided. These laws were not in place, when the Claimant's contract was terminated.

17. The applicable law in 1998, on the date termination took place, would be Service Commissions Act, and the repealed Employment Act, Cap 226 of the Laws of Kenya.

18. The applicable Law on limitation of time would be the Limitation of Actions Act, Cap 22 the Laws of Kenya.

19. The Respondent specifically invokes Section 4(1) (a) of the Limitation of Actions Act, which regulates actions founded on contract. The time-limit, in claims of this nature is set at 6 years. The Claimant states termination was in 1998. He filed the Claim in 2000, 2 years later. The Court does not think he was time-barred, under the law stated by the Respondent in its Notice of Preliminary Objection. Even if the Court adopts the actual date the letter of dismissal issued – 5<sup>th</sup> October 1995 – filing of the Claim in the year 2000 would still be within the 6 years.

20. The Claimant went on annual leave with effect from 1<sup>st</sup> December 1992. Leave was for 24 days. He was to resume on 6<sup>th</sup> January 1993.

21. It was confirmed by his area Senior Chief Jared Nyaude Dende, in a letter to the Respondent dated 14<sup>th</sup> December 1992, that the Claimant was at his rural home in Maliera Sub-location, Gem Location, for leave.

22. It is not clear from the Claimant's evidence however, if he reported back for duty on 6<sup>th</sup> January 1993, as advised.

23. His salary for December 1992, and subsequently, was stopped. A letter of dismissal issued on 5<sup>th</sup> October 1995.

24. Although the Claimant states he followed up the matter of stoppage of salary with the Permanent Secretary, he has not provided the Court with any letter addressed to the Permanent Secretary, enquiring about his salary stoppage.

25. He has exhibited nothing, to show that he returned to work in January 1993, and that he continued to work, incredibly without salary, until 1998, when he received his letter of dismissal from the Public Service Commission.

26. There is considerable doubt on the veracity of his assertion that he did not receive dismissal letter until 1998.

27. The Respondent wrote to the Claimant on 14<sup>th</sup> May 1998, advising that his Appeal was unsuccessful. The letter refers to an Appeal dated 23<sup>rd</sup> August 1996. The dismissal letter dated 5<sup>th</sup> October 1995, refers to a letter written by the Claimant about his desertion dated 10<sup>th</sup> January 1994. It cannot be that the Claimant learnt about dismissal in 1998, while he appealed in 1996.

28. His Replying Affidavit filed in Court on 13<sup>th</sup> July 2015, paragraph 7, he states the letter of dismissal was served upon him on 31<sup>st</sup> July 1997. There is no consistency in Claimant's narrative.

29. The Claimant has not shown that he resumed duty in January 1993, and went on working until 1998, without receiving a salary.

30. He is not entitled to salary and increments, for the period 1992-1998. He has not shown he was at work, and even if he was, he did not establish that he was entitled to salary increments. He does not merit annual leave, over a period he was not working. There is no factual foundation for grant of severance, house allowance (he states he was living in Government quarters), medical insurance, pension and/or other unspecified retirement benefits.

31. The Prayer for 12 months' salary in compensation is based on an Act of Parliament which was not in force, at the time termination took place.

32. The prayer for Certificate of Service is merited and allowed under Section 18 of the Employment Act Cap 226 the Laws of Kenya, in force at the time of termination.

33. Termination was in accordance with the repealed Employment Act, and Service Commissions Act, in place at the time the Claimant left Public Service.

IT IS ORDERED:-

**a. The Respondent shall release to the Claimant his Certificate of Service.**

**b. Other prayers are declined.**

**c. No order on the costs.**

**Dated and delivered at Mombasa this 28<sup>th</sup> day of February 2020.**

**James Rika**

**Judge**