



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 330 OF 2016

(Before Hon. Justice Mathews N. Nduma)

MUSA KIPRONO CHERUIYOT.....APPELLANT

VERSUS

COMMISSIONER GENERAL OF PRISONS.....1ST RESPONDENT

PUBLIC SERVICE COMMISSION OF KENYA.....2ND RESPONDENT

JUDGMENT

1. The suit was filed on 14th November 2016. The claimant relied on a witness statement adopted as the claimant's evidence in chief dated 7th November 2016 in which the claimant testified that he was employed by the respondent on 3rd May 1990 as a prison warder in terms of the letter of appointment produced as exhibit 'I'.

2. That the claimant worked for the respondents continuously until 23rd August 2012 when the officer in charge of the prison, Inspector Henry Ochieng interdicted the claimant by a letter of the said date. Upon interdiction, the claimant was required to report to office three (3) times a day to sign the master roll and was required to reside in the respondent's premises.

3. The interdiction was on account of conduct that was to the prejudice of good order or discipline or security of the prison contrary to Section 124 (1) (x) of the Prison Rules 1977(Revised).

4. The claimant earned half salary of Kshs. 14,000 during the period of interdiction. The claimant testified further that he dutifully reported to the office until 29th November 2013 when he received a handwritten letter from the officer in charge for dismissal on account of a poor record of service. The handwritten letter is dated 30th October 2013.

5. The claimant was not subjected to any disciplinary hearing before the dismissal from service. The claimant filed an Appeal against the dismissal to the Commissioner General of Prison. The claimant was not given a hearing upon filing Appeal but instead received a letter of Dismissal from one R.M. Kibaara (Mrs.) on behalf of Commissioner General of Prisons dated 12th February 2014. The claimant wrote a further Appeal dated 14th March 2014 to the public service commission. The Appeal was not responded to, to date.

6. The claimant testified that the allegations made against him in the letter of dismissal were unknown to him and he was not given any opportunity to defend himself. The claimant wrote a letter of demand to sue which was not responded to. The claimant prays for the following reliefs:

(a) Payment of unpaid salary during the interdiction period between 23rd August 2012 and 29th November 2013.

(b) Payment of unpaid benefits between 23rd August 2012 and 29th November 2013.

(c) Retirement benefits under the Pensions Act.

(d) 12 months compensation for unfair dismissal.

(e) Costs of the suit.

7. The respondent filed a reply to the memorandum of claim on 18th January 2017 but failed to call any witness to defend the suit.
8. The testimony by the claimant remains uncontroverted and the particulars of claim therefore undefended.
9. The testimony by the claimant is credible and the court finds that the claimant has proved on a balance of probabilities that he was interdicted from duty without any specific justifiable cause. That the claimant was kept under interdiction for unreasonably long period on half pay and was not subjected to any lawful disciplinary process during the period of interdiction. That the claimant was eventually dismissed from service without being given a hearing and for no valid reason established following a fair process. The claimant appealed the dismissal on two levels but was not given a hearing before the Appeals were dismissed and the dismissal upheld.
10. Accordingly, the claimant has established that his dismissal from service was unlawful and unfair and in violation of the prisons statutes and Regulations governing discipline of Prison warders. The dismissal also violated *Sections 36, 41, 43 and 45 of the Employment Act, 2007*. The claimant is entitled to compensation in terms of *section 49(1) (c) and 4 of the Employment Act, 2007*.
11. In this regard, the claimant had served the respondents diligently for a period of over twenty three (23) years in a permanent and pensionable status. The claimant lost his service, good record and career progression unlawfully and for no justifiable cause proved. The claimant was not paid any terminal benefits including pension upon dismissal. The claimant was forced to report to office for a prolonged period without being given any duties to perform and on half pay. The claimant was not compensated for the job loss and has suffered loss and damage. The claimant was in advanced age at the time of dismissal and was unlikely to get alternative employment upon dismissal from disciplined forces. The claimant lost means to support his family, was humiliated and dehumanized as a result.
12. The court has considered the case of:

Bishop Matule Mukwara vs County Government of Trans-Nzoia: Bungoma Petition No. 01 of 2018 which has similar facts as this one and the court reinstated the petitioner to his job without loss of salary and benefits and the entire circumstance of the case and awards the claimant the maximum compensation being the equivalent of 12 month salary in compensation for the unlawful and unfair dismissal in the sum of Kshs. 336,000 (28,000x12).

Terminal benefits

13. The claimant has also proved on a balance of probabilities and is awarded the following terminal benefits:

- (a) Unpaid half salary for the period 23rd August 2012 to 27th November 2013 in the sum of Kshs. 210,000 (14,000x15 months)
- (b) The claimant is entitled and is awarded all pension benefits payable to him in terms of the Pensions Act with effect from 27th November 2013.

14. In the final analysis judgment is entered in favour of the claimant against the respondents as follows:

- (a) Equivalent of 12 months salary in compensation in the sum of Kshs. 336,000.
- (b) Unpaid salary for the period 23rd August 2012 to 27th November 2013 in the sum of Kshs. 210,000.
- (c) All pension benefits in terms of Pensions Act with effect from 27th November 2013. The respondents to take steps within 30 days to ensure pension is paid.
- (d) Interest at court rates from date of judgment till payment in full.
- (e) Costs of the suit.

Judgment Dated, Signed and delivered this 10th day of March, 2020

Mathews N. Nduma

Judge

Appearances

M/S Wachira for Claimant

A.G. for Respondents

Chrispo – Court Clerk