



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO. 1 OF 2019

GEORGE KARANJA NGUNDA.....CLAIMANT

VERSUS

MERU WATER AND SEWERAGE SERVICES

(MEWASS) REGISTERED TRUSTEES.....1ST RESPONDENT

MERU COUNTY URBAN WATER

AND SANITATION SERVICES CORPORATION.....2ND RESPONDENT

JOSEPH K. MBERIA.....3RD RESPONDENT

MERU COUNTY GOVERNMENT.....4TH RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondents and averred that he was an employee of the 1st Respondent as General Manager of the 1st Respondent from 1st December 2016 till 31st August 2018 when he was unlawfully and unfairly dismissed from work. The Claimant avers that the 4th Respondent misguidedly alleges that the 1st Respondent was dissolved by the Meru County Water and Sanitation Services Act, 2014. He averred that he had a three year renewable contract effective 1st December 2016. The Claimant averred that the County Assembly of Meru passed the Meru County Water and Sanitation Services Act, 2014 establishing the Meru County Urban Water and Sanitation Services Corporation which was designated to be a successor of Meru Water and Sanitation Services Company and Imenti & Tharaka Nithi Water and Sanitation Services Company. He averred that on 30th August 2018, the Board of the 2nd Respondent passed a resolution to terminate the services of the Claimant and pursuant to the resolution and in utter disregard for the law the 3rd Respondent issued a letter dated 31st August 2018 purporting to terminate the Claimant’s employment as General Manager of the 1st Respondent with immediate effect. The Claimant averred that in response to the demand letter from his advocates, the 4th Respondent dismissively replied that the Claimant was employed by a non-existent body in law. The Claimant averred that the 1st, 2nd, 3rd and 4th Respondents are jointly and severally in an overt conspiracy to unlawfully and ruthlessly dethrone the Claimant from his legitimately earned employment position for ulterior reasons. The Claimant averred that the termination letter does not furnish any lawful grounds for terminating the Claimant’s services. The Claimant averred that as a result of the non-payment of his salary and other lawful benefits he was hard pressed by the vicissitudes of life and unable to afford essential needs including food, water, rent, medication, transport and school fees for himself and his dependents. He averred that he had never gone or taken annual leave and that he has outstanding leave of 88 days. He averred that the letter by the 3rd Respondent is *ultra vires* the lawful powers bestowed on the Respondents and the purported termination by the 3rd Respondent is outrageous and amounts to abuse of power. The Claimant sought one month salary in lieu of notice, salary for the remainder of the term of contract, pension payable for the remainder of the contract, 88 days leave not taken, telephone allowance payable for the remainder of the contract, annual staff retreat allowances, Christmas shopping voucher for 2018, annual WASCA games allowances, 13th month basic salary for 2018, end of year staff party, compensation for unlawful and unfair termination all making a total of Kshs. 8,320,928/- as well as medical cover for the remainder of his contract term, personal accident cover for the remainder of his term, annual membership to Meru Sports Club for the remainder of the term, a certificate of service, costs of the suit and interest.

2. The Respondents filed a joint response to the suit and in it denied that the Claimant’s services were unlawfully or unfairly terminated. The Respondents stated that the appointment of the Claimant on 1st December 2016 was unlawful and unprocedural since the 1st Respondent ceased to exist on 11th December 2014 when the Meru County Water and Sanitation Services Act, 2014 commenced operations. The Respondents averred that the Act aforesaid established a new corporate body, the 2nd Respondent who effectively took over the services previously offered by the 1st Respondent in the County of Meru. The Respondents averred that by virtue of their letters of 21st September

and 19th November 2018, the Claimant was invited for a calculation and eventual payment of his dues but he elected to stay away and has never cleared with the HR department. The Respondents averred that no intention to sue has been made and they sought the dismissal of the Claimant's claim with costs.

3. The Claimant as well as the Respondents' witness Joseph Kithure Mberia testified. The Claimant reiterated his averments in the claim and asserted that he performed well and that the 1st Respondent was the better for his services and that his termination was unlawful. The Respondent's witness testified that he was the 3rd Respondent and CEO of the Meru County Urban Water & Sanitation Services Corporation, the 2nd Respondent in the suit. He testified the 1st Respondent was disbanded by the Act of 2014.

4. Parties were to file submissions in respect of the suit but the Respondents' were the only ones who filed submissions. In their submissions the Respondents submitted that the Meru County Water and Sanitation Services Act, 2014 was enacted and it established the 2nd Respondent and abolished the 1st Respondent under Section 11 of the Act. They submitted that the newly established board advertised and recruited the new CEO who is the 3rd Respondent to take over the functions of the newly established corporation. As a result, it was submitted, the position of the Claimant became untenable as he had a contract under an employment contract with a non-existent body in law. The Respondents submitted that under Section 36 of the Employment Act and Clause 7 of the Claimant's contract of service, either party could terminate the employment contract by giving one month's notice in lieu of notice or pay one month's salary in lieu of such notice. The Respondents submitted that the termination letter issued to the Claimant clearly stated that the Claimant would be paid one month's salary in lieu of notice. The Respondents cited the case of **Joseph Mutuku Muasya v Wells Fargo Limited [2018] eKLR** where it was held that having provided the reason for termination and fair procedure having been followed, the court found that the termination was fair within the meaning of Section 45 of the Employment Act. The Respondents submitted that the dismissal was fair within the meaning of Section 45(2) of the Employment Act. The Respondents submitted that it was a no fault dismissal as the dismissal was not due to any fault by the employee and that the dismissal was fair, and lawful and the Claimant is thus not entitled to the claim for medical cover for the remainder of his term as sought in his suit. The Respondents cited the case of **D. K. Njagi Marete v Teachers Service Commission [2013] eKLR** where the Court held that employment remedies must be proportionate to the economic injuries suffered by the employee and are not aimed at the unjust enrichment of aggrieved employees.

5. The issues I distil for determination are whether the Claimant was unfairly terminated, what remedies lie if he was unfairly terminated and finally, who is to bear the costs of the suit. As to whether the Claimant was unfairly terminated, the Claimant was arguably aggrieved by the dismissal letter he received from the 3rd Respondent who is the CEO of the 2nd Respondent. The Claimant was employed by the 1st Respondent, the Meru Water and Sewerage (MEWASS) Registered Trustees. Under Part II of the Meru County Water and Sanitation Services Act, 2014, the 1st Respondent's duties and functions were taken over by the 2nd Respondent. Section 74 of the Act made provision as to the 1st Respondent's position vesting the properties and assets of the 1st Respondent in the 2nd Respondent. In my considered view the Claimant's position became untenable as the entity he served was subsumed and in effect abolished by law. He was offered a month's salary as notice as provided for in his contract.

6. The 2nd, 3rd and 4th Respondents had cause to bring the Claimant's contract to an end as the law had brought into effect the office of the 3rd Respondent which in effect means the Claimant ceased to hold office. The Claimant is entitled to his terminal dues by virtue of the termination of his contract. He was not at fault and as such the 2nd, 3rd and 4th Respondents must calculate the Claimant's dues noting that the termination falls in the class under Section 40 of the Act as there was abolition of office creating the redundancy the Claimant faces. The Claimant is not entitled to medical cover beyond the period of service or for payment of allowances he would have earned at the 1st Respondent beyond the date of his termination of contract.

7. In the final analysis the Claimant's suit is only successful to the extent he is entitled to recompense under Section 40 of the Employment Act and the resultant final dues the Respondents owe under the terms of his service to the 1st Respondent. Payment of the sums due must be made within 30 days of the judgment and matter must be placed before the Judge at Meru ELRC to confirm compliance, to wit, payment of the Claimant's terminal dues. Claimant shall be entitled to costs of the suit capped at Kshs. 50,000/-

It is so ordered.

Dated and delivered at Nyeri this 11th day of November 2020

Nzioki wa Makau

JUDGE