



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2109 OF 2017

(Originally Nairobi High Court Civil Case No. 742 of 2007)

STEPHEN MARANGA OBEGL.....CLAIMANT

v

KENYA REVENUE AUTHORITY.....RESPONDENT

JUDGMENT

1. This Cause was heard on 17 July 2017 and 7 November 2018. Stephen Maranga Obegi (Claimant) and Grace Mwangi, a Human Resources Manager with Kenya Revenue Authority (Respondent) testified.
2. The Claimant filed written submissions on 5 December 2018 (should have been filed by 30 November 2018) while the Respondent filed its submissions on 15 January 2019.
3. The Court will not consider evidentiary material filed with the submissions of the Claimant. Evidentiary material should be produced in the course of hearing when it can be subjected to interrogation).
4. The parties filed a *Statement of Agreed Issues* on 18 February 2010 setting out some 18 Issues in dispute. The Court will adopt the same albeit condensed as some of the Agreed Issues are broadly the same.
5. Before discussing the merits of the case presented, the Court wishes to note that the Claimant sought three primary remedies, *damages for malicious prosecution and imprisonment, special damages being expenses incurred during the criminal trial and lost prospective income and pension.*

Nature of employment

6. Issues 1 and 2 related to the nature of the employment relationship.
7. The Claimant was offered employment and later confirmed through a letter dated 30 August 1982 by the Ministry of Transport and Communications on permanent and pensionable establishment.
8. On 23 September 1996, the Respondent offered the Claimant employment as an *Assistant Licensing Officer* on permanent and pensionable terms, effective 1 July 1996 (absorption date).
9. The Claimant opted to join the Respondent on 4 October 1996 on the new terms and conditions of service, and the Court finds that the Claimant was an employee of the Respondent on permanent and pensionable terms from that date.

Whether Respondent filed a complaint with the Police maliciously and without probable cause

10. Issues 3 and 4 spoke to the question whether the Respondent made a malicious complaint to the Police.
11. The Claimant contended that the Respondent maliciously and without reasonable cause laid information before the Embu Police alleging that he was involved in stealing and that he was charged, but was later acquitted by the Magistrate's Court.
12. The essential elements a party is required to prove in a case of malicious prosecution are well settled (see *Kasana Produce Store v Kato* (1973) EA 190) and the Court need not set them out here.

13. The Court has reviewed the record of proceedings before the Embu Magistrate's Court and therein found that the Investigating Officer testified that he was acting on a tip off from members of the public that the Claimant and others who were charged with him were involved in theft of government property/conspiracy to defraud.

14. It is not the Respondent who set in motion the criminal complaint against the Claimant. Therefore the question of malice on the part of the Respondent does not arise as there was no nexus shown between the members of the public who whistle blew on the Claimant and the Respondent.

15. The Court therefore finds that the report to the Police was not at the behest of the Respondent but members of the public.

Whether Respondent defamed the Claimant

16. Issue 10 as agreed raised the question of defamation.

17. From the finding that the Respondent did not make any complaint to the Police, it cannot be that the Respondent defamed or caused to be defamed the Claimant, on the basis of the complaint made to the Police.

Whether dismissal of the Claimant was lawful

18. Issues 12, 13, 14 and 15 challenged the lawfulness of the Claimant's dismissal.

19. It is not in dispute that the Claimant was charged with theft related offences and that he was convicted by the Magistrate's Court on 21 February 2005, and that on appeal, the High Court quashed the convictions on **26 July 2005**.

20. The Respondent had on its part commenced disciplinary action against the Claimant and the same run in parallel with the criminal trial.

21. On 4 February 2005, the Respondent decided to dismiss the Claimant from employment.

22. The legal framework applicable to termination of employment contracts in 2005 was radically different from the present framework.

23. Under the framework, an employer could terminate the contract of an employee for a good cause, a bad cause or no cause at all provided that damages equivalent to the agreed notice period was paid.

24. The rules of natural justice were not a statutory requirement, and would only apply if incorporated by contract or specific law.

25. In the instant case, the Claimant was suspended in terms of the Respondent's Code of Conduct and was invited to a disciplinary hearing before a decision to dismiss was taken.

26. Despite that, the Claimant contended that the Respondent breached clause 3.2 of the Code of Conduct in that no investigations were conducted and also that his Head of Department and the Chief Human Resources Manager were not involved.

27. The Claimant submitted that the Commissioner General was equally not involved and that his appeal was never determined.

28. In the view of the Court, the fact that the disciplinary process was led by the Human Resources department rather than the Claimant's Head of Department did not lead to any injustice or prejudice.

29. The suspension letter set out clearly the allegations the Claimant was expected to respond to and the provisions of the Code of Conduct allegedly violated. The Claimant was asked to make a written response within 14 days and he was also invited to an oral hearing through letter dated 18 October 2004. He appeared before the Committee.

30. On the submission that the quashing of the conviction and sentence by the Magistrate's Court by the High Court meant the Claimant was not guilty of the disciplinary charges, the Court is of the view that disciplinary proceedings then as now had different objectives and purposes and standards of proof from a criminal trial. The quashing of the decision of the Magistrate's Court therefore would not without more be of any assistance to the Claimant.

31. Considering the contractual provisions on separation, the Court finds that the dismissal of the Claimant was lawful as the Respondent was acting pursuant to contractual authority.

32. The Court also notes that the Claimant did not explicitly seek any direct relief hinged on the lawfulness or otherwise of the dismissal.

Special damages

33. Under issue 11, the Claimant sought special damages of Kshs 155,000/- being legal costs and other expenses incurred as a result of the criminal trial in Embu.

34. The Court having reached a conclusion that the Respondent was not responsible for the complaint made to the Police and trial, cannot hold it liable or responsible for such special damages/costs.

35. It is noteworthy that the entities responsible for investigations and prosecutions at the material time were not parties to this suit.

Lost prospective income

36. Under issue 16, the Claimant sought Kshs 2,767,894/- being income he would have earned had his employment not been terminated before retirement.

37. In the view of the Court, this head of claim was not proved and the relief is not tenable.

38. The Court takes comfort in the decision by the Supreme Court of Uganda in *Bank of Uganda v Tinkamanyire* (2009) 2 EA 66 that the contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law.

Pension

39. Pension is regulated by specific Pensions law and where applicable *Schemes of Service* which have elaborate dispute resolution mechanisms.

40. The Respondent has in place a Pension Scheme (extract was filed in Court) and the Claimant should apply for any pension as required under the Scheme.

Conclusion and Orders

41. The Court finds and holds that the Cause herein lacks merit and orders that it be dismissed with no orders as to costs.

Delivered, dated and signed in Nairobi on this 25th day of January 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Nyangena instructed by Kerandi Manduku & Co. Advocates

For Respondent Ms. Naeku instructed by Beatrice Akinyi Odundo, Advocate

Court Assistant Lindsey