



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maunda v Postal Corporation of Kenya (Cause 8 of 2017)  
[2019] KEELRC 2616 (KLR) (29 March 2019) (Judgment)**

*Albert Mutekhele Maunda v Postal Corporation of Kenya [2019] eKLR*

Neutral citation: [2019] KEELRC 2616 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE 8 OF 2017**

**MN NDUMA, J**

**MARCH 29, 2019**

**BETWEEN**

**ALBERT MUTEKHELE MAUNDA ..... CLAIMANT**

**AND**

**POSTAL CORPORATION OF KENYA ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed on 24.4.2017. The Claimant seeks compensation for unlawful and unfair summary dismissal and other terminal benefits including:-
  - a) Arrear salary for July to December, 2015 in the sum of Kshs 124,710.
  - b) Outstanding house allowance Kshs 20,000
  - c) Withheld bonus Kshs 52,400
  - d) 3 months salary in lieu of notice
  - e) Costs.
2. The suit is defended vide a statement of response filed on 13.12.2017.

**Claimant's Case**

3. The Claimant testified under oath as CW1 and stated he was employed by the Respondent as a Postal Officer on 3.5.1985. He worked in various capacities until the year 2013 when he was promoted to Branch Manager 'C'. He served in that capacity until 11.12.2015 when he was summarily dismissed from service on grounds of negligence of duty leading to official cash loss of Kshs 5,060,700.04 at



- Kamuriai Post Office. The Claimant appealed the dismissal and the same was rejected by a letter dated 16<sup>th</sup> June, 2017.
4. At the time of dismissal the Claimant earned a basic salary of Kshs 61,590 and house allowance of Kshs 20,000.
  5. The Claimant was interdicted on 15.7.2015 following a visit by an inspection team at Kamuriai post office on allegation of gross negligence leading to misappropriation of funds in the sum of Kshs 5,060,700.00. That the Claimant had on several occasions allowed the Post Master Kamuriai to hold excess cash in the office over and above the authorized maximum amount of Kshs 100,000. That he failed to confirm cash movement from Kamuriai Post Office to Bungoma Post Office and exposed the Respondent to serious fraud. That the Claimant also failed to conduct regular snap checks at Kamuriai Post Office as required and did not scrutinize the serial numbers of the Kamuriai cash account, sheets to ensure the serial numbers were running as required.
  6. The Claimant responded to the notice to show cause by a letter dated 22.7.2015. The Claimant denied the allegations in the said letter and in his testimony before court and stated that he did not allow the Post Master Kamuriai to hold excess cash that he did not fail to monitor cash movement because cash movement forms were given to cashier Bungoma and Regional Accountant Western not to him as the Branch Manager Bungoma. That the Claimant carried out all the required checks and inspections of all Post Offices under him and various reports were forwarded to the Respondent.
  7. That the Claimant confirmed that the scrutiny of all cash accounts sheets was the responsibility of Regional Accountant and not the Branch Manger.
  8. The Claimant adopted the witness statement dated 11.1.2017 and filed on 24.4.2017 as his evidence in chief.
  9. The Claimant said that for 30 years that he worked for the Respondent he had established a solid reputation as one of the best and good performing officers. His work ethics had never been questioned and was always complimented by his supervisors. That he never received a verbal or written warning in the entire period.
  10. That the Claimant said he was not treated fairly and the procedure adopted in reaching the decision to summarily dismiss him from service was an affront to the Employment Act 2007 and the Constitution of Kenya 2010.
  11. The Claimant produced annual performance reports for 2011 to 2016. He said that his Appeal was dismissed without him getting opportunity to appear before the panel.
  12. The Claimant stated that he had no role and was not implicated in the alleged misappropriation and that he was not charged with any offence before a criminal court.
  13. The Claimant prays to be awarded as prayed.
  14. RW1 Jared Gillo Opol, the Human Resource Officer Western Region testified for the Respondent. He said that the Claimant was known to him. That the fraud at Kamuriai Post Office in the sum of Kshs 5,060,700.00 was manifested through excessive cash holding in the office, non-accounting of actual transactions carried out in the office over time, purported falsified cash remittance to Bungoma Head Office, fraudulent M-pesa and Airtel money transactions and fake cash accounts documents representation.
  15. That these actions and omissions were facilitated by inaction by the Claimant between 1<sup>st</sup> September, 2014 and 14<sup>th</sup> April, 2015 in his capacity as the Branch Manager Bungoma.



16. That instances when the Claimant's negligence was evident was on 24<sup>th</sup> March 2015 when the Post Master's cash on hand was Kshs 3,346,091.04 on the Post Master's P89 and on 31<sup>st</sup> March 2015 when the cash on hand was Kshs 2,169,307.04 on the Post Master's P 89.
17. The Claimant also failed to ensure that AC184 receipts issued by the Post Master were received at the Head Post Office and duly signed by cashier as required. For example receipt No. 0768619 dated 18.2.2015 amounting to Kshs 700,000 had no receiving office stamps date and signature of the receiving officer. Receipt No. 0768620 dated 10.3.2015 amounting Kshs 500,000 likewise had no receiving office particulars.
18. That the Claimant did not confirm cash movement from Kamuriai Post Office to Bungoma Post Office which exposed the corporation to serious fraud. Further, the Claimant failed to conduct random checks at Kamuriai Post Office as required of him which gave Mr. Wanyonyi a chance to play around with the M-pesa and Airtel transactions on diverse dates. Further more, RW1 testified that the Claimant failed to scrutinize the serial numbers of the office cash accounts sheets AIC 112 to ensure the serial numbers were running serially as required. This gave the Post Master a chance to operate form different cash accounts with the aim of defrauding the corporation.
19. RW1 testified further that the Claimant was given opportunity to defend himself. His explanation in writing and before the Regional Disciplinary Committee Western was not accepted by the committee which committee recommended summarily dismissal. The Disciplinary Appeals Committee upheld the decision.
20. RW1 prays the suit be dismissed with costs.

#### **Determination.**

21. The issues for determination are:-
  - a) Whether the termination of the employment of the Claimant was for a valid reason and if the Respondent followed a fair procedure.
  - b) If the Claimant is entitled to the reliefs sought.

#### **Issue 1.**

22. Section 47(5) of the *Employment Act*, 2007 read with Section 107 and 108 of the *Evidence Act* Cap 80 Laws of Kenya places the burden of proving that one was unlawfully and unfairly terminated from employment on the Claimant.
23. The Claimant without refuting that huge losses in the sum of Kshs 5,060,700.04 occurred at Kamuriai Post Office defends himself by shifting the responsibility of oversight on the Regional Accountant Western Region, and cashier Bungoma Post Office and not on himself in the position of Branch Manager Bungoma Post Office.
24. The Claimant confirmed that he had carried out all the required checks and inspections of all post offices under his jurisdiction. Kamuriai Post Office was one of the post offices under his jurisdiction.
25. As the Manager, Bungoma Branch, the responsibility of the Claimant included but not limited to:-
  - a) Co-ordinate all postal services with the main Head Post Office and Departmental offices in his jurisdiction including sets of postal services.
  - b) Ensure targets for various business units are cascaded to departmental offices and are achieved.



- c) Ensure prompt accounting of the business transactions within the Head Post Office area.
  - d) Be in-charge of Head Post Office cash account, Banking and submission of Business returns and reports to the respective directorate.
  - e) Ensure efficient mail circulation within and outside the Head Post office area.
  - f) Ensure efficient delivery of all services.
  - g) Ensure safe custody of accountable documents, stock and cash in the Head Post Office area.
  - h) Co-ordination of handling enquiries of products and services and complaints from customers and ensure maintenance of enquiry books and sheets.
  - i) Maintain safe working environment.
  - j) Preparation of annual budgets by forecasting, equipment purchase, maintenance and repair, staff costs and projects required, monitor projects and operations in the Head post Office area.
  - k) Perform additional duties assigned by the Regional Co-ordinator.
  - l) Perform any other duties as assigned by Manager Operations.
26. It is without doubt that both the Regional Accountant and the Branch Manger Bungoma, being the Head Post Office covered the Kamuriai Post Office. It is without a doubt also therefore if the post master Kamuriai was holding cash over and above the authorized maximum limit, this is a matter that the Claimant ought to have flagged and ensured it was stopped.
27. Similarly, the movement of cash from the post office to Bungoma Head Post Office was a matter that fell within the Claimant's accounting responsibility assisted by the Regional Accountant Western.
28. The Claimant testified that he had carried out all the required checks and inspection of all post offices under his area, but unfortunately his oversight failed to detect the on going non compliance by the Post Master Kamuriai between the period 1<sup>st</sup> September, 2014 and 14<sup>th</sup> April, 2015 giving opportunity to the Post Master Mr. Wanyonyi and officers under him to misappropriate Kshs 5,060,700.00.
29. This loss was a large amount and it could not go undetected if it is true that the Claimant being in-charge of the postal area was diligent in his duties.
30. Supervisory leadership attracts vicarious responsibility.
31. The disciplinary committee cannot be faulted for rejecting the explanation by the Claimant that tended to diminish his responsibility and shifting the same to the regional accountant and to his subordinate cashier Bungoma Post Office whereas the Claimant's responsibility being in charge of the Head Post Office, responsible for the area and therefore had oversight over Kamuriai Post Office.
32. It is the court's finding that the Respondent successfully rebutted the case put forth by the Claimant vide the evidence of RW1.
33. The Claimant did not prove on a balance of probabilities that his summary dismissal was not for a valid reason.
34. To the contrary, the Respondent demonstrated that it had a valid reason within the meaning of Section 43 and 45 of the [Employment Act](#), to terminate the Employment of the Claimant. Whether the summary dismissal was justified is an entirely different matter.



35. The Claimant was also accorded opportunity to defend himself and the Respondent complied with the requirements of Section 41 of the Employment Act in this respect.
36. The termination therefore followed a fair procedure in compliance with Section 41 and 45 of the Employment Act 2007.
37. In ELRC NO. 67 OF 2014, Thomas Nerkesian Miringwo -vs- Egerton University the learned judge stated:-
33. in the view of the court, the Claimant was negligent in handling of money entrusted to him as a Senior Manager in the Hotel and considering his position the buck must stop with him.”
38. The Claimant finds himself in similar circumstances. The buck stopped with him being the Branch Manager, Bungoma Branch, which was the head post office of the area in which the culpable post master was situated.
39. The claimant however did not lack extenuating or mitigating factors including that he had served the Respondent diligently for a period of 30 years and that he was not directly involved in the misappropriation of funds. His was a case of failing to detect what his cunning subordinate was up to. He had kept a very clean record all this time and was rated very favourably by the Respondent all along.
40. Following many decisions of the court, the court is inclined to reduce the summary dismissal of the Claimant to a normal termination to enable the Claimant access his full terminal benefits including payment in lieu of notice.
41. Accordingly, in answer to issue (b) above, regarding terminal benefits due and owing to the Claimant, the court finds that the Claimant is entitled to the following terminal benefits that he has proved are due to him on a balance of probabilities.
- a) Three(3) months salary in lieu of notice in the sum of Kshs 124,710.
  - b) Salary arrears for the months of July to December, 2015 in the sum of Kshs 124,710.
  - c) Outstanding house allowance in the sum of Kshs 20,000
  - d) Withheld bonus in the sum of Kshs 52,400.
42. In the final analysis, judgment is entered in favour of the Claimant as against the Respondent in respect of payment of terminal benefits in the sum of Kshs 321,800 following commutation of summarily dismissal to a normal termination.
43. The Respondent to pay half the taxed costs of the suit.

**DATED, SIGNED and DELIVERED at BUNGOMA this 29<sup>TH</sup> day of MARCH, 2019.**

**HON. M. N. NDUMA,**

**JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT BUNGOMA**

Appearances:

Mr. Makokha for the Claimant

Mr. Morara Apeimi for the Respondent

Chrispo: Court Assistant.

