



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 67 OF 2017

FREDRICK ALEKWA SAKWA

NANCY ROSA NYENDE

BEATRICE ONGORE MUCHESI

JOHN ODENGE ADWA.....CLAIMANTS

VERSUS

MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT

J U D G M E N T

Suit by the 1st and 4th Claimants was withdrawn by consent recorded by the parties on 29.5.2019. The suit pending judgment is by the 2nd and 3rd Claimants.

The 2nd and 3rd Claimants seek reinstatement to their job loss without loss of wages and benefits and costs of the suit.

The 2nd and 3rd Claimants were summarily dismissed from Employment. The Claimants had been on suspension and given show cause letters on various allegations set out there. The Claimant had responded to the show cause letters. They also recorded statements with the company's security service office.

The 2nd Claimant was employed on 13.3.2008 as a field Assistant Grade UG 12 at a monthly salary of Kshs 28,642.83. She was promoted to field superior Grade 134 (a) on 16.2.2012 earning Kshs 58,036.30 and car allowance of Kshs 20,000 if she owned and run a car.

On 3.9.2014 the 2nd Claimant was promoted to field superintended on Grade 5 at Kshs 88,333 per month and car allowance of Kshs 63,000. She earned gross salary as per pay slip of April 2016 at Kshs 155,733

The 3rd Claimant was employed on 30th March 2006 as Field Assistant Grade 5 UG 12 at Kshs 26,038.94 per month. On 14.3.2008 she was promoted to field supervisor at Kshs 47,000 per month and car allowances of Kshs 15,000.

As per the pay slip of April 2016 she earned a gross pay of Kshs 96,341.

CW2 Beatrice Ongore Muchasi testified that she was summarily dismissed on 26th April, 2016. She had been accused in a show cause letter to which she responded of fraudulently requisitioning and carrying out a survey on some farmers plots. CW1 explained that the survey was not fraudulent but she had initiated it in terms of her mandate. On 14.4.2016 CW2 was called to a disciplinary hearing and was dismissed thereafter.

CW2 testified that she had a good reason to conduct the survey. The farmer had requested for the survey because she had been supplied with excess input. The farmer was Owor Juma Ekeye. He wrote through the company secretary. The survey was done in 2015. CW2 said her dismissal was unfair and unlawful. She prayed for reinstatement. Under cross examination CW2 stated that she was dismissed for gross misconduct and wilful neglect to perform work and carefully performing the work contrary to Section 44(4) of the Employment Act 2007. CW2 insisted that the survey was meant to cut costs of the respondent and avoid wastage of input. That CW2 had requested survey in 2014 and a further request was made in 2016.

CW1 testified that on 7.3.2015. She had generated a contract for the farmers to sign upon being given instructions to do so by the Administrator. That allegations of forgery were false. That generation of private numbers was done procedurally and that she signed the

contract following procedure before the Administrator Mrs Martha.

That it was for the benefit of the company to receive money from the farmers. Under cross examination she explained that she had developed an addendum to the contract with Authority of Martha. The contract was between Mr. Onuse and the company. That as the acting farmers service manager, CW1 said it was her role to sign contracts on behalf of the company.

As a manager she could sign on behalf of a supervisor. The supervisor was not there and so CW1 signed for him. That the summary dismissal was wrongful and was not for a valid reason. That persons who had given her instructions were confirmed as a manager, whereas she was dismissed. CW1 denied having been careless as alleged or at all.

The Respondent did not call any witness on the day they were set to proceed with defence hearing. The respondent's case was deemed closed and directions for submissions given.

Determination:

The issues for determination are:

- (i) whether the dismissal of the 2nd and 3rd Claimants were for valid reason and whether they were effected in terms of fair procedure.
- (ii) Whether the Claimants are entitled to replacement.

Issue (i)

The testimony by the 2nd and 3rd Claimant is not controverted since the Respondent did not adduce any evidence in rebuttal. The 2nd and 3rd Claimants explained the circumstances under which the 2nd Claimant made an addendum of contract between the respondent and a farmer by the name of Omuse Stephens Isiya while the 3rd Claimant explained circumstances under which she had conducted a re-survey of his land because he had been supplied with excess input. The farmer Omuse Isiya Stephen testified as CW2 and told the court that the survey was done regularly CW4 testified that he was present when Martha directed the 1st Claimant to prepare a new contract to facilitate CW4 Juma Ibrahim a farmer to be paid. That CW1 gave the contract to Martha and same was signed by CW3 and CW1. CW3 was paid his dues following the signing of the contract.

The Respondent has failed to satisfy the requirements of Section 43 of the Employment Act in that there was no valid reason to summarily dismiss the 2nd and 3rd Claimants. The two just did their work under supervision of their superiors. The 2nd and 3rd Claimants have discharged their onus under Section 47(5) of the Employment Act, in that they have demonstrated that their summary dismissal was wrongful and the respondent have failed to demonstrate any justification for the termination of their employment.

The summary dismissal of the 2nd and 3rd Claimants was in violation of sections 36, 41, 43 and 45 of the Act and the Claimants are entitled to the reliefs set out under Section 49(1) (2) (3) and 4 of the Act.

Issue ii

The Claimants have sought to be reinstated to their employment. The two were summarily dismissed on 26th April 2016. The 3rd Claimant had served the respondent from 30th March 2006 up to 20th April 2016, a period of 10 years whereas the 2nd Claimant had also served the Respondent from April 2006 to April 2016 a period of 10 years.

The two had built their career and expertise in the sugar industry as field assistant; field supervisors and acting manager.

CW1, Nancy Miyenda Rose, now works for West Kenya Sugar Co. & Supervisor whereas CW2 now works as a High School teacher although employed by the Management Board.

It is now past three (3) years since the two were summarily dismissed. From the numerous cases, before court the Respondent is not doing well financially and is on the verge of collapse.

Even though the claimants desire to be reinstated, it is not the appropriate remedy in the circumstances of the case.

The appropriate remedy for the Claimants in the circumstances of the case is an award of compensation for the wrongful and unfair summary dismissal.

The Claimants were not paid terminal benefits upon summary dismissal. They are both entitled to payment in lieu of two months notice having served for over five (5) years.

The court awards the 2nd and 3rd Claimants two months salary in lieu of notice.

Both Claimants had served the Respondent diligently for ten (10) years. They had been promoted from time to time. The Respondent did not tender any evidence to show that the Claimants contributed to the termination. The Claimants would have otherwise been entitled to

reinstatement with payment of full benefits and salary. The two have however mitigated their loss by getting alternative employment although not equivalent to the previous employment with respect to CW2 who is not on a stable employment as a teacher.

CW2 has lost prospects of career growth and development in the sugar industry until retirement. CW1 is still in the sugar industry and is permanent in this respect.

Considering all the circumstances of the two cases which are similar in many respects. The court awards the Claimants the equivalent of ten (10) months salary in compensation for the unlawful and unfair dismissal.

Judgment is entered in favour of the 2nd and 3rd Claimants as against the Respondent as follows:-

(a) Two (2) months salary in lieu of notice in the sum of

(i) Kshs 311,466 to the 2nd Claimant

(ii) Kshs 192,682 to the 3rd Claimant

(b) Equivalent of ten (10) months salary being compensation in the sum of

(i) Kshs 1,557,380 for 2nd Claimant and

(ii) Kshs 963, 411 for the 3rd Claimant

(c) Interest at court rates for date of Judgment till payment in full.

(d) Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 26Th day of SEPTEMBER, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearance:

M/s Mukhwana for Claimants

Mr. Were for Respondents

Joy: Court Assistant.