



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO 1348 OF 2015**

**CHARLES MUSYOKI TEKISI.....CLAIMANT**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE PERMANENT SECRETARY, MINISTRY OF LAND, HOUSING**

**AND URBAN DEVELOPMENT.....2<sup>ND</sup> RESPONDENT**

**THE PUBLIC SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was employed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent on 21<sup>st</sup> February, 1995 and worked in various stations as a Land Adjudication and Settlement Assistant. In 2008 he was transferred to Mutomo District after it had been exised from Kitui District and the Land Adjudication and Settlement Assistant who was his overall supervisor was Mr Abel Ateka. The said Mr Ateka according to the claimant was very vindictive, malicious and usually harassed and abused and his powers when dealing with Junior staff.
2. In the year 2010 the said Mr Ateka called the claimant's wife to his office and gave her false information about the claimant and advised her to leave the claimant since he was irresponsible and immoral. This led to a breakdown in the claimant's marriage.
3. The impact of being deserted by his wife and children led the claimant to be depressed and develop hypertension and mild stroke and was admitted in several hospitals including shalom Hospitals in Machakos, Mutomo Mission Hospital and Makueni District Hospital a fact that was well known to Mr Ateka.
4. According to the claimant Mr Ateka wrote malicious absenteeism letters against him to the 2<sup>nd</sup> respondent despite being furnished with medical reports explaining the claimant's absence from work.
5. On 25<sup>th</sup> February, 2010 the claimant wrote a letter requesting a transfer on medical grounds. An official of the 2<sup>nd</sup> respondent instead wrote to Mr Ateka asking him to recommend about the claimants condition. According to the claimant Mr Ateka wrote a malicious report about him leading him to be served with a disciplinary letter giving him twenty one days to explain why he had deserted duties.
6. The claimant averred that he responded to the letter through a letter dated 10<sup>th</sup> Sep0tember, 2010 attaching medical reports which recommended he be transferred to Makueni District. The respondent remained silent until 5<sup>th</sup> September, 2011 when he was served with a dismissal letter. He appealed against the dismissal on 30<sup>th</sup> May, 2011 but the review was disallowed.
7. The court however did not find on record the respondent's statement of defence which could have been misfiled or misplaced. The respondent however filed witness statement and documents opposing the claim.
8. In his oral evidence, the claimant stated that he was issued with a sick sheet from Mutomo Hospital and wrote to the Permanent Secretary informing him of his illness and sought transfer on medical grounds. He further stated that he was dismissed for absconding duties and that it was claimed that the days he claimed that the days he claimed he was sick were false. According to him he used to ask for permission to go to hospital either verbally or in writing and further that he used to support his absence by producing sick sheets.
9. In cross-examination he stated that his immediate boss was the start of his problems. According to him he requested to be transferred elsewhere. He however stated that he never wrote to complain about his immediate boss.

10. The respondent's witness Mr Avisia Harold informed the court that he was a Human Resource Officer at Public Service Commission. It was his evidence that it was reported to Public Service Commission by the claimant's supervisor of his absence from work. The Permanent Secretary then informed the claimant of the allegations against him.

11. The claimant responded to the Permanent Secretary's letter. The defence was considered by the Ministerial HR Advisory Committee and found unsatisfactory. The Committee therefore recommended dismissal. According to him the Committee noted that the claimant refused to resume duties even after being called upon to do so. Further the claimant alleged he was ill but the medical report produced was not the authorized one. On his relationship with Mr Ateka Mr Avisia stated that prior to the charges the claimant had never raised any issue of personal Vendetta by Mr Ateka against him.

12. In cross-examination he stated that he could not tell if the claimant was sick but he had evidence of the claimant's absence from work. He further stated that there was no warning letter in the claimant's file.

13. The claimant herein was dismissed from service on account of desertion. In his defence he stated that he was prevented from going to work on the days in question by his ill health. He produced medical records from various hospitals which he claimed to have received medical attention. The respondent rejected the medical reports on grounds only that they were not accompanied by a medical sick sheet in the prescribed format. The respondent did not allege nor present any evidence questioning the authenticity of the medical documents produced by the claimant.

14. Proof or justification for reasons for dismissal is on the employer. In this case the respondents. The claimant reasonably demonstrated why he was absent from work for the period in question. It was therefore incumbent on the respondents to disprove the claimant's allegations and evidence presented in support. The respondent failed to do so. The court therefore finds the termination unfair.

15. Regarding the remedies sought, the court will not order reinstatement due to the time lapse since the wrongful dismissal. The court will further not award salary from date of termination until filing of suit because the employment could have terminated by either parties for lawful cause. Besides where the court reaches a finding that termination was unfair, the maximum amount of compensation is twelve months salary.

16. In this particular case the court awards the claimant ten months' salary being Kshs 158,110 as compensation for unfair termination of service. The claimant shall further have costs of the suit. The award shall be subject to taxes and statutory deductions but shall attract interest at court rates.

17. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**