



**REPUBLIC OF KENYA**

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

**CASE NO. 284 OF 2015**

***(Before Hon. Justice Mathews N. Nduma)***

**PAUL KIMUTAI MURGOR.....CLAIMANT**

**VERSUS**

**MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 28<sup>th</sup> July 2015 seeking the following orders inter alia:
  - (a) A declaration that the Respondent's decision and action to terminate the Claimant from employment was unfair, illegal and unlawful for expressly violating the Claimant's rights under the Constitution of Kenya 2010, the Employment Act, 2007 and the Respondent's own policy number 47.
  - (b) An Order to issue directing the Respondent to unconditionally reinstate the Claimant to employment services and position with the Respondent without any loss of benefits or seniority and without any conditionality.
  - (c) An Order that the Claimant be adequately compensated by the Respondent for time lost out of employment.
  - (d) Further in the alternative to reinstatement and without any prejudice to the foregoing, an order directing the Respondent to fully compensate the Claimant for unfair, unlawful and wrongful termination of the employment services of the Claimant with all attendant benefits as tabulated hereunder:
    - (i) Two months salary in lieu of notice @817,623.35.....Kshs. 1,635,246.70.
    - (ii) Payment in lieu of 34 accrued leave days.....Kshs. 1,323,771.10.
    - (iii) An Order for payment of the Claimant's amounts due from the Respondent's Staff Retirement Benefit Scheme.
  - (e) General, aggravated and exemplary damages for breach of Claimant's constitutional rights.
2. The claimant testified under oath that he was employed by the respondent in the position of National field sales manager on 1<sup>st</sup> September 2008 and was confirmed as Head of Sales after completion of probation period. He was later promoted to the position of quality management representative and Director Agriculture. The claimant was further promoted to the position of Commercial Director.
3. That the claimant worked continuously and diligently until the 27<sup>th</sup> August 2019 when his employment was terminated upon his refusal to voluntarily resign or take early retirement as directed by the Board of Directors.
4. At the time of termination the claimant earned a gross salary of Kshs. 817,623.33 plus other listed benefits.
5. The claimant stated that he had a clean record for the period of six (6) years he served the respondent until the 1<sup>st</sup> April 2014 when the board sent him on compulsory leave pending investigations by KPMG on allegations of improper:
  - (i) Importation of sugar
  - (ii) Procurement transactions.

(iii) Commercial transactions by the claimant

The claimant was invited severally by KPMG to shed light to the matters raised. On 10<sup>th</sup> June 2014 and 2<sup>nd</sup> July 2014 he was served with two separate show cause letters. Claimant had responded to both. On 28<sup>th</sup> July 2014, claimant was summoned by the Chairman of the Board Nominations and Human Resource Committee and two (2) other members where the Chairman told the claimant that KPMG audit report had exonerated the claimant from any wrong doing and that the claimant had no case to answer. The Chairman however requested the claimant to either resign or take early retirement.

6. The claimant declined either of the options and requested the Chairman to formally communicate to him the decision of the committee. The Chairman told the claimant that they had no option but to terminate the employment of the claimant.

7. On 1<sup>st</sup> October 2014, the claimant received a letter of termination dated 27<sup>th</sup> August 2014 which letter did not give any reason for the termination. The claimant appealed the decision on 6<sup>th</sup> October 2014 listing several grounds stated before court. The Appeal was not responded to up to the time of hearing of the case.

8. The claimant testified that the termination was malicious, unlawful and unfair and in violation of clause 47.4 of the staff manual since the Managing Director was not involved in the dismissal of the claimant. The claimant prays for the reliefs sought.

9. It is important to note that the witness statement of the claimant filed on 11<sup>th</sup> December 2018 was produced by consent of the parties on 5<sup>th</sup> July 2018. The claimant did not testify before court. The list of documents were also produced in terms of the said consent signed by advocates for the parties.

10. The respondent did not also call any witness before court. The respondent had intended to call Mathews Gae, Moses Owino and Ronald Luby as its witnesses in terms of the list of witnesses filed by the respondent on 2<sup>nd</sup> February 2017. However the respondent did not file any witness statements in terms of the consent entered into on 5<sup>th</sup> July 2018.

11. Accordingly, the testimony by the claimant is not controverted. The respondent however produced list of documents annexed to the respondent which documents tend to confirm the chronology of events as narrated by the claimant.

### **Determination**

12. The issues for determination are:

- (a) Whether the termination of the claimant was for a valid reason and done in terms of a fair procedure.
- (b) Whether the claimant is entitled to the reliefs sought.

### **Issue (a)**

13. The uncontroverted evidence before court is that the claimant had served the respondent in various positions continuously and diligently from 1<sup>st</sup> September 2008 until 27<sup>th</sup> August 2014, a period of six (6) years.

14. That the claimant was on 1<sup>st</sup> April 2014 sent on compulsory leave pending investigations into matters outlined in this judgment by the firm of Auditors named KPMG. That to date the claimant was not given the report of the Audit. However on 28<sup>th</sup> July 2014, the claimant was summoned to a meeting by the Chairman of Board Nominations and Human Resource Committee and two other committee members. That at the meeting the claimant was told that he had been exonerated by KPMG of the charges leveled against him, however the committee wanted him to resign voluntarily or take early retirement. That the claimant declined the invitation made to him by the committee and on 1<sup>st</sup> October 2014, the claimant was served with a letter of termination produced before court which gave no reason(s) for the termination.

15. The claimant appealed the decision to terminate his employment by a letter dated 27<sup>th</sup> August 2014, which appeal was not responded to to date.

16. It is the court's considered finding that the respondent had no valid reason to terminate the employment of the claimant and the respondent did not follow a fair procedure in effecting the termination.

17. The respondent violated *Sections 36, 41, 43 and 45 of the Employment Act 2007* and the termination was thus unlawful and unfair.

18. Accordingly, the claimant is entitled to the reliefs set out under *Sections 49(1) (2) (3) and 4 of the Act*.

19. In this regard the claimant sought reinstatement to the position he last held at the respondent's employ of Commercial Director without loss of any benefits. In the alternative the claimant sought award of compensation and damages for the unlawful termination and payment in lieu of two months' notice and in lieu of 34 days untaken leave.

20. The termination took place on 1<sup>st</sup> October 2014, more than four years from to date. A lot of water has passed under the bridge and the court is not in a position to properly determine the viability of reinstating the claimant to the position he previously held. The claimant did not furnish the court with sufficient information to verify that he is still compatible with the operational requirements of the respondent and

that reinstatement would be practical considering all circumstances of the case.

21. The court however deems this an appropriate case to award the claimant compensation in that he was unlawfully and unfairly terminated from employment. That the claimant did not contribute to the termination. The claimant was not compensated for the loss of his job, very good career prospects as evidenced by his meteoric rise from one position to another and loss of future income. The claimant had served the respondent for six years without blemish in high managerial positions. The claimant was not paid terminal benefits upon termination. The claimant suffered loss and damage due to the unlawful conduct of the respondent.

22. The court has also considered the case of *Murambi vs Nzoia Sugar Company 2019 eKLR* which has similarities to the present case where E&LRC at Bungoma awarded the claimant maximum compensation for the unlawful termination of employment.

23. In the present case the court awards the claimant:

(a) Equivalent of six (6) months gross salary in the sum of Kshs. 4,905,740 in compensation for the unlawful and unfair termination of employment.

(b) In addition the claimant is awarded two months salary in lieu of notice in the sum of Kshs. 1,635,246.70.

(c) Further, the claimant is awarded Kshs. 1,323,771.10 in lieu of 34 untaken leave days.

**Total award Kshs. 7,864,757.906.**

(d) Interest at court rates in respect of (b) (c) above from date of filing suit and from date of judgment in respect of (a) above till payment in full.

(e) Costs of the suit.

24. The court has considered other reliefs prayed for by the claimant and does not grant the same.

**Judgment Dated, Signed and delivered this 8<sup>th</sup> day of October, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Ouma Njoga for the Claimant.

Mr. Okweh Achiando for the Respondent

Chrispo – Court Clerk