



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 64 OF 2017

(Before Hon. Justice Mathews N. Nduma)

CHRISTINE CHEROTICH.....CLAIMANT

VERSUS

MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The claimant filed suit on 9th February 2016, seeking maximum compensation for unlawful and unfair termination of employment. The claimant was employed by the respondent in various capacities from 1995 up to August 2014, a period of about 20 years. At the time of termination of employment the claimant served as Warehouse Manager at Nairobi.
2. The claimant worked diligently and without blemish and earned Kshs. 210,198.40 at the time of termination.
3. The employment of the claimant was terminated on allegations that she had failed to surcharge transporters who directly delivered goods directly to the respondent's customers meant for warehouse transfers, allegedly occasioning the respondent a cost of Kshs. 62,904,256.60. The claimant received a show cause letter dated 14th July 2014 to which she responded explaining the situation. The claimant denied any job responsibility connected to the allegation made against her since that was the direct docket and responsibility of the Transport Manager. The claimant testified that the respondent had no valid reason to terminate her employment therefore and at all material time as seen in the leaver's form dated 18th August 2014, the respondent described the claimant as very efficient at her work, and was of excellent conduct and very honest at work.
4. That the response to the show cause letter was never considered and the appeal against the termination was also ignored.
5. The respondent did not adduce any evidence in rebuttal to the testimony under oath by the claimant. The respondent in the circumstances failed to discharge the onus placed on it under *Section 43(1) and (2) read with Section 47(5) of the employment Act, 2007* to demonstrate that it had a valid reason to terminate the employment of the claimant and therefore the termination was justified.
6. On the contrary the claimant has demonstrated on a balance of probabilities that the termination of her employment was wrongful and unfair and was in violation of *Sections 41, 43 and 45 of the Employment Act, 2007*.
7. The court therefore finds that the termination was unlawful and unfair. That the claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Act*.
8. In this respect, the claimant served the respondent diligently for a period of about 20 years. The claimant did not contribute to the termination and was wrongly blamed for mistakes of other persons who did not work under her. That the claimant lost prospects of continued gainful employment and was unable to get alternative employment up to the time of hearing of this suit. The claimant was not compensated for the job loss. The claimant was paid terminal benefits but suffered loss and damage as a result of the wrongful termination.
9. The court has considered the case of ***Patrick Muita Martnis vs National Police Service Commission and others Petition NO. 48 of 2018*** in which the court reinstated the petitioner to his employment without loss of any benefits.
10. The court has also considered the case of ***Daniel Kiplagat Kipkebut and SMEP Deposit Taking Micro Finance Limited (2016) eKLR*** in which the court awarded the claimant who had worked for a period of about 6 years the equivalent of six months salary in compensation for the unlawful dismissal.
11. The court considers all the factors above especially the 20 years unblemished service by the claimant and awards her the equivalent of ten (10) months salary in compensation for the unlawful termination in the sum of Kshs. (210,198.40x10) Kshs. 2,101,984.

12. In the final analysis judgment is entered in favour of the claimant as a against the respondent as follows:

(a) Kshs. 2,101,984 in compensation.

(b) Interest at court rates from date of judgment till payment in full.

(c) Costs of the suit.

Judgment Dated, Signed and delivered this 10th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Achoki for Claimant

Mr. Otieno for Respondent

Osotsi – Court Clerk