



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1344 OF 2013**

**GEOFFREY MUTABARI MUGAMBI..... CLAIMANT**

**-VERSUS-**

**MASTERMIND TOBACCO (K) LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 5<sup>th</sup> April, 2017)

**JUDGMENT**

The claimant filed the memorandum of claim on 21.08.2013 through Laichena Mugambi & Company Advocates and Mr. Ayieko Advocate appeared at the hearing on 05.04.2017. The respondent filed the memorandum of defence on 07.10.2013 through Kiogora Mutai & Company Advocates and Mr. Onyango appeared at the hearing on 05.04.2017.

The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination of the claimant's employment by the respondent was illegal, unjustified and unlawful and was contrary to the law.
- b. Two years' service pay equivalent to one month salary for each year worked being Kshs.180,000.00.
- c. Reasonable one month salary in lieu of the termination notice Kshs.90, 000.00.
- d. Unpaid salary for the month of June being Kshs.90, 000.00.
- e. Accrued leave for 8 days being Kshs.24, 000.00.
- f. General damages for unlawful and unwarranted termination.
- g. Damages for discrimination against the claimant for delay and withholding payment of his salary.
- h. Interest on (b), (c), (d), and (e) above.
- i. Any other or further relief that the honourable court may deem fit to grant.

The respondent prayed that the claimant's suit be dismissed with costs.

There is no dispute between the parties that they were in a contract of service. The claimant was initially employed by the respondent by the letter dated 05.08.2011 as the Environment Health and Safety Manager effective 29.08.2011. By the letter dated 18, 03.2013 the respondent appointed the claimant as the respondent's assistant management representative for the respondent's QMS ISO 9001:2008 effective 18.03.2013. By the letter of summary dismissal dated 19.06.2013 the respondent dismissed the claimant from employment effective 19.06.2013. The reason given for the dismissal was thus, **"It has been brought to management attention that while discharging your duties as an Environment Health & Safety Manager, you acted in a manner that has compromised company interest contrary to clause (7) of your employment contract, details of which you are aware"**. Clause 7 of the contract provided thus, **"During your service with the Company you will be expected to follow and adhere to the rules and regulations of the Company as amended from time to time. You will also be expected to be loyal to the Company and keep to yourself any Company secrets that come to your knowledge. You will be expected to act responsibly while in a very competitive market."** Particulars of the alleged breach were not set out in the letter of summary dismissal.

The **1<sup>st</sup> issue** for determination is whether the termination of the claimant's employment was unfair or unjustified and unlawful. The evidence is clear. The material particulars of the alleged breach of clause 7 of the contract on confidentiality were not disclosed in the dismissal letter or to the claimant or to the court at the hearing. Accordingly the court finds that the dismissal was unfair for want of valid reasons as envisaged in section 43 of the Employment Act, 2007. Second, the court finds that the alleged breach of clause 7 amounted to alleged poor performance or misconduct against the claimant and the respondent failed to invoke the procedure of a notice and a hearing as prescribed in section 41 of the Act and accordingly the dismissal was unfair for want of due process.

The claimant had served for about 18 months and had about 18 months to go to complete the 3 years' fixed term contract. The claimant testified and it was not rebutted that he had successfully accomplished the assignment on ISO certification and in return he received a sudden dismissal on unfounded grounds; an aggravating factor the court has put into consideration. The court further considers that the claimant did not contribute to his dismissal in any manner. Taking into account all those factors, the court awards the claimant maximum 12 months' salaries under section 49 of the Employment Act, 2007 for the unfair termination at Kshs. 90,000.00 per month making **Kshs. 1, 080,000.00**.

The **2<sup>nd</sup> issue** is whether the claimant is entitled to the other prayers as set out in the statement of claim. The court makes findings as follows.

As submitted for the respondent and the claimant's counsel at the hearing, prayer (b) is abandoned because the claimant was a member of NSSF, there was no agreement on service pay and the prayer is duly surrendered as unjustified in view of sections 35 and 36 of the Employment Act, 2007. There is no dispute between the parties that the claimant is entitled to **Kshs. 90,000.00** pay in lieu of the termination notice, **Kshs.24, 000.00** being pay for accrued 8 days of annual leave, and pay for 19 days worked in June 2013 making **Kshs.57, 000.00**.

There were no submissions on prayer (g) on discrimination and the same is deemed to have been abandoned.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a. The declaration that the termination of the claimant's employment by the respondent's letter dated 19.06.2013 was unfair, illegal, unjustified and unlawful as was contrary to the law.
- b. The respondent to pay the claimant a sum of **Kshs.1, 251, 000.00** by **01.07.2017** failing interest to be payable thereon at court rates from the date of the suit till full payment.
- c. The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Wednesday, 5<sup>th</sup> April, 2017**.

**BYRAM ONGAYA**

**JUDGE**