



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 183 OF 2013**

**BETWEEN**

**KENYA UNION OF COMMERCIAL**

**FOOD AND ALLIED WORKERS [KUCFAW].....CLAIMANT**

**VERSUS**

**TAVEVO WATER AND SEWERAGE COMPANY LIMITED ....1<sup>st</sup> RESPONDENT**

**COAST WATER SERVICES BOARD ..... 2<sup>nd</sup> RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Dickens Atela, Industrial Relations Officer for the Claimant*

*Kioko, Munyithya, Ngugi & Company Advocates for the 1<sup>st</sup> Respondent*

*Munyithya, Mutugi, Umara & Muzna Advocates for the 2<sup>nd</sup> Respondent*

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**JUDGMENT**

1. The Claimant Union filed a Statement of Claim on behalf of its Member [Grievant], William Ruto Chebolet, who was employed initially by the Public Service Commission of Kenya in 1986, and in latter days by the 1<sup>st</sup> Respondent, as a Water Inspector. He was transferred to the 1<sup>st</sup> Respondent by his initial Employer, after restructuring of the water sector through the Water Act 2002.
2. The dispute arose after the 1<sup>st</sup> Respondent terminated the Grievant's contract of employment effective 1<sup>st</sup> March 2013. The reasons for the decision are stated in the letter of termination dated 27<sup>th</sup> February 2013 to include: Grievant caused the 1<sup>st</sup> Respondent loss of revenue amounting to Kshs. 594,856; and insubordination.
3. He and his Union fault the decision, terming it unfair and unlawful. The Claimant prays for:-
  - a) Reinstatement of the Grievant without loss of benefits and seniority.

- b) Redeployment, in the alternative.
- c) Contractual cost lost when out of employment [?]
- d) Costs of the Claim.
- e) Costs of Conciliation.
- f) Any other suitable relief.

4. In the prayer for redeployment, the Claimant refers to ‘them,’ while there is only one Grievant in this Cause. The Court thinks the Claimant had in mind Grievants in Cause Number 185 of 2013 which involved the same Parties. It could also be the case with regard to Cause Number 222 ‘A’ of 2013, involving the same Parties and revolving around the same legal issues.

5. The findings on questions of fact and law, in the Cause Number 185 of 2013 are helpful in the present dispute. Some of the findings were:-

- The 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent have a Service Provision Agreement.
- The two Companies are regulated by the Water Act 2002.
- The Memorandum and Articles of Association of the 1<sup>st</sup> Respondent binds the 1<sup>st</sup> Respondent to deal with staff according to human resources policy developed with the consultation, and the approval of the 2<sup>nd</sup> Respondent.
- The 1<sup>st</sup> Respondent is an agent, and licensee of the 2<sup>nd</sup> Respondent, and acts under the supervision of the 2<sup>nd</sup> Respondent Board.
- The 2<sup>nd</sup> Respondent advised the 1<sup>st</sup> Respondent that termination of the Grievants’ contracts [in all cases], was unfair and unlawful and the 1<sup>st</sup> Respondent should reinstate the Grievants.
- The 1<sup>st</sup> Respondent defied the advice of its principal and held termination decision to be irreversible.
- The Grievants would be entitled to reinstatement as had been directed by the 2<sup>nd</sup> Respondent.
- The remedy of reinstatement however was not practicable and reasonable given the passage of the years from the date of termination, and the changed workplace.

6. The Claimant relies on the same or similar documents as in the previous files. There is a letter from the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent advising that termination was unfair and unlawful and should be reversed, with the Grievant reinstated. There are defiant letters written by Managing Director of the 1<sup>st</sup> Respondent Peter Shwashwa to the 2<sup>nd</sup> Respondent, holding termination decision to be irreversible.

7. Remedies granted under Cause 185 of 2013 would therefore suffice in the present Claim. The same reasons given under the previous Cause, why the order of reinstatement is unsuitable and impracticable, apply in the present Cause. An additional ground is that the Grievant has reached the age of 60 years. He was born in 1957. It would not be reasonable to reinstate a man who has reached retirement age.

8. It is also to be noted that his prayer for a compensatory award is poorly pleaded. It is not clear why the Claimant Union, which is one of the oldest in the Republic, has presented profoundly inelegant Pleadings, in the series of these related Causes. What is the Court to make of ‘*contractual cost lost when out of employment?*’

9. Placing reliance of the previous Claim, the Court has come to the conclusion that the Grievant should be compensated, as an alternative to reinstatement. It is the view of the Court that litigation would have been avoided had the 1<sup>st</sup> Respondent given consideration to the advice of the 2<sup>nd</sup> Respondent, or objectively participated in the conciliation meetings. Orders for costs of the litigation, and interest, against the 1<sup>st</sup> Respondent, are merited. There is no provision in law for payment of costs incurred during conciliation. The prayer made by the Claimant for costs of conciliation is declined. The Grievant,

through his Union, is granted the following orders:-

***a) It is declared termination was unfair.***

***b) The 1<sup>st</sup> Respondent shall pay to the Claimant the equivalent of 12 months' gross salary in compensation for unfair termination.***

***c) Costs of the litigation, against the 1<sup>st</sup> Respondent, to the Claimant and the 2<sup>nd</sup> Respondent.***

***d) Interest granted at 14% per annum from the date of termination, 27<sup>th</sup> February 2013,, till payment is made in full.***

Dated and delivered at Mombasa this 27<sup>th</sup> day of June 2017.

James Rika

Judge