



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1020 OF 2014**  
**(formerly HCCC No.854 of 2006)**

**(Before Hon. Justice Hellen S. Wasilwa on 15<sup>th</sup> May, 2015)**

NOAH KIMUTAI SAWE.....CLAIMANT

VERSUS

KENYA PIPELINE COMPANY LIMITED .....RESPONDENT

**JUDGMENT OF THE COURT**

1. The Claimant herein Noah Kimutai Sawe filed this case initially as Nairobi HCCC No. 854/2006. This file was later transferred to the Employment and Labour Relations Court on 18/6/2014 following an application by the Claimant herein.

**Claimant's case**

2. The Claimant's case is that he was employed by the Respondent as a Senior Security Officer Job Group 4 with effect from 7<sup>th</sup> June 2000. According to the terms of employment, he was entitled to a basic salary of 582,880/= per annual, 15,000/= per month privately rented accommodation and Kshs.37,500/= per month for owner occupied accommodation. The terms and conditions for his service were regulated by the Company's Staff Rules and Regulations Manual of April 1993 and the Employment Act.
3. He avers that on 19/1/2005, he received a suspension letter from the Respondent. That according to the letter, the suspension was done on an undisclosed complaint purportedly to pave way for investigation. He stated that during the suspension, he was entitled to payment of half salary and all full benefits.

He further stated that after the suspension, the company circulated a circular to certain security firms to the effect that he was a person of suspicious character and should not be employed as a security service provider in any security firm. The Claimant avers that by reason of the circular, he has not been able to secure any job in any of the firms.

4. The Claimant avers that he was unfairly terminated as he was not given the 3 months notice envisaged by his contract. He also avers that during the suspension he was entitled to ½ salary and

fuel benefits which he was denied.

He avers that he was dismissed in total disregard to the terms and conditions of employment as enunciated in the contract of employment, staff rules and regulations and the Employment Act.

5. It is the Claimant's case that he suffered loss as a result of the dismissal and seeks to be paid 3 months salary in lieu of notice, balance of salary during the suspension period January, February, March and April unpaid leave.

He also seeks damages against the Respondent who circulated malicious circular to security firms that the Claimant is a person of suspicious character and should not be engaged in providing security services.

He avers that by reason of these circulars the security firms who are Claimant's potential employers, the Claimant is unable to secure any employment and as a result has suffered damages. He also seeks for interest on the above and costs of this suit.

### **Respondent's case**

6. The Respondents filed their defence on 2/2/2007 through the firm of Okoth & Kiplagat Advocates. They admitted the descriptive parts of the claim and agree that the contract between the Claimants and themselves was governed by the terms set out in the performance contract and terms and conditions of service set out in the Staff Rules and Regulations Manual.

It is their position that the Claimant was suspended vide a letter dated 19/1/2005 but they aver that this was in accordance with the rules and regulations that the Claimant had signed to abide by and this included him maintaining at all times the professional and ethical standards expected of him in transacting company business with efficiency, integrity and impartiality.

It is the Respondents position that this dismissal was fair and justified and they pray that this case be dismissed with cost to them.

### **Issues for determination**

7. Upon consideration of the evidence adduced and submissions filed by both parties, the issues for determination are as follows:
  1. ***Whether there were valid reasons to warrant dismissal of Claimant summarily.***
  2. ***Whether due process was followed before Claimant was dismissed.***
  3. ***Whether Claimant is entitled to prayers sought.***

8. On the first issue, defence is made to the letter dismissing the Claimant. The letter stated as follows:

***"Dear Maj. (Rtd) Sawe***

#### **Summary Dismissal**

***Reference is made to our letter to you dated 19<sup>th</sup> January 2005 suspending you from duty.***

***It was noted that you deliberately frustrated investigations in some of the theft of products cases by failing to take action that was expected of you and even went to an extent of directing a junior officer to destroy evidence which would have implicate some officers in the security section.***

***The Staff Rules and Regulations 8.E.6 stated that staff must at all times maintain the professional and ethical standards expected of them in transacting company business with efficiency, integrity***

*and impartiality.*

*Consequently it has been decided that you be summarily dismissed from the company with immediate effect as the company has lost faith in you.*

*You should therefore arrange to immediately surrender your Staff Identification Card to the Human Resources Manager and any other company property that may have been assigned to you by virtue of your responsibilities to the Administration Manager and to make a follow-up on your pension payment with the pension's office.*

*Yours sincerely,*

*R. A. OSIAKO (MRS)*

**FOR: MANAGING DIRECTOR** “

9. Under Section 17 of the repealed Employment Act Cap 226 Law of Kenya:

**“Any of the following may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal -**

- a. **if, without leave or other lawful cause, an employee absents himself from the place proper and appointed for the performance of his work;**
- b. **if, during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable properly to perform his work;**
- c. **if an employee willfully neglects to perform any work which it was his duty to have performed, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;**
- d. **if an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;**
- e. **if an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer.**
- f. **if, in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within ten days either released on bail or on bond or otherwise lawfully set at liberty;**
- g. **if an employee commits, or on reasonable and sufficient grounds is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his employer's property.”**

10. This Section is worded in similar words as the wording in Section 44 of the employment Act 2007. The provisions above does not include:

**“an employer losing facts in an employee”** as was the case with the Claimant herein. The Respondents have alluded to some actions that they claim the Claimant was involved in including frustration of investigations but they have not adduced evidence to support their contention. This court finds that the reason/s given by Respondents to terminate the Claimant summarily as not valid and therefore the summary dismissal was unfair and unjustified.

11. On the 2<sup>nd</sup> issue, there is no evidence that the Claimant was also given a hearing. Though the repealed law did not expressly provide for a hearing, a hearing is a mandatory ingredient of rules of national justice which provide that a **“man should not be condemned unheard”**. Indeed the

claimant was condemned without a hearing and this also makes the dismissal unjustified and unfair.

12. Having found as above, I find the Claimant is entitled to the following remedies:

1. **I declare the dismissal unfair and unjustified and convert it to a normal termination.**
2. **The Claimant is entitled to balance of ½ pay not paid when he was on suspension = 57357 x 4 = 229,428/=**
3. **12 months salary as compensation for unlawful termination = 12 x 346570 = 229,428/=**
4. **12 months salary as damages for malice meted on Claimant through circular to prospective employer terming Claimant as unfit employee**

**= 12 x 346570 = 4,158,840/=**

5. **3 months salary in lieu of notice = 1,039,710/=**

**TOTAL 9,586,818/= plus costs and interest at court rates less statutory deductions.**

It is so ordered.

Read in open Court this 15<sup>th</sup> day of May, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Miss Auka holding brief Mr. Ndege for Claimant

Makori holding brief Okoth for Respondent