



IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO.139 OF 2013

(Formerly Civil Suit No. 962 of 1996 in the Chief Magistrate's Court at Nakuru)

JOSEPH CHEGE KARIUKI.....PLAINTIFF

-VERSUS-

EGERTON UNIVERSITY.....DEFENDANT

(Before Hon. Justice Byram Ongaya on Friday 17th October, 2014)

JUDGMENT

The plaint was filed on 23.04.1996 through Mirugi Kariuki & Company Advocates. The defence was filed on 13.05.1996 through Sheth & Wathigo Advocates. The amended plaint was filed on 28.09.2007. The plaintiff prayed for:

- a. A declaration that the purported termination of the plaintiff's services by the defendant was wrongful and unlawful and therefore null and void.
- b. A declaration that the plaintiff is entitled to his salary and benefits until his employment is properly and lawfully terminated.
- c. In the alternative and without prejudice to the foregoing the plaintiff seeks terminal benefits in the event that the court finds against the plaintiff that the termination was lawful.
- d. Salary arrears for November and December 1995.
- e. Kshs. 100,000.00 being the value of the plaintiff's property stolen on 13th or 14th September 1998.
- f. An order compelling the defendant to release the plaintiff's property confiscated on 12th March 1999 and in alternative the defendant be compelled to pay its equivalent value.
- g. The costs of the suit are provided for.
- h. Any other or further relief this honourable court may deem fit to grant.

The amended statement of defence was filed on 9.10.2007. The respondent prayed that the suit be dismissed with costs.

At the commencement of the hearing on 07.07.2014 counsel for the defendant submitted that the respondent was agreeable to paying:

- a. Kshs.9, 873 being one month salary in lieu of notice;
- b. Kshs. 7, 240.00 being pay for 22 days worked in January 1996;
- c. Kshs. 1,200.00 being leave travelling allowance; and
- d. Kshs. 29, 619.00 being damages for unfair termination at the rate of 3 months salaries.

A partial judgment by consent of the parties was entered in terms of (a) to (d) above and the parties agreed to the following issues for determination at the hearing:

- a. Whether the plaintiff was entitled to salary arrears for November and December 1995.
- b. Whether the plaintiff is entitled to leave arrears for 73 days.
- c. Whether the plaintiff is entitled to pay for property valued at Kshs. 960, 000.00.

There was no dispute that the plaintiff was employed by the defendant from sometimes in 1976 as a farm clerk in Ngongeri farm up to about January 1996 when the plaintiff's services were terminated. The claimant testified to support his case and the defendant's witness was Abel Miyogo Oganga (RW), the respondent's security officer at the material time.

The court has considered the pleadings, the evidence and the submissions and makes the following findings on the agreed issues in dispute.

The **1st issue** is whether the plaintiff was entitled to salary arrears for November and December 1995. The claimant testified that he was not paid the salary for November and December including the 22 days worked in January 1996. The claimant's evidence was that he received the relevant payslips but no money was deposited in his bank account as expected. The respondent did not provide evidence to rebut the plaintiff's evidence. On a balance of probability, the court finds that the claimant has established his claim and is entitled to **Kshs. 6,730.00** and **Kshs. 9, 873.00** respectively for the 2 months in issue.

The **2nd issue** is whether the plaintiff is entitled to leave arrears for 73 days. The claimant claimed Kshs. 2,400.00 for the 73 leave days and testified that the relevant documents were not available because they had been lost among the properties he lost from his residential house as the respondent took them. The defendant did not provide any evidence to rebut the claimant's evidence and the court finds that the plaintiff is entitled to **Kshs. 2, 400.00** as prayed for and on a balance of probability, the court finds that the claim was established.

The **3rd issue** is whether the plaintiff is entitled to pay for property valued at Kshs. 960, 000.00. The plaintiff testified that on 30.09.1998 one Professor Ituria and some two guards arrested the plaintiff and took him for detention at the police station without allowing the plaintiff to lock his house. When the plaintiff returned to his residential house, it was his evidence that he found when his property had been stolen. Later the plaintiff was authorised to continue occupying the residential house as provided by the defendant as he awaited the payment of his final dues. He testified that on 26.02.1999 the defendant's guards locked him out of the house and chased him away. On 12.03.1999 the belongings were moved from the house to the defendant's stores. The defendant's registrar told the claimant that unless the authority of defendant's vice chancellor was obtained, the plaintiff's property would never be released. The plaintiff testified that in that way he lost all his household property. His rough estimate of the loss was Kshs. 960,000.00. The plaintiff filed a list of the property he testified he had lost in the eviction process. The court has considered the list and finds that it does not bear any estimated costs of the property that is said to have been lost. The court finds that the plaintiff has not established the basis for the amount of money claimed and the prayer shall fail.

In conclusion, judgment is entered for the plaintiff against the defendant for:

1. The defendant to pay the plaintiff **Kshs.19, 003.00** plus interest at court rates from the date of the suit 23.04.1998 to the date of this judgment.
2. The defendant to pay the plaintiff all the monies as ordered in this judgment's order (1) above and the partial consent judgment by 1.12.2014 and failing interest at court rates to be payable from the date of the judgment till full payment.
3. The defendant to pay the plaintiff's costs of the suit.

Signed, dated and delivered in court at Nakuru this **Friday, 17th October, 2014.**

BYRAM ONGAYA

JUDGE