



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA

CAUSE NO. 925 OF 2010

(Before D.K.N. Marete)

HOSEA MURUAIGI GICHOHI.....CLAIMANT

VS

KENYA AGRICULTURAL RESEARCH INSTITUTE..... RESPONDENT

JUDGEMENT

The claimant brought this matter to court vide a memorandum of claim dated 12th August, 2010 and filed on 17th instant. It does not expressly cite the issue in dispute.

The respondent on the other hand denies the claim and prays that the same be dismissed with costs. He also launches a counter-claim for Kshs.534,607.00 being loss incurred out of the claimant's negligence.

The claimant's case is that by an appointment letter dated 6th January, 2005 he was employed by Kenya Tripanosomiasis Research Institute as Store-man II with effect from 1st February, 2003. By a letter dated 27th March, 2006, the respondent placed the plaintiff on interdiction based on the allegation of conspiracy to defraud KETRI between 1st May, 2004 and 5th June, 2007 and he was put on half pay.

Again by a letter dated 4th April, 2006 the claimant was asked to show cause why disciplinary action should not be taken against him. He submits that thereafter disciplinary proceedings were instituted against him wherein he was not given a hearing before the disciplinary committee. The claimant was then transferred to Kenya Agricultural Research Institute (KARI), and became an employee of the respondent KARI with effect from 1st July, 2004. This employment was faultless and he was transferred to Naivasha.

The claimant further submits that by a letter dated 6th July, 2007, he was wrongfully dismissed from the claimant's service and thereby lost all his terminal benefits. He launched an appeal against dismissal but was not heard. He in the penultimate submits that his dismissal was unlawful and prays as follows;

- a. A declaration that the purported summary dismissal of the claimant from the respondent employment was unjustified, unlawful and is invalid and void.
- b. Compensation for damages suffered for the sum of Kshs.5,367,880.00 as set out in paragraph 18, 19 and 20 above.

In the alternative and without prejudice;

- c. An order of reinstatement of the claimant to employment and payment of all outstanding salary

and benefit arrears from date of interdiction upto time of reinstatement together with interest.

d. Costs of the suit and interest.

e. Any other or further relief that this Honourable Court may deem fit to grant.

The respondent entirely denies the claim and submits that the claimant was interdicted vide a letter dated 27th March, 2006 on grounds of a preliminary finding of neglect of duty, conspiracy to defraud the respondent during the course of duty between 1st May, 2004 to 5th June, 2004 while working for KETRI which was now in its charge on the authority of presidential circular of July, 2004. The respondent pursuant to a presidential circular agreed to transfer his services as a Storeman II with the respondent which transfer did not absolve the claimant of any misconduct, breach of duty or contract in his employment at KETRI. He was thereafter transferred to Naivasha.

The respondent further submits that it was an implied term of the letter of transfer that the claimant would be accountable to the respondent for his actions and discharge of duties as Storeman II under KETRI and also an implied guarantee that he had discharged his duties diligently, honestly and in accordance with the law and terms and conditions of employment of KETRI.

On 17th March, 2005, the defendant received a demand for Kshs.503,382.00 from Intermoss Technologies being the value of toner cartridges allegedly delivered to KETRI on 7th June, 2004 and received by the claimant. The claimant was not able to account for these toner cartridges and was therefore summarily dismissed vide a letter dated 6th July, 2007. The respondent avers that the dismissal of the claimant was regular and lawful and he is therefore faultless.

The respondent makes a counter-claim for Kshs.534,670.00 as follows;

a.

b. *An award be made against the Claimant in favour of the respondent in the sum of Kshs.534,607*

c.

d. *Interest on (b) and (c) at court rates*

The issues for determination therefore are;

1. Was the termination of the claimant's employment unjustified, unlawful and invalid?
2. Is the claimant entitled to the relief sought?
3. Is the respondent entitled to the Counter-Claim?
4. Who bears the costs of this cause?

This matter came for hearing on 1st March, 2012, whereby CW1-the claimant reiterated his case as laid out in the claim.

The evidence of the claimant and the defence witness brings out the case very, very clearly. The claimant was unaccountable and fraudulent in his dealing with the respondent employer. This is clearly brought out in the evidence of Nyaga Karugutira, DW1- an employee of KARI who was involved in an investigation belying the invoice for Kshs.503,382.00. The claimant in all ways fails to come out clear on this matter and therefore the claim must fail.

On the Counter-Claim the claimant clearly brings out a case of fraud on the part of the claimant occasioning a loss of Kshs.503,382.00 as a consequence of the fraudulent manouvre of the claimant. As a consequence of the claimant's neglect and fraud, the employer lost this amount. I therefore find for the respondent to the tune of Kshs.503,382.00 being part of the Counter-Claim. The balance of Kshs.31,225.00 being costs awarded in CMCC No. 3989/2008 should be pursued under that cause. This is the law and process of execution.

I therefore find that the summary dismissal of the claimant was regular and lawful and dismiss the claim

with costs. I find for the respondent in terms of the counter-claim for Kshs.503,382.00.

I am therefore inclined to in the penultimate order as follows;

1. That this claim be and is hereby dismissed with costs to the respondent.
2. The respondent is entitled to the amount of Kshs.503,382.00 being the Counter-Claim.
3. That the claimant be and is hereby ordered to meet the amount of Counter-Claim.

Dated, delivered and signed this 1st day of July, 2013.

D.K. Njagi Marete

JUDGE

Appearances:

1. Mrs. Muchemi instructed by Wangari Muchemi & Company Advocates for the claimant.
2. Mrs. Pauline Masila instructed by Masila & Company Advocates for the respondent.