



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2838 OF 1996

JOHNSON B. WAIROMA.....PLAINTIFF

V E R S U S

SECURICOR KENYA LIMITED.....DEFENDANT

J U D G M E N T

The Plaintiff Johnson B. Wairoma brings this suit against the Defendant Securicor Kenya Limited seeking judgment for general and special damages for wrongful dismissal. The Plaintiff is also asking for costs of the suit.

The facts of the suit are not in dispute and can be briefly summarized . The Plaintiff was employed by the Defendant as a Company Secretary and Administrative Officer as from 1st August, 1990. Plaintiff's employment by the Defendant was to be governed by the Employment Agreement (Exhibit 2) signed by both parties. That employment agreement contained general terms and conditions of employment. It would appear that Plaintiff's employment continued without any problem until 26th March, 1996, when he was suddenly presented with a letter of termination of employment. This letter of termination stated inter alia:-

"Dear Sir

RE: TERMINATION OF YOUR EMPLOYMENT

In accordance with your Employment contract we hereby Give one month's salary in lieu of notice to terminate Your employment with immediate effect. You are hereby Required to deliver up all Company property including the Motor car registration number KAB 692 S. Our cheque for Kshs. 148,328/= is hereby tendered made up As follows:-

One month in lieu of notice 64,083

26 days salary 54,244

16 days leave pay 45,478

163,805

Less PAYE 11,754

NSSF 80

Service Charge 200

Pension 3,124

Total Net Pay 148,328

As a result of this letter the Plaintiff left and he is now challenging his termination employment. He complained that the letter terminating his employment did not indicate why his services were being terminated. He said that he was 47 years old when his services were terminated while, according to his employment agreement, he was expected to work up to the age of 60 years.

In view of the above, the Plaintiff now claims loss of future earning for 13 years with full benefits under retirement scheme. He also claims car and running allowance for the same period together with education allowance at the rate of 650,000/= per year. He also claims professional association subscription and club membership subscription at the rate of Shs. 6,950/= per year.

The main issue in this suit is whether the termination of Plaintiff's employment was unlawful. If it was unlawful, then the Plaintiff would be entitled to claim damages from the Defendant.

This suit is based on a claim of wrongful dismissal. It was the Plaintiff's evidence that he had been employed by the Defendant company as per Employment Agreement (Exhibit 2). In his evidence in chief the Plaintiff stated inter alia:-

"I have a copy of General Terms of Employment which is on the reverse of Exhibit 2. It sets out the terms that relate to me. Either party is to give notice for termination. There is clause 9 which provided for summary dismissal. Clause 15 relates to retirement date".

And on being cross-examined the Plaintiff said:-

"I would have given notice of one month. If you do not give notice you surrender one month's salary."

From the above it is clear that the Plaintiff himself admitted that he was given a month's salary in lieu of notice. The employment contract contained clause 8 which relates to termination by notice while clause 9 relates to summary dismissal. The Plaintiff was not summarily dismissed but had his services terminated. The letter of 26th March, 1996 (Exhibit 3) addressed to the Plaintiff clearly states that the Plaintiff was paid shs.

64,083/= as one month's salary in lieu of notice. That being the case, there can be no reason for complaint since the Plaintiff's services were terminated in accordance with the terms and conditions of the Employment contract (Exhibit 2).

However, Ms. Guserwa for the Plaintiff introduced another aspect to this case to the effect that the Plaintiff was holding a statutory post pursuant to section 178 of the companies Act (Cap. 486). It was also contended that no reasons were given for termination of services. But on this issue of reasons for termination clearly this cannot be a reason for complaint as it is not mandatory that the reasons for such termination be given. Once notice is given or salary in lieu of notice paid, then the issue of reasons for termination does not arise.

Section 178 of the companies Act (Cap. 486) provides:

“178 (1) Every company shall have a secretary. (2) Anything required or authorized to be done by or to the secretary may if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally especially in that behalf authorized generally specially in that behalf by a resolution of the board of directors,”

I think, Ms. Guserwa’s contention was that the Plaintiff having been the company secretary of the Defendant company could not have his services terminated without resolution of the board of directors. In answer to this, Mr. Gitonga for the Defendant submitted that Section 178 of the Companies Act relates to responsibilities of a company secretary and that it has no application to employment of a company secretary as resolutions do not relate to employment and dismissal of company secretary.

In my view termination of the Plaintiff’s services did not require resolution of the board of directors and with due respect to Ms. Guserwa’s submission, I do not think section 178 of Companies Act has any application to the present case. The Plaintiff’s termination of services was in accordance with the Employment Agreement (Exhibit 2) which he signed.

The relationship between the Defendant and the Plaintiff was that of master and servant. Since the Plaintiff was paid all that he was entitled to under the Employment Agreement, he is not entitled to any further payment. It has also been held that unless the contract so stipulates the rules of natural justice have no application to a simple contract of employment (see **Rift Valley Textiles Limited v. Edward Onyango Oganda – Civil Appeal No. 27 of 1992** (Unreported).

I must emphasize that this was not a case of summary dismissal but termination of employment in which the Plaintiff was paid one month’s salary in lieu of notice. After payment of all that was due to him, the Plaintiff was not entitled to any other dues. That being the view of this court it would be unnecessary to consider the other claims raised by the Plaintiff since all these are what can be called fringe benefits attached to the Plaintiff’s employment.

Once employment is terminated all these fringe benefits disappear as was stated in the Court of Appeal ruling in **Eric Makokha and Others v. Lawrence Sagini and Others – Civil Application No. NAI 20 of 1994** (unreported).

The upshot of the foregoing is that the Plaintiff’s suit is hereby dismissed with costs to the Defendant.

Delivered and dated at Nairobi this 10th day of November, 2000.

E. O. O’KUBASU

JUDGE OF APPEAL

10-11-2000: CORAM: E. O’KUBASU, J.A.

No appearance for Plaintiff but Plaintiff is present

In person

Mr. Gitonga for Defendant

C.C. - Beatrice

ORDER: Judgment delivered.

E.O. O'KUBASU

JUDGE OF APPEAL

8-1-2001:

Mr. Mwithya for H.H. & Mathews for Applicant

Chamber Summons dated 18-12-2000 fixed for 20th February, 2001.

Notice to issue

20-2-2001: Coram: Visram, C.A.

Judy C.C.

Gitonga for D/Applicant

Mrs. Guserwa for D/Respondent

GITONGA:- Application is dated 18-12-2000 for refund of shs. 269,136/= paid into Court. Grounds set out with Affidavit. Deposit was made by Trustees of Defendant – under Order 26 R. 1(3) – by notice. However, Plaintiff's case was dismissed in its entirety. Plaintiff was never involved in deposit, and no basis for them to hold. Order 26(3) says once money paid and not accepted, it shall remain in Court, and paid out by court Order, or by consent.

MRS. GUSERWA: I oppose. Replying Affidavit on file. Payment was in respect of retirement benefit. Therefore money no longer belongs to Respondent. These funds should remain pending appeal. There is no prejudice.

GITONGA: No reply.

COURT: Ruling on 6-3-01 at 9.00 a.m.

ALNASHIR VISRAM C.A.



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