



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2351 of 1989

LUCY WANGARI WANGOMBEPLAINTIFF

V E R S U S

1. TEACHERS SERVICE COMMISSION

2. THE ATTORNEY

GENERALDEFENDANTS

J U D G M E N T

The Plaintiff filed this suit on 31st May, 1989 by plaint dated 24th April, 1989. The Defendants duly entered appearance and filed a statement of defence in April, 1990. On 6th October, 2005 an amended plaint was filed with leave of the court.

On 7th November, 2005 the Plaintiff applied by chamber summons of the same date under **Order IXA, rules 7 and 11** of the **Civil Procedure Rules** for leave of the court to enter interlocutory judgment against the Defendants for alleged default of appearance. Interlocutory judgment was so entered on 20th December, 2005. A defendant is **not** required to enter appearance afresh to an amended plaint when he has already entered appearance and filed defence, as was the case here. There was no cause for interlocutory judgment to be entered in the present case. But the Defendants who have been represented throughout by State Counsel, have never questioned the interlocutory judgment and the same remains in place. It was upon basis of it that it was ordered that the matter proceeds to hearing for purposes of formal proof and assessment of damages. In the meantime the Defendants had filed an amended defence (dated 8th November, 2005) on 10th November, 2005.

I have endeavoured to understand the Plaintiff's claims as set out in the amended plaint and in her testimony. The plaint is a long, rumbling document apparently drawn by a lay person. Her many sets of written submissions are equally of no assistance. Though at the institution of the suit she was represented by counsel, she soon took over conduct of the matter herself. In her testimony she was not clear at all what her causes of action were in this suit.

The Plaintiff is an elderly lady who was at the material time an employee of the Teachers Service Commission (the 1st Defendant) as a primary school teacher. She appears to have had many issues with her employer and its agents and also agents of the Ministry of Education regarding performance of her duties, housing, transfer, interdiction and relations with fellow teachers. It is not clear whether her employment was terminated at some point by dismissal or she was eventually retired.

The reliefs that the Plaintiff seeks in the amended plaint are framed as follows:-

“A. The Defendants to be ordered to solve the issues outstanding between them and the Plaintiff, (the same be) expedited and an amicable conclusion be arrived at just as the Attorney General advised. If the Attorney General’s advice is not honoured....this honourable court to order thatdamages...(be paid)

B General damages (for) defamation (and)....character assassination.

C. Goods sold by the PTA Embu Urban Primary School....KShs. 1,595,508/00....

D. Illegal rent paid to the Head Teachers Embu Urban Primary School be refunded.

E. Salary refunded back to TSC for November and December, 2002.

F. Salary and pension not paid with effect from 1st January 2003 to 3rd December, 2003.

G. Give the plaintiff promotions....not given....

H. Deducted pension benefits KShs. 81,400.50.

I. Revoke interdictions EMB/99/2 Vol. VII/64 dated 20th January, 1989 and disc case No. 100/2/03 dated 16th December, 2002

J. Give sick leave with effect from 21st October, 2002 to 15th November, 2002.

K. Solve false claims of the house allowances from a false plot No. 373 since 1987 to 1996 August.

L. Give PCA showing false allowances paid....in 1996.

M. Stop threatening, harassing and frustrating the plaintiff and her children.

N. Interest....at court rates.

M. Costs of this suit plus interest.

P. Any other relief as this court may find....necessary.”

The first relief the Plaintiff seeks is that the Defendants be ordered to solve the issues outstanding between them and her. These “outstanding issues” are not pleaded with any specificity at all. No particulars are given. I am unable to know from the Plaintiff’s amended plaint or her testimony what these “outstanding issues” are. It also doubtful if the court can order a party to “solve” a dispute that has been brought before it for adjudication. This claim is hereby dismissed.

The Plaintiff’s main claim appears to be in defamation (claim B). The particular words alleged to be defamatory have not been pleaded. I have considered the Plaintiff’s testimony and the documents she produced in evidence. It appears that what she found to be offensive were official communications from her employer and its agents, and also from officials of the Ministry of Education, regarding performance of her duties, housing, her interdiction, etc. There is no evidence that any of these communications, which would ordinarily be privileged, were published to any unauthorized persons. The alleged defamations are unproven. But the Plaintiff has judgment on liability that has not been challenged. As the pleaded defamation was based on written documents, it is libel, which is actionable *per se*. I will therefore award the Plaintiff token damages of KShs 100,000/00.

Claims C, D, E, F and H are special claims which must be specifically and particularly pleaded, and

strictly proved. That is the law. These claims are not specifically and particularly pleaded. The Plaintiff did not tender any evidence in support thereof. They have not been proved and cannot be awarded. They are hereby dismissed.

Claim G is for promotions not given to the Plaintiff. No particulars of these promotions are given. In any event, the Plaintiff is no longer in the employment of the 1st Defendant, and no monetary compensation for these promotions has been claimed. This claim cannot be awarded and is hereby dismissed.

Claim I seeks revocation of the Plaintiff's interdiction that took place in January, 1989. As already observed, the Plaintiff is no longer employed by the 1st Defendant. It is not clear whether she was dismissed or retired. It is probably the latter as she has also claimed pension. So, the interdiction was overtaken by the event of either dismissal or retirement. In any case, no evidence was given to show that the interdiction was illegal. The claim cannot succeed and is hereby dismissed.

Claim J is for "sick leave w.e.f. 21st October, 2002 to 15th November, 2002". I am not sure that sick leave can be an entitlement. It is usually a compassionate consideration that an employer extends to an employee. The Plaintiff did not prove that she was entitled to it, and even if she had, surely it was long over-taken by events. She has not claimed any monetary compensation for it. This claim is not proved and is hereby dismissed.

Claim K states:-

"Solve false claims of the house allowances from a false plot No. 373 since 1987 to 1996 August."

This claim is not intelligible at all! What kind of resolution does the Plaintiff seek? And what are these "false claims" of house allowances? No particulars have been given. The claim cannot be awarded and is hereby dismissed.

Claim L states:-

"Give PCA showing false allowances paid arrears in 1996"

What is PCA? What are these "**false allowances**" paid in 1996? Paid by who and to whom? This is another unintelligible claim! It is hereby dismissed.

Claim M is:-

"Stop threatening, harassing and frustrating the Plaintiff and her family".

I will assume that this relief is seeking an injunction. But no evidence of threat or harassment was tendered. I am not sure that "**frustration**" by itself is an actionable tort. This claim has not been proved and is hereby dismissed..

Apart from the claim based on defamation, where I have awarded the Plaintiff KShs. 100,000/00, all her other claims have been dismissed. There will thus be judgment for the Plaintiff for the sum of KShs. 100,000/00 against both Defendants jointly and severally. This sum will attract interest at court rates from the date of judgment till payment in full.

Regarding costs, as most of the Plaintiff's claims have been dismissed, I will award her only half of her costs of the suit, the same to be calculated upon the awarded sum of KShs. 100,000/00. I decline to award her interest on the costs.

I will say one final thing. The Plaintiff's case was very badly pleaded, especially in the amended plaint. She was a very poor witness, unable to properly articulate her claims despite a lot of patience on the court's part. She has had unreasonable expectations in this case which has dragged on for nearly twenty years. In her written submissions she sought KShs. 20 million for general damages, KShs. 1.5 million for

aggravated damages and KShs. 900,000/00 for “**time and apology**” whatever that means! She is lucky to get what she has got. I would advise her to get this case behind her now, and get on with her life.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS 21ST DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E