



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1166 of 2003

D.C. MICHAEL CHELOGOY.....PLAINTIFF

VERSUS

DAYSTAR LIMITED T/A DAYSTAR UNIVERSITY.....DEFENDANT

JUDGMENT

The Plaintiff was first employed by the Defendant as a Lecturer on 1st July 1991. The letter of appointment was accompanied with the terms and conditions of service which provided termination period after probation which was 3 months and was later increased to 6 months. After 3 years of service he applied for further studies in the United Kingdom and was admitted. He applied to the defendant for study leave and funding which was granted but was required to sign the Employee Training Board which in part read as follows:-

“The employee has been granted a Scholarship by the employer to attend UNIVERSITY OF BRISTOL in the UNITED KINGDOM for a period of 1 year to further his knowledge in his field of specialization upon condition that on completion of the course of study the Employee shall resume work and continue to render services to the Employer in such capacity as the employer may determine for a period of not less than 5 years and shall not during that period accept employment elsewhere except with the consent in writing of the Employer.....”

The Defendant paid for the Plaintiff’s studies for only one year and stopped because it started experiencing financial problems. The Plaintiff was forced to meet all the expenses for the rest of the study period. On completion of the course the Plaintiff came back and was admitted back to his employment by the Defendant. On 12th June 2000 he was promoted to senior lecturer.

By its letter of 23rd October 2003 the Defendants terminated the services of the Plaintiff.

The letter which was termed:-

“SEPERATION FROM DAYSTAR UNIVERSITY EMPLOYMENT” read as follows:-

“In April 2003, DAYSTAR UNIVERSITY COUNCIL contracted Kenya Institute of Management (KIM) to undertake a study and review of the University Operations. KIM report and recommendation were accepted by the council and a summary of the same communicated to the staff.”

As a result of the restructuring and staff audit exercise by KIM and approved by the council, you are

advised that you have been identified for separation. Your separation date is 31st October 1993.

To facilitate the process of your separation dues, kindly collect and return the clearance form from DVC – Finance Administration and Planning, please ensure that your clearance form is processed and returned to DVC – FAP by latest 28th October 2003.

The Council and Management of Daystar University would like to take this opportunity to sincerely thank you for working with Daystar University and wish you a blessed future. The Plaintiff filed this plaint on 13th November 2003 suing the Defendant for wrongful dismissal and the prayers he made in the plaint were:-

- (a) Terminal benefits in the sum of Kshs.8,318,427.30
- (b) Damages for wrongful dismissal
- (c) Costs of the suit
- (d) Interest on (a), (b) and (c) above

The Defendant filed a defence denying that the dismissal was wrongful. The Defendant admits terminating the services of the Plaintiff by issuing a separation letter on 23rd October 2003 but avers that termination was carried out legally as per the terms of the contract.

Where the employer and the employee enter into a service contract which stipulates a termination clause or notice to terminate the employment they intend to be bound by the termination clause or notice regardless of the nature of the employment. Following the unlawful termination of such a service contract there is a breach of that contract and the measure of compensation or indemnity or general or special damages call them what you may, is the loss the employee would incur during the stipulated period of the termination clause or notice.

In the case of **NATIONAL CEREALS & PRODUCE BOARD VS. ALBERT ONGARO – CIVIL APPEAL NO. 9 OF 1999 (UNREPORTED)** THE Court of Appeal had this to say:-

“As the Respondents appointment was terminable by three months notice he was entitled only to such damages as the employer would have been obliged to pay if it had dismissed the Respondent in accordance with the provisions of the contract.”

In the instant case the Plaintiff’s contract was terminable by 6 months notice and therefore damages payable to him was 6 months salary in lieu of notice.

The other issue raised by the Plaintiff is the payment for his studies in the United Kingdom. The Plaintiff had applied to be admitted at the University of Bristol for further studies. He applied to the Defendant to be granted study leave and sought financial assistance. He was granted study leave and was assisted with funds to meet his studies during the first year but due to the fact that the Defendant was experiencing financial difficulties, there was no further financial assistance rendered to the Plaintiff until he completed his studies.

For the fact that the Plaintiff had sought financial assistance from the Defendant during the first year of his studies that did not amount to a binding contract to compel the Defendant to meet his financial requirement for the rest of his studies. The claim under this heading therefore fails and the same is dismissed.

The last issue raised by the Plaintiff was the issue of the bonding. The Plaintiff had signed a bond with the Defendant to the effect that on completion of his course of study he was to resume work and continue to render services to the Defendant for a period of not less than 5 years. On completion of his studies, he

came back and served the Defendant for a period of 3 years before his services were terminated. This was contrary to the terms of the bond and therefore the Plaintiff is entitled to 2 years salary as per the terms of the bond calculated at Shs.1,392,000/=, salary in lieu of notice calculated at Shs.348,000/= salary of one month for every year worked calculated at Shs.696,000/=.

Accordingly there shall be judgment for the plaintiff in the sum of Sh. 2,436,000/= with costs and interest.

Dated and delivered at Nairobi this 26th day of September 2007.

J.L.A. OSIEMO

JUDGE