



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

CIVIL CASE 1974 OF 1998

NANGA KIHOTO FARMERS CO-OP SOCIETY.....PLAINTIFF

VERSUS

PETER MWANGI NDUNG'U.....DEFENDANT

JUDGMENT

The defendant was employed by the plaintiff through a letter of appointment dated 1st September 1987.

The Letter of Appointment did not indicate the amount of the salary he could earn as his earnings were more or less of a casual. On 8th July 1993 he was promoted to the rank of a Supervisor at a salary of Shs.2000/= per month. He worked for the plaintiff until 3rd February 1998 when his services were terminated on the ground that he had stolen money from his employer after selling a cow. But the matter was not reported to the police.

The Letter of Termination informed him after the probe by the management on the allegations against him it was decided that his services be terminated on public interest. The plaintiff after terminating the services of the defendant they filed this suit against him seeking the following prayers:

- (a) General damages for breach of contract.
- (b) Special damages to tune of Shs.419070/=.
- (c) Interest on (a) and (b) above at court rate.
- (d) Costs of the suit.

The defendant on being served with summons entered appearance, filed a defence and counter claim. In his counter claim he sought payment of the amounts he was not paid as stipulated in his Terms of Employment as contained in the Collective Bargain in The Kenya Coffee Growers and Employers Association and The Kenya Planters and agriculture Workers Union as follows:-

- (i) 3 months salary in lieu of notice at Shs.4,966/= per month – Shs.14,898/=
- (ii) Traveling allowance for leave for 3 years at Shs.450/= per year – Shs.1,350/=.
- (iii) Early Retirement Service Gratuity calculated at 18 days wages for every year completed on

service – 11x18 days by Shs.191/= - Shs.37,818/=.

(iv) Overtime worked Shs.37,066/=.

Lastly he was 36 years at the time his services were terminated and he had 20 years. $20 \times 12 \times 4,966 =$ Shs.962,640/=. The defendant has adduced evidence to prove that he was not given notice before his services were terminated. Prayer (i) therefore succeeds. He did not produce any documentary evidence to prove that he never went for his annual leave for 3 years. Prayer (ii) therefore is not proved and the same fails.

As stipulated in the Terms and Conditions of Employment, the defendant was entitled gratuity calculated as follows: $18 \times 11 \times 191 =$ Shs.37,818/=. He has not proved that he is entitled to overtime payment as there is no documentary evidence to prove the same. Prayer (iii) therefore fails.

The defendant is also not entitled to payment of salary to the time of anticipated retirement. The defendant's claim succeeds as follows:-

(a) Prayer (i) Shs. 14,898/=

(b) Prayer (iii) Shs. 37,818/=

(c) Unpaid wages Shs. 61,410/=

Total Shs.114,126/=

Accordingly there shall be judgment for the defendant in the counter claim against the plaintiff for Shs.114,126/= with costs and interest.

Dated and delivered at Nairobi this 21st day of February 2006.

J.L.A. OSIEMO

JUDGE