



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 1663 of 1999

JOSPHAT M. MUDAMBA.....PLAINTIFF

VERSUS

KENYA REVENUE AUTHORITY.....DEFENDANT

RULING

Delay in the preparation and delivery of this ruling has been occasioned by my recent illness, hospitalization and recuperation. The delay is regretted.

This is an application brought by the Plaintiff/Decree-Holder seeking the following main orders:-

- 1. That the Court do interpret the judgment of this court (Mbaluto, J.) dated 23rd March, 2001 “so that the normal retirement age referred to is specifically disclosed”.**
- 2. That the normal retirement age so disclosed do apply *mutatis mutandis* to HCCC No. 1662 of 1999 (Joseph Mureith Murage –vs- Kenya Revenue Authority).**

The application is said to be brought under section 3A of the Civil Procedure Act and all other enabling provisions of the law. Only one ground has been set out on the face of the application, to wit, that the parties have difficulties in interpreting the judgment. There is no affidavit sworn in support of the application. One would have expected such an affidavit so that the Plaintiff/Decree-Holder may set out his case in the application. There are no grounds of opposition or replying affidavit filed, though the Defendant/Judgment-Debtor’s learned counsel appeared and opposed the application. This was probably because the Defendant/Judgment-Debtor could not have known what case it was supposed to confront in the application.

Learned counsel for the Plaintiff/Decree-Holder submitted that the contentious part of the judgment appears on the last page thereof. It was his contention that it is explicit that the Plaintiff was to receive further benefits in addition to the three months pay in lieu of notice up to the time he would have retired – that is, at the age of 55 years. In his view therefore, a calculation of the decretal sum ought to be based upon that premise. On his part, learned counsel for the Defendant/Judgment-Debtor submitted as follows. The Plaintiff had been dismissed from his employment. He challenged that dismissal in his suit. The Court held in his favor. The dismissal was reversed to retirement. Any benefits would therefore be calculated up to the time his service ended. He referred the court to page 8 of the typed judgment in the last paragraph. In his view this paragraph explains the award as stated in the last paragraph of the judgment. The Plaintiff’s benefits therefore apply up to the time he would have left

employment by normal retirement.

It will be necessary to look at the decree as drawn and also the judgment of the court to see if the decree, which is said to have been extracted and drawn by the Plaintiff, was in accordance with the judgment, and also to see whether the judgment needs any clarification or interpretation. The two relevant orders of the decree as drawn are:-

- “1. That the Defendant do pay to the Plaintiff three months salary in lieu of notice at the rate of KShs.35,367/00 per month, and such salary do include the usual allowances as reflected in his salary slip (Exhibit 4) less income tax and other statutory deductions.**
- 2. That the Defendant do pay to the Plaintiff all the related benefits, and such be calculated as if he had been normally retired.**
- 3.”**

The last paragraph of the judgment, which in my view contains the decision and award of the court, is in the following words:-

“As an Assistant Preventive Officer, the Plaintiff occupied a senior position in the Defendant’s department and in my view was entitled to a reasonable notice if the termination had been properly done. I assess such notice to be three months. Accordingly, it is ordered that he be paid three months salary in lieu of notice, such salary to include the usual allowances as reflected in his salary slip (Exhibit 4) less of course income tax and other statutory deductions. In addition, the Plaintiff will receive all the relevant benefits to be calculated as if he had been normally retired.....”

This last sentence appears to have brought the confusion.

What had the Plaintiff claimed in his plaint? He claimed, (a) a declaration that his dismissal from the Defendant’s employment was unlawful and that he is entitled to his full benefits till his retirement age in the year 2010; (b) special damages as pleaded in paragraph 5 of the plaint (withheld salary from August 1998 to December, 2010 plus leave, medical and house allowances - all amounting to KShs.12,771,058/00; and, (c) general damages for unlawful dismissal. The court found that the Plaintiff’s dismissal was unlawful and that he is entitled to special damages arising from that unlawful dismissal (see page 8 of the typed judgment). The court went on to state:-

“In a claim for unlawful damages (sic), the only damages payable to a party in the Plaintiff’s position are damages (sic). The Plaintiff has already abandoned the claim for general damages. In the event what is payable to him is salary in lieu of notice.”

The first sentence as it appears in this quotation from the typed judgment does not quite add up. I was unable to see the handwritten judgment in the court record. But one thing is clear. The Plaintiff abandoned his claim for general damages. The court held that the only special damages he was entitled to were three months salary in lieu of notice. This appears to be the general tenor of the judgment, especially in the last paragraph thereof. It appears to me that the court did not award the Plaintiff any salary from August 1998 to December, 2010, plus leave, medical and house allowances – all amounting to KShs. 12,771,058/00. If that were so, the court would have clearly and expressly stated so. There are some unfortunate sentences in the judgment which have brought about the confusion. But it is trite law that a person unlawfully dismissed from employment without notice will normally be entitled to pay in lieu of the notice provided for in the contract of employment. And this is what the Plaintiff was awarded in the judgment, the unfortunate sentences notwithstanding.

In my interpretation of the judgment therefore, the Plaintiff is entitled to three months pay in lieu of notice plus whatever other allowances he was entitled to for those three months, less statutory deductions. I so hold. I thus do not agree with the interpretation of the judgment put forward by the Plaintiff. There will be no order as to costs of the application.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF MARCH, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 3RD DAY OF MARCH, 2006.