



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 373 of 1988**

CATHLEEN TULLOCH BIGET PLAINTIFF

VERSUS

THE INTERNATIONAL SCHOOL OF KENYA.....DEFENDANT

JUDGMENT

Cathleen Tulloch Biget, sued the International School of Kenya Ltd, seeking:

- (a) **“General damages for loss of employment and interference with her career progression”,**
- (b) **“Costs and Interest of the suit”.**

The plaintiff’s cause of action is contained in para 2 of her plaint, filed on 3rd February, 1988.

The plaint was amended, vide Amended Plaint dated 3rd May, 1997, bringing in several new paragraphs as appear in the amended plaint, and there is a further amended plaint filed by leave of the court granted on 23.9.2004.

The defendant’s original defence is dated 23rd March, 1988, filed in court on 24th March, 1988. In it the defendant denied the plaintiff’s claim, and stated at para 4 as follows:

- (a) **“By relinquishing her sabbatical leave, the plaintiff was deemed to have resigned and the resignation was accepted.”**
- (b) **That the plaintiff did not qualify for unpaid leave of absence as her contract allowed only 2 leaves of absence which had not been taken”.**
- (c) **That the plaintiff was not entitled to maternity leave; as such leave could only be granted if the plaintiff taught upto the time she was released by the doctor for a period not exceeding 2 months.”**

The defendant said at para 5, that,

“it will aver that by her letter of 22nd January, 1987, the plaintiff admitted having resigned from employment....”

The defendant filed a defence to the 1st amended plaint, on 18.6.2001.

The hearing of this suit started before Etyang, J (as then he was). I took it over upon his retirement

and the parties consented to proceed with the hearing from where he stopped.

Evidence recorded by Etyang, J show that the plaintiff Cathleen Mary Tulloch Biget, is a teacher by profession, and by December, 1995, was the Head of Geography Department at Hillcrest school, Nairobi. She gave her qualifications in court. The plaintiff was born in Kenya, and lived the better part of her life in Kenya before going overseas.

She returned to Kenya in the summer of 1980 from England and got a job with International School of Kenya, the defendant, from 1st July 1980 as an elementary teacher in the primary school.

The plaintiff worked for 6 years, from 1st July 1980 and upon completion of 6 years, she was entitled to apply for sabbatical leave which meant that she would go for a course to improve her teaching. That during such a course, she would be entitled to half salary, and a job guarantee at the end of it. The sabbatical would be for one year.

The plaintiff's 6th year of teaching ended on 30th June, 1986. Before she was granted sabbatical, she had to show which University she wanted to go to.

The plaintiff applied for sabbatical which was approved by the sabbatical committee and the Superintendent of the defendant. The superintendent is what would be referred to as the Headmaster. He was the man in charge of the school.

A Mr. Brian MACAULEY was the superintendent when the plaintiff applied for sabbatical. He, however, left in May 1986 and Dr. David Bratt, took over. The plaintiff got admission to Bristol University to pursue a masters degree for her sabbatical leave.

The sabbatical year started on 1st July 1986, but the Bristol University course started at the end of September 1986. The plaintiff was due to depart Nairobi on 27th August, 1986, however, before she did so, she went to her doctor for a routine check up and the doctor found that was pregnant and there was some problem with the pregnancy, as she was bleeding.

The doctor told her that she was expecting twin babies, after taking a scan. The plaintiff testified, "As a result of this medical condition, I had to consider a change of course and be able to raise twins at the same time. I suggested that me and my husband proceed to England where I could do some education courses with the open University and not a masters degree course at Bristol".

The plaintiff explained that an, "**open degree course at a University** was her alternative plan. She went to talk to Dr. Bratt on 5.8.86, he had now become the Superintendent. She discussed her condition with him and told him that she was expecting twin babies, and did not therefore, "feel that it was possible to pursue a Masters Degree course. She suggested that she would study at home with assistance of radio and television (BBC), which means that most of the study is done at home but with occasional contact with lecturers and professors at the University. The plaintiff said that these courses would have helped her in her job, and would still be within the scope of her sabbatical.

According to the plaintiff, "**Dr. Bratt was very positive about everything, i.e. the twins and the open University etc etc everything was fine, he did not propose to cancel my trip to England**".

The plaintiff held further discussions with Dr. Bratt concerning her husband, and it was agreed between them that her husband would go along with her and study foundation courses in Arts at a Technical College in Devon, England, whilst the plaintiff did the Open University Course.

The plaintiff asked for a loan of US dollars 6000 repayable upon return from Britain after one year.

The plaintiff said Dr. Bratt was favourable about the loan, but said that he had to first ask the board for

approval. She ended her discussions with Dr. Bratt on a very positive note. He did not inform or suggest to her that if she did not go to Bristol University, her employment would be terminated. There was no talk that by her not going to Bristol University to do a masters degree course, this would lead to termination of her employment. The plaintiff then said,

“The word Resignation never featured in our discussion with Dr. Bratt, or with anybody at ISK. I was to go away to England for the sabbatical year as originally planned and return to ISK.....”

Dr. Bratt told the plaintiff to put in writing all the things they had discussed and she wrote the letter and delivered to him on 21st August, 1986. She produced the letter in court as an exhibit. The plaintiff wrote the letter in terms of the discussions with Dr. Bratt. The plaintiff would normally be entitled to 2 months maternity leave with full pay, if she had applied for it.

She left for Britain on 27th August, 1986. The defendant paid for her air ticket after making travel arrangements through a travel agent.

The plaintiff and her husband traveled to England via Spain and France. They arrived in England on 14th September, 1986 and she received a letter from the defendant via her brother, dated 27th August, 1986(Ex.4).

The letter was addressed to her via the defendant’s address. She assumed that the letter must have been handed over to her mother in Kenya who in turn must have posted it to her brother in Devon, Great Britain who in turn posted it to her.

The letter was from Dr. Bratt, and was headed **“Resignation”**. The plaintiff denied having resigned from her job. She also denied having mentioned anything of the sort in her discussions with Dr. Bratt on 5.8.86, before she left Nairobi.

The plaintiff re-stated that she was given sabbatical leave to study in England. That the sabbatical was approved, but her husband took leave of absence to be with her in England and also attend ART college.

The plaintiff was to start sabbatical leave when the University opened in October 1986 in England. She returned to Kenya in July 1987, but was unable to return to work at ISK because her position was occupied by another teacher, Mrs. Bratt.

The plaintiff wanted to go back to the defendant school because it is, **“a unique school”**, which is part of a large group of international group worldwide, and has a child centred approach to education and there are opportunities for teachers, not available in other schools. She listed the benefits available at the defendant.

The plaintiff lamented that the loss of her job put **“our lives in disarray. We were not a teaching team anymore, and our lives were disrupted”**.

The plaintiff earned a salary of US Dollars 26,000 p.a. She was paid 20% locally, and 80% overseas. She said this was a good salary with a good arrangement!

Because she was a married woman, the house allowance was paid to her husband. The plaintiff looked for a job everywhere in Kenya. She even went to Teachers Service Commission, but was told that they were not employing expatriate teachers. She got short term teaching jobs as she continued looking for a job. She put a figure of about Kshs.120,000/= for salary lost between 1987 – 1988.

The plaintiff found a permanent job with Hillcrest Secondary school in 1991. Her net salary after all deductions is Kshs.107,378/=. She produced the payslip in court as an exhibit. The plaintiff said that after her sabbatical, her salary would have been doubled.

She lamented that there was **“breach of natural justice”**, as she was not given a chance to question

the decision in the letter which terminated her services and was not given a chance to give her side of the story.

Several questions were put to her to which she replied that she believed she was on sabbatical leave when she left for Britain. She referred to a letter dated 21.8.86, which she wrote to Dr. David Bratt, Superintendent of ISK, and Mr. Richard Castrodale, Chairman, ISK Board of Directors, giving up her sabbatical leave and giving back money assigned for it.

She claimed damages for wrongful termination of her employment with the defendant school. She produced as an exhibit the ISK (defendant), “**salaries and Benefits Guide 2003 – 2004 – 05, 2004 – 5, 2005 – 2006**” to show what salary she would have continued to earn, if she was still teaching at ISK. She said she was in category C in terms of salaries, she is a holder of a BA degree plus a year’s post graduate in education.

The plaintiff had completed 6 years of teaching at ISK school. She would have taught for another 20 years, she said.

She also claimed damages for pain and suffering the stress she suffered after receiving the letter of 27.8.86. The plaintiff answered to further questioning after her letter of 21.8.86.

“there was no authorization by ISK in writing but Dr. Bratt knew I was going to Britain and he did not tell me not to go”.

The plaintiff was not sure if Dr. Bratt could give her permission to leave, the country and the school but she insisted that she had discussed everything in that letter with Dr. Bratt, before writing it.

The plaintiff wrote several letters to the defendant whilst still in Britain, looking for a job with the defendant. She identified a letter she wrote on 21.5.87, confirming that she had a full time job in England after Easter.

The plaintiff said in re-examination that the loan of US Dollars 12,000 was for a masters programme under sabbatical leave but because she could not pursue this after discovering that she was pregnant with twins, she returned the money and she got into a different programme and applied for a loan of US Dollars 6000, however this was not approved because she was already dismissed. The alternative plan to sabbatical was not accepted.

Sharon Louise Wanyee, is the Human Resources Manager of the defendant school, since May 1986. Her job involves handling matters of administration, employees benefits preparation of contracts, board policy matters, etc etc.

She had the plaintiff’s records from which she confirmed that the last service agreement signed by the plaintiff was in 1985 i.e. 1st July 1985 to 30th June, 1986. She produced as Ex. A and confirmed that it was the last agreement the plaintiff signed with the defendant before going for sabbatical.

Mrs. Wanyee stated further that the plaintiff’s employment was based on contracts, and this was the last one she signed. That the plaintiff applied for sabbatical by October 15th 1985, as per the school policy, Ex. 5 and, this was approved, and was effective from 1.7.86 upto 30.6.87.

According to Mrs. Wanyee, the plaintiff did not go on sabbatical leave as approved. She gave it up because she was pregnant and could not follow through the approved sabbatical.

That the plaintiff wrote a letter, Ex.3, dated 21.8.86. The personnel committee of the Board of Directors reviewed the plaintiff’s letter and communicated its decision to the plaintiff vide its letter of 27.8.86.

Mrs. Wanyee typed the letter of 27.8.86. By then she was the administrative assistant to the

Superintendent Dr. Bhatt. The letter was thereafter given to a driver to take to the plaintiff's house, the day she was due to leave the country.

Mrs. Wanyee denied having posted the letter. She confirmed that Dr. Bratt left the school in 1981. The committee did not approve the plaintiff's alternative request as suggested by her in her letter, Ex. 3.

Mrs. Wanyee confirmed that the plaintiff's air ticket was paid to enable her to go on sabbatical. The defendant received the letter Ex B from the plaintiff asking for her job back. The plaintiff also wrote to the Board of Directors making a similar request. The letter was produced as Ex.C. Mrs. Wanyee said that during all that period the plaintiff did not complain of having been terminated unlawfully. The plaintiff did not sign any contract in February 1986, because she applied for a sabbatical.

Mrs. Wanyee explained further that the plaintiff would have been entitled to a 2 year contract at the end of the sabbatical which had been approved for the study of a masters degree in Britain. According to Mrs. Wanyee,

“when the plaintiff gave up sabbatical there was no employer/employee relationship left”.

Mrs. Wanyee explained further that those applying for sabbatical would have worked for 6 years as the plaintiff had, and that sabbatical would be the 7th year. That only those who had done well were given sabbatical, and upon completion, one was entitled to a 2 year contract. These provisions were contained in the document produced as an exhibit. Further that once a sabbatical was approved in case of inability to take it, the decision would be communicated back to the Committee by the Superintendent.

Talking about the tone in which the plaintiff's letter was written, Mrs. Wanyee said that the plaintiff assumed she would get her job back at ISK. She thought there should have been a letter by the plaintiff requesting for a change of programmes since the plaintiff's letter simply assumed that the change in sabbatical was approved.

About Mrs. Bratt's employment, Mrs. Wanyee said that she was given a one year contract to run concurrently with the plaintiff's sabbatical. The arrangement was that the plaintiff would return after her sabbatical and get a 2 year contract. That this she would have got forthwith because she was qualified.

At the conclusion of the defence case, Mr. Rebello for the plaintiff applied for leave to amend the plaint and insert figures of salaries. This came out from evidence. He in fact filed an application seeking leave to amend.

The application was strenuously objected to by Miss Ndosì for the defendant. I nevertheless granted leave to effect that amendment. I allowed the amendment though coming rather late in the proceedings because it involved figures which came out during the plaintiff's evidence. The plaintiff wanted to use the figures as a basis for the court to calculate the damages she was claiming from the defendant. I did not find anything wrong with that since the said figures came out during the trial and the case had not been concluded.

After that the advocates representing both parties made detailed submissions. Counsel for the plaintiff took as his first issue, the question of whether **“the plaintiff resigned from her employment from the facts hereinafter stated.”**

He then went through the plaintiff's evidence in detail. About Ex. 5 the Administrative Procedure for making applications for sabbatical, a document from the defendant Mr. Rebello submitted that this document, which sets out the sabbatical activities and criteria, does so **“in the widest possible terms and would cover the activities which the plaintiff now proposed to undertake. That the activities are based and not limited to obtaining degrees ---“.**

Mr. Rebello took issues with the letter Ex.4 dated 27th August 1986, from the defendant, written by Dr. Bratt, the Superintendent of the school, whom the plaintiff said she had a discussion with.

He said that this was a letter written on the day the plaintiff was due to leave Kenya for Great Britain. Yet it was not marked urgent and was not delivered to her before she left. Mr. Rebello submitted that no reason was given why Mr. Bratt took up the matter with the Board before he had received the plaintiff's letter, produced as Ex.3 dated 21.8.2006 and further, that there was no evidence to show what Mr. Bratt told the Board.

Mr. Rebello also challenged the defendant for failing to produce Dr. Bratt at the trial to confirm or deny the details of the conversation he had with the plaintiff, which resulted in the plaintiff writing Ex.3. Mr. Rebello denied the assertion that the plaintiff "**resigned**" and submitted that it was the defendants who terminated her services that is why the letter Exh.4 invited her to "**apply for a job in the following year**".

Mr. Rebello also challenged the fact of the plaintiff's position having been taken up by Dr. Bratt's wife and asserted that Dr. Bratt, "**was quite clearly interested in creating for her a permanent position at the cost of the plaintiff.**"

On the defence case, Mr. Rebello submitted that too much reliance was placed on the plaintiff's letter, Exh.3 dated 21.8.86, to terminate her services, yet she made it clear in the letter that she still had a job at LSK to which she intended to return.

According to Mr. Rebello the evidence of Sharon Wanyee in stating that "**when the plaintiffs gave up sabbatical there was no employer/employee relationship**" cannot be relied on because she was not present when the plaintiff had a meeting with Dr. Bratt. That besides, she was Dr. Bratt's secretary at the time and not Human Resources Manager. Mr. Rebello maintained that the plaintiff did not resign but had her services terminated by the defendant.

Mr. Rebello submitted on the 2nd issue, which according to him is the quantum of damages payable to the plaintiff for wrongful termination of employment. The submissions and computation appear in his written submissions. He had also annexed several decided cases.

The defendant, on the other hand submitted that the plaintiff's last employment contract with the defendant was from the period 1st July 1985 to 30th June 1986.

Reading through Ex. A ISK Agreement of Service, the defendant counsel submitted that under Clause 12 an employee who wishes to be considered for renewal of contract was required to inform the defendant's Board by January 1 of the final year of the agreement of the services. That for the plaintiff, this was January 1986., The defendant's answer would be communicated back to the plaintiff by February, 1986.

On termination of employment, the defendant's counsel quoted Clause 13 of the Service agreement which says that either party could terminate the contract of employment by giving 90 days notice, or pay 90 days salary in lieu of notice. That the plaintiff did not "**notify**" the defendant in January 1986 of her desire to renew her contract which was to end on 30th June 1986. She instead applied for sabbatical, which was approved for one year to enable her to proceed to Bristol University in Great Britain to pursue a Masters programme. That the sabbatical leave was granted from August 1986, after the expiry of her current contract on 30th June, 1986, and further that the sabbatical leave was granted in accordance with the defendant's administrative procedures, produced in court as Exh.5. For the plaintiff particularly, the sabbatical was for a specific, purpose, i.e. to study for a master's degree at Bristol University in Great Britain and nothing else.

The plaintiff was unable to accept the "**approved**" sabbatical leave by the defendant, for "**personal reasons**". The defendant counsel submitted that the sabbatical leave was usually approved for a specific activity, and there was no provision for the plaintiff to change the activity without prior approval of the defendant.

According to the defendant's counsel, "**sabbatical is a period of paid leave granted to a University teacher for study or travel, such that if an employee declines sabbatical, they would be expected to be at work, unless they are on any other leave granted by the employer**".

The defendant submitted finally that the plaintiff "**willingly relinquished her sabbatical leave**". This, according to the defendant meant that the plaintiff had "resigned" because there was no other term governing the relationship between her and the defendant.

The defendant's counsel also relied on a number of decided cases which I have read through.

Having gone through the oral evidence and the written submissions of both advocates, I am now in a position to decide on the issues in this case.

The one all important issue is whether the plaintiff "**resigned**" from her employment with the defendant or whether it was the defendant who wrongfully terminated her employment? All the evidence needed to answer this issue is already on record. I only need to consider a few important points, such as

1. The plaintiff's contract of employment or agreement of service which was said to have come to an end on 30th June, 1986
2. Evidence produced in court, particularly Ex. A(International School of Kenya) agreement of service, clearly states that an employee, such as the plaintiff should have applied for a further contract of employment by January 1986.
3. The plaintiff did not do this as she opted to apply for sabbatical leave for a year, to enable her to pursue a Masters degree course at Bristol University. This was approved by the relevant committee.
4. According to the same "agreement of service", the plaintiff would have been entitled to a 2 years contract upon completion and return from sabbatical leave.
5. Unfortunately for the plaintiff, things did not work as planned, because of "medical reasons".
6. This resulted in her giving up the sabbatical leave which had been approved, and accompanying her husband to the United Kingdom. The husband was on one year leave of absence to coincide with her sabbatical leave.
7. The plaintiff contends that when she discovered her "medical condition, she discussed it with the school Superintendent and revealed to him that she was pregnant with twins and could not take the sabbatical leave which had been approved. That further they discussed several other matters including other options as her evidence shows, and she was told by Dr. Bratt to put it all in writing, which she did in Ex.3, a letter dated 21.8.86; which is self explanatory. The letter had request at para 4 for "a special sabbatical/educational loan from ISK of US Dollars 6000" which was not approved.

From the evidence I have just outlined, I find that after the plaintiff had given up sabbatical leave to pursue a masters degree course at Bristol in England, and having not renewed her contract in January, 1986, there were no terms governing her employment with the defendant. She was actually not employed any more. There was no "**agreement of service**", so the question of termination of service, wrongfully or otherwise could not, in my considered opinion, arise.

I consider it unfortunate that the ISK Board of Directors "**accepted her resignation**", as stated in their letter of 27.8.86 (Ex. 4) before reviewing her letter of explanation dated 21.8.86 (ex. 3), but that in my view did not change the state of things.

The plaintiff was assured of a 2 year contract upon completion of the one year sabbatical, but since she gave it up, the defendant could not guarantee her employment. The plaintiff must have been aware of this that is why she took up various jobs in England. In fact in one of her letters produced as Ex. D dated 5th

May, 1987, the plaintiff wrote,

“I am now working in England and in order to finalize my salary the local education office need a letter from ISK to say that I have been teaching full time from “1980 – 1986”

The above underlining shows that the plaintiff knew that the period of her employment with the defendant was from 1980 – 1986, because there was no further terms of service between them after that.

The plaintiff’s husband notified the defendant by his letter on 22.11.1986, that the plaintiff who was by then **“trying to find a teaching job in England from January to July next year”**.

The last paragraph on page 1 of that letter reads in part,

“This means that Cathleen will definitely want to work next year. We will be writing to the Personnel Committee in January 1987....”

Indeed the plaintiff applied for a job with the defendant school in January 1987. Her 2 letters dated 21st May 1987, complain of a lack of response from both the Superintendent of the school and the Chairman of the Board of ISK school.

I find that there is sufficient evidence to show that the plaintiff was aware that her last contract of service with the defendant ended on 30.6.86, with no renewal as she had opted for sabbatical leave, which she subsequently gave up. I do not find any evidence to show that the defendant terminated the plaintiff’s agreement of service because there was no such agreement in place at the time.

Finally I would like to quote part of the plaintiff’s letter dated 22nd January 1997 written Dr. David Bratt, the then Superintendent of ISK. The letter reads in the 1st paragraph,

“I am writing this letter to formally apply for a teaching position at ISK for the 1987 school year. I know you are aware of my circumstance this year and the reasons why I left teaching at ISK and therefore “technically resigned my job”. the above underlining is mine, and in my opinion, a conclusion of this case, as it shows that the plaintiff was aware that she had **“technically resigned” from her job by traveling with her husband to Britain when her last contract of service had ended and instead of renewing it in January 1986 as per the laid down regulations, opted for a sabbatical which was approved, but which she subsequently gave up. I have great sympathy for the plaintiff’s circumstances given the fact that the reason which made her give up the sabbatical study leave ended up in a disaster as the twins both died! This was most tragic, but be that as it may, I find that the plaintiff **“resigned her job”**, due to **“personal health reasons”**. She was not terminated by the defendant.**

I have **NOT** gone further to consider the quantum of damages payable to the plaintiff because I am not satisfied that she proved her case on a balance of probabilities against the defendant to warrant her to be paid damages. I am therefore left with no alternative but to dismiss her plaint with costs to the defendant.

Dated at NAIROBI this 9th day of June, 2006.

JOYCE ALUOCH

JUDGE