



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

Civil Case 753 of 2004

CATHERINE NGIGI.....
.....PLAINTIFF

VERSUS

INNSCOR KENYA LTD.....DEFENDANT

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RULING

The plaintiff was engaged by the defendant as a Human Resources Manager vide a Contract of Service commencing on 3rd January 2000.

The plaintiff's contract of service was on Permanent and Statutorily Pensionable terms and the plaintiff was entitled to interalia:-

- (a) AAR Medical and Coverage at 50% Personal Contribution.
- (b) Leave of 26 days per annum.
- (c) Fuel for her personal car pursuant to the company motor vehicle Policy.
- (d) Termination of employment only upon 3 months notice.

On 23rd June 2004 she was advised that her services had been terminated summarily and that interalia:

- (i) She was being redundant
- (ii) That her services as the Human Resources Manager were no longer required as the company was undergoing restructuring.

According to paragraph 8 of the Plaintiff, she was informed that she was not entitled to redundancy dues because her exist was Redundancy on Summary Dismissal due to gross misconduct. In paragraph 11 of the Plaintiff the plaintiff avers that she is entitled to Redundancy dues at 18 days for every complete year of service as envisaged by the General Wages Order in the Regulation of Wages and Conditions Act Cap 229, Laws of Kenya and her unpaid leave days for 61 days and in paragraph 18 she sought the following special damages:

(i) Three (3) months Notice pay	Sh.300,000/=
(ii) Unpaid leave days	Sh.254,615/=
(iii) Unpaid salary for June	Sh. 92,308/=
(iv) Redundancy dues at 18 days pay for	<u>Sh.311,538/=</u>
Total	<u>Sh.938,461/=</u>

She prayed for judgment against the defendant for:-

- (a) A declaration that the termination of the plaintiff is that of Redundancy and cannot be summary dismissal under the plaintiff's contract of employment.
- (b) A declaration that the actions of the Defendant have been unmanifest breach of the dictates of natural justice.
- (c) A Declaration that the Defendant is entitled to Redundancy Pay at 18 days for every year of service Leave pay for 61 days Three months Notice Pay Salary for June 2004 and a certificate of service pursuant to the provisions of Cap 226.
- (d) A Declaration that the Defendant has breached Clause 5(2)
- (c) of the Employment Act Cap 226.
- (e) General and special damages.
- (f) Costs of the suit and interest thereon from the date of filing suit until payment in full.

The defendant on being served with summons filed defence on 2nd August 2004 and amended on the 17th August 2004 in which it denies the plaintiff's claim and further avers that since the plaintiff was summarily dismissed. She was not entitled to any benefits and that on dismissal the issue of notice does not arise.

On the 23rd September 2004 the plaintiff filed a Notice of Motion expressed to be brought under Order 35 Rules 1, 2, 5 and 8 of the Civil Procedure Rules seeking summary judgment.

The application is based on the ground:

1. That the plaintiff has not been paid her salary for June 2004 is clear breach of Rule 5(2) of the Employment Act (Cap 226 which Act is mandatory and binding on Employers and the plaintiff seeks the said June salary.
2. That the plaintiff has not been paid her 61 leave days, likewise in breach of the said Employment Act (Cap 226) and the Defendant's own payslip for May 2004 contains an Admission as to the said leave days being unpaid.
3. The summary judgment should be awarded for these clear liquidated amounts pending the determination of all other matters upon full hearing of the suit.
4. That costs of this application be provided for.

The application is also supported by an affidavit of the applicant sworn on 23rd September 2004.

The plaintiff has brought this application under Order 35 Rule 1 of the Civil Procedure seeking summary judgment. The summary remedy should only be applied in plain and obvious cases. In the case of **GIGEM CONSTRUCTION COMPANY VS. AM AMALGAMATED TRADERS SERVICES (1982 – 88) 1 KLR 309** HANCOX JA as he then was said at page 311:

“The proper principles to be considered in a case such as the present were set out in the locus classicu in East African on the subject namely ZOLA VS. RALLI BROTHERS (1969) EA 691 in which Sir Charles Newbold P said at page 694 “Order 35 is intended to enable a plaintiff with a liquidated claim to which there is clearly no good defence to obtain a quick and summary judgment without being unnecessarily kept from what is due to him by delaying tactics of the defence”.

In the instant case there is admission that the plaintiff was not paid her June 2004 salary for 24 days. The payslip for May 2004 indicates that the plaintiff had leave balance of 60 days.

I am satisfied that the defendant has shown no good defence in respect of the said two items having admitted the claim. The plaintiff is entitled to a summary judgment.

Accordingly I enter summary judgment as prayed in the sum of Ksh.326,923/=. Costs to abide the main suit.

Dated and delivered at Nairobi this 20th day of July 2006.

J.L.A. OSIEMO

JUDGE