



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 586 of 1991

HARRISON N. GITHINJI.....PLAINTIFF

VERSUS

KARIRIMA ESTATE LTD.....DEFENDANT

JUDGMENT

The plaintiff was on 22nd December 1972 employed as a manual factory worker and from the record it is evident that he was a pleasant and hard working officer and as a result he gained promotions through the ranks ending as Estate Accountant.

In the management grade he enjoyed many privileges i.e. free housing, 3 servants, free electricity, free firewood, free medical treatment and free education for 3 children.

On 3rd November 1988 his services were terminated that he was involved in fraudulent accounting, was arrested charged but the charges were eventually withdrawn. He was given three months salary in lieu of notice amounting to Ksh.21,450/= and a further Ksh.21,000/= transport allowance.

He was also given Ksh.88,000/= provident fund. He filed this suit seeking damages for false imprisonment for one day and unlawful dismissal. The plaintiff's contention is that he was wrongfully dismissed from his employment where he had served the defendant company for a continuous and interrupted period of 16 years. His wrongful dismissal caused him humiliation, mental anguish, several shock and public embarrassment. Counsel for the plaintiff also submitted that the dismissal of the plaintiff without giving him any reason or giving him a chance to be heard contravened the rules of natural justice.

It is not disputed that the plaintiff was employed by the defendant as a manual worker and was promoted through the ranks ending as the Estate Accountant. It is also conceded that his services were terminated by giving the plaintiff 3 months salary in lieu of notice. But counsel for the defendant submits that there was a contract of employment which is not disputed by the plaintiff and which had a termination clause where the employer and the employee enter into a service contract which stipulates a termination clause or notice to terminate the employment. Where a notice period is provided in a contract of employment as was the case here, then an employer needs not assign a reason. There is no difficult in such a situation because the employer and the employer and the employee intended to be bound by the termination clause or notice regardless of the nature of the employment.

Following the unlawful termination of such 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 **ADDIS VS. GRAMAPHONE CO. LTD 1909 AC 488** it was held that:-

“Where a servant is unlawfully dismissed from his employment the damages for dismissal cannot include compensation for the manner of the dismissal, for his injured feelings or for the loss he may sustain from the fact that the dismissal itself makes it more difficult for him to obtain fresh employment”

This principle was cited and adopted by the Court of Appeal in the case of **OMBANYA VS. GAILEY AND ROBERTS [1974] EA 522.**

The circumstances of the present case were such that the plaintiff had risen in ranks to the position of Estate Accountant in his employment. He had acquired specialized knowledge and experience as the accountant in the field he was employed by the defendant. The plaintiff argues that he ought to have been given reasons for the termination of his services and by not doing so it was against the rules of natural justice. The rules of natural justice do not apply in simple service contract. Where a notice period is provided in a contract of employment, as was in the case of here, then an employer needs not assign a reason, the question of offering to the employee a chance to be heard before giving the notice does not and cannot arise. Again if the employee were to be minded to leave his employment say for a better paid job, and

he gives notice of his intention to leave, the employee is not obliged to assign any reason for his intention to terminate the contract and it would be ridiculous for the employer to insist that he be given a hearing before the employee leaves.

This was so stated in the case of **RIFT VALLEY TEXTILES LTD VS. EDWARD OMBANGO OGANDA – CIVIL APPEAL NO.27 OF 1992.**

In the present case it was within the terms of the contract for the defendant to terminate the services of the plaintiff at any time and without assigning any reason for so doing provided that he gave three months notice as stipulated in the contract of employment and which it did in this case.

As regards unlawful arrest and detention, the plaintiff should have sued the police through the Attorney General and not his employer.

The plaintiff's claim therefore fails and is hereby dismissed with costs to the defendant.

Dated and delivered at Nairobi this 1st day of March 2005.

J.L.A. OSIEMO

JUDGE