



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

Civil Suit 1814 of 1999

LINUS DON BOSCO AGOYA..... PLAINTIFF

VERSUS

KENYA REVENUE AUTHORITY.....DEFENDANT

RULING

The Plaintiff herein filed this suit on 16th September 1999 against his former employer, the Kenya Revenue Authority, seeking the following reliefs:

- a) A declaration that his dismissal from employment on 2nd November 1995 was wrongful and void**
- b) Special damages in the sum of Shs.1,018,230.60.**
- c) Costs of the suit and interest.**

After being set down for hearing severally without being confirmed the suit was finally confirmed during the call over for November 2004 but was again adjourned at the request of the Defendant’s Counsel. The same was set down again for hearing and when the parties appeared before me for the third time on 19th July 2005 the Defendant raised a Preliminary Objection to the suit, under a notice of Preliminary Objection filed on 10th January 2001 but never argued. The Preliminary Objection reads as follows:

“1. The suit is bad in law as it offends Sections 12 and 13A of the Government Proceedings Act and Section 3 of the Kenya Revenue Authority Act Cap 469 of the Laws of Kenya.”

Counsel for the Defendant submitted that in view of the provisions of Section 3 (2) (a) of the Kenya Revenue Authority Act (Chapter 469 of the Laws of Kenya) this suit ought to have been filed in accordance with the provisions of the Government Proceedings Act wherein the Attorney General and not the authority ought to have been sued wherein a notice of intention to sue ought have been served under Section 13A.

Counsel argued that the dismissal of the Plaintiff was an act falling within the exercise of the Defendant’s functions under Section 5 of the Kenya Revenue Authority Act and that Section 3 (2) (a) of the Act provided a bar to these proceedings. The Plaintiff’s Counsel submitted on the strength of the same provisions and argued that these proceedings are outside the proviso to Section 3 (2) (a) which incorporated the Government Proceedings Act into Cap 469. For the sake of clarity, the said Section reads as follows:

“3 (1) (2) the Authority shall be a body corporate with perpetual succession and a common seal and shall, subject to this Act, be capable of (sic) its corporate

name of (a) Suing and being sued Provided that any legal proceedings against the authority arising from the performance of the functions or the exercise of any of the powers of the authority under Section 5 shall be deemed to be legal proceedings against the Government within the meaning of the Government Proceedings Act.”

(underlining supplied)

The functions and powers of the Authority under the said Section 5 are spelt out as follows:

“5 (1) The Authority shall, under the general supervision of the Minister, be an agency of the Government for the collection and receipt of all revenue

(2) in the performance of its functions under sub-section (1) the Authority shall

(a) administer and enforce: -

(i) all provisions of the written laws set out in part I of the 1st Schedule and for that purpose to assess collect and account for all revenues in accordance with the laws.

(ii) The provisions of the written laws set out in Part II of the First Schedule relating to revenue and for that purpose to access, collect and account for all revenues in accordance with those laws.

(b) advice the Government on all matters relating to the administration of and the collection of revenue under the written laws.....

(c) performing such other functions in relation to revenue as the minister may direct.

(all underlining supplied)

It is quite clear from the reading of Section 5 of Cap 469 that the hiring and firing of staff by the Defendant is not one of the functions for which the Government Proceedings Act would apply. Counsel for the Plaintiff submitted (and I am inclined to find her submission correct) that this suit clearly falls outside the proviso to Section 3 (2) (a). Thus I find that this suit, in the circumstances is properly instituted against the Defendant Authority in its own corporate name.

I also find that the case of Hudson Laise Walimbwa –vs- Attorney General H.C.C.C. No. 2714 of 1987, in which the Attorney General was property sued, but without the requisite notice of intention to sue being issued, does not support the Defendant’s Preliminary Objection. Consequently the Preliminary Objection is overruled with costs to the Plaintiff. Parties will proceed to fix the matter for hearing henceforth. This Court’s earlier order barring applications for further adjournment(s) will continue in force.

Dated and delivered at Nairobi this 30th day of September, 2005

M.G. Mugo

Judge

In the presence of:

N/A for the Plaintiff

Mrs. Odunda for the Defendant

