

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Civil Case 127 of 2001

ANTONY RAGOGI MONDA
.....PLAINTIFF

V E R S U S

THE ATTORNEY GENERAL

THE PERMANENT SECRETARY,

MINISTRY OF ROADS & PUBLIC WORKS.....
DEFENDANTS

J U D G M E N T

Interlocutory judgment was entered on 24.3.2003 in the suit herein. Defence was struck out on 28.7.2004. Ex-parte hearing was on 4.10.2004 when the plaintiff gave evidence but called no witness.

The suit by the plaintiff, Antony Ragogi Monda, is against the Attorney General and the Permanent Secretary, Ministry of Roads and Public Works. The claim was for general damages for wrongful dismissal. The plaintiff's claim was that the plaintiff was a Motor Vehicle Mechanic Grade I in group F in the Ministry of Roads and Public Works earning a monthly salary of Shs.4655/=. Although he alleged that he worked up to 26.6.2000, he did not plead the date on which he was first employed as a civil servant. However, he indicated that he worked from 1st September, 1998 until 26th June, 2001. The later date was at variance with the earlier date of 26.6.2000.

Instead of setting out his claim in the plaint, the plaintiff put up defensive statement ostensibly in anticipation of and in an apparent attempt to forestall defences the defendants were likely to come with.

In his evidence, the plaintiff stated he was employed on 1/1/98 as a subordinate staff at the age of 25 years. He was dismissed on 25.2.99. He produced a letter marked as exhibit No.2 showing that he was engaged on 2/11/94 and dismissed on 11/5/98. He received the letter (Exht.No.2) on 16.9.99.

The suit herein was instituted on 27.11.2001. The cause of action arose on 25.2.99 when the plaintiff alleged his employment was wrongfully terminated or on 16.9.99 when the plaintiff alleged he received the letter of dismissal. This was an action against the Government. The action was based on contract. It was filed after the expiry of two years. Whether the period is computed from 25-2-99 or 16.9.99 to the date of filing suit, it was clearly statute barred. It mattered not that the plaintiff by his letter dated 27.9.2000 gave notice to the Attorney General pursuant to section 13 A of the Government Proceedings Act Cap.40. Time did not run from the date of the notice. It ran from the date the cause of action accrued on either 25/2/99 or 16/9/99. Being time barred, the suit must fail.

It is dismissed with no order as to costs.

Dated at Kakamega this 11th day of November, 2005

G. B. M. KARIUKI

J U D G E

