

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 758 OF 2002

JOSEPH MULI KIOKO & ANOTHER APPELLANT

VERSUS

TROPIFLORA LIMITED RESPONDENT

JUDGMENT

The two Appellants here filed an action in the lower court for compensation for wrongful dismissal from employment, and for general and punitive damages for malicious prosecution.

While dismissing the claim for malicious prosecution, the lower court found that the Appellants were entitled to the claim for wrongful dismissal and awarded them loss of salary for one month in lieu of notice. The court declined to award severance pay.

At the hearing of this appeal, the Appellants withdrew Ground 3 which related to general and punitive damages for wrongful dismissal. The only issue before this court is whether the Appellants were entitled to severance pay. Counsel for the Appellants argued that the terms of employment were governed by the letter of employment (Exhibits 1 and 6) which provided that the terms of employment would be governed by the Employment Act, Cap 229. According to the Act, Counsel submitted, the Court having found that the Appellants were wrongfully dismissed, they were rendered redundant, and, therefore, entitled to severance pay.

Both Counsels agreed that severance pay is applicable and payable only in the event of redundancy. The issue, therefore, is whether the Appellants had been declared, and laid off, as a result of redundancy. Redundancy is defined as follows in Section 2 of the Trade Disputes Act, Cap 226, Laws of Kenya.

“The loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of employment at the initiative of the employer where the services of an employee are superfluous, and the practices commonly known as abolition of office, job or occupation and loss of employment due to the Kenyanization of a business but it does not include any such loss of employment by a domestic servant.”

There was no evidence before the lower court of the Appellants being laid off because of redundancy. Their employment was terminated because they absented themselves from work for ten days each. There is no evidence that the employer declared any of its employees, including the Appellants, redundant. Accordingly, the lower court was correct in coming to the conclusion that severance pay was not payable to the Appellants, and this appeal is, therefore, dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 28th day of June, 2004.

ALNASHIR VISRAM

JUDGE