



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL APPEAL NO. 109 OF 1998

KENYA CREDIT TRADERS LIMITED APPELLANT

VERSUS

JOSEPHAT ONDIEKI RESPONDENT

JUDGMENT:

This appeal arises from the judgment of Ngomo K. Senior Resident Magistrate delivered on 31st March 1998. The appeal was heard by WAMBILYANGAH J. but he left service before he wrote the judgment.

The appellant was the defendant in the lower court. The respondent was the plaintiff. The appellant employed the respondent on 13th August 1992 as a salesman Grade 1C and posted to their Kitale shop. His monthly pay was shs.1750/=. On 6th September 1995 he was promoted to a shop Manager to be in charge of Kitale shop. His salary was increased to shs.3830/= per month. The appellant's business is to sell goods on hire purchase. On 29th September 1995 two customers bought goods from the Kitale shop. Later it was company lost shs.35,000/=. The respondent was then the shop manager.

On 11th December 1995 the appellant dismissed the respondent from service with one month's found that the documents they used when filling the hire purchase forms were fake. The salary in lieu of notice. The appellant then filed a suit in Kisii court seeking:

- a) Monthly salary since 31st January 1996 together with allowances and bonuses;
- b) General damages;
- c) Reinstatement;
- d) Interest;
- e) Costs of this suit.

Judgment was delivered on 31st March 1998. The court granted prayer (a) and ordered that he be paid his salary since 31/1/96 together with allowances and bonuses. It also awarded shs.40,000/= as general damages for wrongful dismissal and costs of the suit.

It is against these the appellant has appealed. There are 9 grounds of appeal as numerated in the memorandum of appeal.

It was submitted that the case against the appellant was not proved. The respondent had allowed use of fake documents and the appellant lost money. He was the shop manager and was the one responsible. He did not perform his duty well and the decision to terminate his services was therefore proper.

He was given one month's salary notice but he had a debt of shs.3000/= with the company.

Further it was submitted that it was wrong to award the respondent shs.40,000/= general damages. The only damages he would have been entitled to is salary in lieu of notice.

The respondent opposed the appeal and stated that the learned magistrate made a proper findings, as the respondent was not to blame for the two purchases made using fake documents. He was entitled to payment in lieu of reinstatement.

The main issues before the court were whether the respondent's termination of services were unlawful and if so what damages he was entitled to. The respondent was the shop manager. It is not in dispute that two people used fake documents to purchase goods. Though the magistrate found that respondent was not the one to blame there was evidence that he was the one who was responsible and he had the duty to satisfy himself that the documents used were proper.

The two transactions complained of were handled by him and other salesmen. However it was clear from the evidence that he is the one who gave final authority for the documents to be accepted. DW2 SIMIYU WANYONYI had testified that he noticed that the identity card of one of the customers seemed to have been interfered with. The name in the Id/Card did not tally with the one in the pay slips. He therefore directed the two customers to the respondent together with the documents. The respondent approved them as genuine. It was therefore obvious that he was not careful as the person in charge.

There is evidence that the appellant called for his explanation before his services were terminated. The learned magistrate therefore was wrong to hold that the termination was unlawful. The evidence on record clearly show otherwise.

The contract of employment between the respondent and appellant clearly stated how termination could be effected. It stated that the appellant could terminated the employment by giving one month's salary in lieu of notice.

The respondent signed the agreement on 13/8/92 (exhibit P.1) accepting the terms. In his letter of dismissal dated 11th December 1995 the appellant informed the respondent that he will be paid one month's salary in lieu of notice. Thus even if there was no misconduct on part of the respondent the appellant adhered to the contract and paid him one month's salary. He should have been paid for the same and that is why he claims for salary from 31/1/96.

The respondent was not entitled to any general damages even if his dismissal was found to be unlawful. The terms and conditions of his service were well spelt out. He was only entitled to one month's pay in lieu of notice.

In the case of DALMAS B. OGYE –VS.- K.N.T.C. LT. .CA Civil Appeal No.125 of 1996 the court of appeal held that the only damages an employee would be entitled to is the amount he would be entitled to if his employment was brought to an end in the manner stipulated in the contract of service. The contracts of service between the appellant and respondent was for one month's salary in lieu of notice. The learned magistrate therefore erred in ordering that he be paid his salary from 31/1/96. He did not even say until when. Neither did he say what allowances and bonuses he was entitled to.

All in all I find that the appeal is merited. The same is allowed and the lower court's judgment is therefore set aside. The appellant will have costs of this appeal and in the lower court.

KABURU BAUNI

JUDGE

26/7/2004

Delivered on 26th July 2004 in presence of Mr. Momanyi.

KABURU BAUNI

JUDGE