



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL CASE NO. 14 OF 2002**

**ROSE NJIRA ..... PLAINTIFF**

**VERSUS**

**SONYACCO SACCO SOCIETY LTD. .... DEFENDANT**

**JUDGMENT:**

The plaintiff ROSE NJIRA claims shs.772,920/= special damages. Damages for loss of future earnings, costs and interest from the defendant SOUTH NYANZA TEACHERS CO-OP. SAVINGS & CREDIT SOCIETY.

The plaintiff was employed by the defendant on 20th August 1987 as an office messenger.

Later she was promoted as a bookkeeper. She was employed on permanent terms. However on 14th October 1999 the defendant terminated the services of the plaintiff. She was in other words retrenched due to economic hardships. She was paid shs.35,590/= as terminal dues. By then she was earning sh.7396/= per month. She told the court that she should have been paid terminal dues of shs.266,256/=. She further said she had contributed sh.28,800/= to staff welfare, had sh.11,600/= unpaid medical claim, N.H.I.F contribution un-remitted of shs. 11,526/=. shs.264,660 contribution to K.N.A. Pension scheme, shs.32,600/= Co-operative shares, shs. 22,188/= 3 months salary in lieu of notice, shs.10,500/= outstanding salary, leave shs.7,396/=, life insurance benefits shs.95,400/= and handshake shs.20,000/=.

She said she suffered loss as a result of the termination. She would have worked up to 55 years. She had 17 more years to work if she was not retrenched. She therefore claims for damages for loss of future earnings.

The plaintiff further said that she was subjected to pecuniary embarrassment, mental torture and anxiety and claims for damages.

In total plaintiff claims a total of shs.772,920/= special damages, damages for loss of future earnings, interest and cost of the suit.

Defendant denied the claim and said the retrenchment was legal and lawful. He denied plaintiff was entitled to the claims she had made. Further the defendant averred that plaintiff was employed in 1996 and not 1987.

It is not in dispute that the plaintiff's services were terminated in September 1999. In essence she was retrenched on what she was told were economic hardships. By then she had risen from a cleaner to a bookkeeper earning sh.7396/= per months. What was in dispute is when she was employed. She told court that she was employed in 1987. A letter dated 20/8/87 was produced by PW2, which informed her

of her permanent appointment. In fact when the defendant was calculating her terminal benefits as per the letter to her dated 23/2/2000 they showed she had worked for 12 years. If her services were terminated in 1999 then it means that she was employed in 1987 and not 1996, as DW1 wanted the court to believe.

Having settled the issue of period of employment the other issue is the benefits, which she was entitled to. In the letter terminating her services she was informed that this was due to economic hardship. There was no evidence of any malice on part of the defendant.

Though the plaintiff said there was advertisement for employment by the defendant soon thereafter there was no advertisement for a bookkeeper, which was what she was. She cannot therefore say that her job was advertised. I therefore find that there was no wrongful dismissal. The defendant gave a reason, which is plausible enough.

The letter to the plaintiff offering her employment did not provide how either party can terminate the employment. It only says she was employed until she was 55 years. This I believe did not mean that either party could not terminate employment for a good reason. MULI J.A (as he then was) in the case of C.P.C. INDUSTRIAL PRODUCTS (K) LTD. -VS.- OMWERI AGINA C.A. Civil Appeal No.197 of 1992 considered a situation where the contract of employment did not provide a termination clause and he stated that the employee is entitled to the loss he suffers for a period of a reasonable notice. In this case the plaintiff was paid one months salary in lieu of notice. I think she should have been paid for 3 months notice. Apart from that she is not entitled for any damages for wrongful dismissal. Court cannot direct that she be paid for up to 55 years or even for a less period for to do so is to order she be paid while not working.

The plaintiff cannot be paid damages for pecuniary embarrassment, mental torture and anxiety. She was expected to be diligent enough and find other employment. In fact she said that she is now in business. In the case of KENYA PORTS AUTHORITY -VS.- EDWARD OTIENO C.A. Civil Appeal No.120 of 1997 Court of Appeal set aside an award of shs.100,000/= as general damages for shock and distress. Likewise the plaintiff in this case is not entitled to damages for mental torture and anxiety.

Plaintiff was paid terminal benefits totaling to shs.35,590/=. Terminal dues were calculated at the rate of 15 days for every year worked and they came to shs.31179/=. She however claims to be paid for 3 months for every year worked. The correct position from employment regulation is that of payment of 15 days for every year worked and not 3 months. The defendant however worked with the figure of shs.5196/= and not sh.7396/=. DW1 when testified did not justify the reduced amount. The correct figure should have been shs.7396/-. Thus  $shs.7396 \times 12 = 44,376/-$  less  $31,179/- = shs,11,197/=$  2

Plaintiff claimed outstanding salary at the date of termination of shs.10,500/-. However she did not adduce evidence of how she arrived at that figure. She did not say which months she was not paid. In the letter advising her of her terminal dues it is shown she had a salary advance of shs.6,013/=. She did not protest to this. I find that claim not proved. That also goes to the claim of unpaid leave. She was paid sh.3,031/= pro rata leave.

As for her other claims I too find them not proved. If she was contributing to staff welfare it is that staff welfare organization which should refund her money if any.

There was no evidence that defendant did not forward her contributions to N.H.I.F. There was no officer from there to say they did not receive the money.

As for co-operative shares it was not clear which co-operative society she belonged to. It cannot be the defendant's society for that was society for teachers and she was not one.

Contributions to Kenya National Assurance Company, pension scheme can also only be claimed from the Insurance Company and not the defendant. This is together with life insurance benefits. It is the insurance company that was doing the insuring. If defendant was to contribute to the scheme there was no evidence that he did not do so.

From the above therefore I find the plaintiff's claims fails save that she be paid shs.11,97 as further terminal benefits and 2 months salary – shs.7396 x 2 = 14,792/= in lieu of notice.

Thus I enter judgment for plaintiff for shs.25,989/= with interest at court's rate from 14/10/99 until payment in full. Plaintiff will also have half the costs of the suit.

It is so ordered.

Dated and delivered at Kisii this 12th October 2004.

**KABURU BAUNI**

**JUDGE**

**12/10/04**

Mr. Otenyo for the defendant

Mr. Oyuko for Mr. Okoth for the plaintiff

**KABURU BAUNI**

**JUDGE**

**12/10/04**