



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**  
**CIVIL SUIT NO. 682 OF 2003**

**ROSE MBULA OJWANG**

**T/A FAIDA 2002 CATERERS**  
.....**PLAINTIFF**

**VERSUS**

**BARAKA APPAREL EPZ (K) LIMITED .....**  
**DEFENDANT**

**J U D G M E N T**

The defendant's counsel had been served with the hearing notice but when this case came up for hearing despite the court having waited up to 10.00 a.m. the defendant counsel failed to attend court. The case proceeded *ex parte*.

The Plaintiff stated in evidence that she is the proprietor of **FAIDA 2002 CATERERS**. The said firm entered into a contract with the defendant whereby the firm was to supply the defendant's employees with meals. The contract provided the time and costs of the meals. The contract, which commenced on 8 April 2002, was to expire after one year but under clause 5 parties could terminate by giving three months notice.

The plaintiff was serving 800 employees of the defendant and to enable her to carry out the contract the plaintiff had employed 28 employees and had invested Kshs 2, 456, 991. The plaintiff's exhibits showed the menu of food supplied to the defendant's employees and the record of the persons who eat the lunch.

For the first year there was no incident and the parties carried out their respective obligations. It was on the renewal of the contract that the plaintiff encountered problems with the defendant; for example the plaintiff's invoice of June and July 2003 had not been settled by July 14th 2003 and a demand was made to the defendant. The defendant also began to make unilateral changes to the contract by stopping the provision of lunch for certain categories of employees. Finally by letter dated July 21, 2003 the defendant cancelled the plaintiff's catering services without giving the 3 months notice.

The plaintiff in her evidence said that the average she would have earned for the period of 3 months was kshs 865, 929.

For the five remaining months to the end of the contract period the plaintiff stated she would have earned Kshs 1, 443, 215/-. The plaintiff's employees had their employment terminated and as a consequence the plaintiff paid them terminal dues of kshs 217, 185.

As a consequence of unilateral termination of the contract by the defendant the plaintiff, who had

purchased equipment to carry out the contract could not get alternative contract to utilize them and this, so said the plaintiff, led her to mental anguish and agony, distress and wasted investment and lost business opportunity.

In a case such as this one where a party successfully proves breach of contract the court's function is to place the innocent party as far as money can do it, in as good a situation as if the contract had been performed.

I am satisfied that the plaintiff is entitled to be compensated for the remainder period of the contract and accordingly the plaintiff has proved the amount for 3 months being kshs 865, 929 and for 5 months kshs 1, 443, 215/-.

I do not accept that the plaintiff would be entitled to recover the terminal dues payable to the workers since the contract with the defendant was only for one year if the contract was not renewed, the workers would have had their services terminated. I therefore reject the claim for kshs 217, 185/-

The plaintiff's claim for general damages for distress and anguish was not sufficiently proved. When one talks of distress and mental anguish I think it ought to be proved with perhaps medical report and there has to be direct connection to the defendant's acts for it to succeed. The court appreciates that the plaintiff must have been disappointed, indeed she stated so in evidence, with the defendant's premature termination; but the court cannot award damages for this.

Accordingly the judgment of this court is as follows: -

**1) Judgment for the plaintiff as against the defendant for kshs 865, 929 and kshs 1, 443, 215 for the eight months contract period. Costs of this suit to the plaintiff.**

Dated and delivered this 9th December 2004.

**MARY KASANGO**

**AG JUDGE**