



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.CIVIL CASE NO.3097 OF 1989

STEPHEN ONYANGO JUMA..... PLAINTIFF

VERSUS

THE INTERNATIONAL CENTRE OF

INSECT PHYSIOLOGY..... DEFENDANT

JUDGMENT

The Plaintiff by his further Amended Plaint claims special damages in the sum of Shs.598,960/= and general damages from the Defendant. The Plaintiff was allowed by me to be amended as filed. The claim is based on an alleged breach of contract of employment as set out in the plaintiff.

The Plaintiff was employed by the Defendant initially by a written contract dated the 19/2/1987. This contract of employment called a service agreement was for a period of 2 years and 10 months from the 1st March 1986 expiring on the 31/12/1988.

The Plaintiff duly served out his service under the contract. The Defendant's appeared pleased with the Plaintiff's service as appears from a letter they wrote to him on the 7th January 1987. On the 23rd February 1988 the Defendant wrote a further letter to the Plaintiff, which I set out in full.

“ I am pleased to inform you, on behalf of the Governing Board of the International Centre of Insect Physiology and Ecology (ICIPE) should be awarded one normal annual increment bringing your salary to step 3 (i.e. 60,000/=) in the salary scale T2 with effect from 1st January, 1988) It has further been decided that your Contract should be renewed with effect from 1st January 1989 to 31st December 1992. We shall send you the Service Agreement later”.

It is apparent from this letter that the Plaintiff contract of service was renewed from 1/1/1989 to 31/12/1992.

On the 2/3/1988 the Plaintiff confirmed its acceptance of the offer contained on the letter of the 23/2/1988. Thus a contract came into existence.

The letter of offer referred to a service Agreement being sent later. It was the Plaintiff's evidence, which I accept, that no service agreement was sent but he started work and continued under the terms of

his first written contract.

On the 19/7/1983 the Defendant wrote to the Plaintiff informing him of his new restructured salary scale. On the 3/8/1988 the Defendant sent the Plaintiff a staff performance valuation from which rated the Plaintiff highly on. On the 13th December, 1988 the Plaintiff was transferred to Nairobi. On the 26/1/1989 the Defendant wrote to the Plaintiff informing him of one normal salary increase and stating.

“It has further been decided that your contract should be extended only for six months with effect from 1/1/1989 to 30/6/1989 we enclose a service agreement to that effect”

In his plaint the Plaintiff alleges that this letter amounted to breach of his on going contract for four years.

In the further Amended Defence the Defendant denied it gave a fresh contract for four years. It states that the contract was a mere extension of the on going previous contract and that it had a break clause.

The Defendant relied on what it stated to be the operational service, service against which was dated the 26/1/1989. That is the letter referred to above. It is not dispute that the service agreement enclosed with that letter was never signed. The Defence further alleges that the Plaintiff did not reject the extension of his contract for only six months though he appealed against this decision.

In his evidence the Plaintiff stated that he worked up to July, 1989 when he was forced out. This I think is metaphorically speaking. He also said he spoke to both Mr. Arum and Mr. Oholla but received no explanation as to why they were writing to him in respect of a contract which had already been offered and accepted but he got no reply. Neither of these gentlemen were called to refute the Plaintiffs allegation which I accept as true. Having heard the evidence there is no doubt that the Plaintiff had a four-year contract of service with the Defendant. There was a clear offer and acceptance. What then of the letter of the 26/1/1989. This in no way referred to the existing renewed contract for four years and totally ignored it.

This in my view ran contrary to the new renewed contract and constituted a breach of it.

It is true the Plaintiff went somewhat weekly but it would have been impossible for him to stay on as the Defendant's employee when they had unilaterally and irregularly said his employment would not continue beyond the 30/6/1989. the Defendant did not terminate the contract under the termination provisions contained in clause 12(ii) of the first Contract Ex.1 which I hold regulated the Plaintiff's further employment with the Defendant.

I find therefore the Defendant liable for breach of contract with the Defendant. I would add that this situation was brought about by Mr. G.E OKIRI was on my view acted wrongly in writing the letter of the 26/1/1989 without regard to the renewed four year contract. He was either grossly negligent in so doing or otherwise completely incompetent. Having found the Defendant liable for breach of contract I must now assess damages. The Plaintiff is not entitled to all of the benefits which would have accrued to him had he served out his four years contract. The Further Amended Plaint sets out the sums claimed in respect of each year of the prospective four years contract.

I accept the submissions of Mr. Manyonge that medical allowance only arose when medical treatment was taken. There is no evidence that either the Plaintiff or his family required medical Treatment during the four years period. Again so far leave allowance was concerned nothing can be claimed in respect of leave allowance, as the Plaintiff was not allowed to continue with his employment. I award nothing under this heading. The same can be said of transport allowance.

On the authorities as the contact was subject to three months written Notice I allow the Plaintiff time months salary in lieu of such notice based on his last salary. I do not think that general damages can be awarded. I give the costs of the suit to the Plaintiff and interest at court rates on the sums awarded

from the date of the filing of the Plaint..

Dated and delivered at Nairobi this 5th December 2003

P.J. RANSLEY

JUDGE