



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIV CASE 1783 OF 97

GEOFFREY SHERRIDAN OUMA PLAINTIFF

VERSUS

HON. ATTORNEY GENERAL & ONE OTHER DEFENDANTS

J U D G E M E N T

Plaintiff claims damages against the defendant arising out of the alleged breach of contract of employment. The suit against the first defendant was withdrawn.

Plaintiff was employed by the Ministry of Education as an Education Officer in 1985, In 1988, Plaintiff was seconded to Kenya Industrial Research and Development Institute (KIRDI) – a parastatal under the Ministry of Education (2nd Defendant). KIRDI employed plaintiff as an Administrative officer under a 3 year contract from 2.10.88 to 30.9.91. After the expiry of the contract the contract was according to plaintiff, renewed for a further 3 years from 1.10.91 to 30.9.94. He was promoted during the first contract to Chief Administrative Officer.

In November 1991 plaintiff was transferred to Ministry of Research and Technology. The 2nd defendant was under that Ministry. In May 1993, the Ministry of Research and Technology transferred plaintiff to the Ministry of Education. Plaintiff complained that his contract with 2nd defendant had not expired but he was told to be reporting to the Ministry of Education. Later he received a letter dated 20.11.94 terminating his services with 2nd defendant with effect from 3.5.93. After receiving that letter he reported back to the Ministry of Education with effect from 28.1.94 working with the Ministry of Education.

Plaintiff avers in para 5 of the plaint that his salary and allowances were not paid for the period from 1.6.93 to 26.1.94 was not paid until February 1996 and that during that period he suffered primary embarrassment, loss and damages for which he claims damages.

In para 5 of the plaint, plaintiff avers that 2nd defendant wrongfully prematurely terminated the contract as a result of which he suffered loss. In para 7 of the plaint, plaintiff claims

(a) Special damages for the unpaid salary over the 8 months period – Kshs.184,05 plus interest.

(b) Damages for loss of earning capacity being Kshs.686,520.

(c) General damages for mental anguish, defamation and premiary embarassment being Kshs.891,500/= less the Kshs.200,000/= paid February, 1996.

The 2nd defendant in its defence denies that the termination of the contract was wrongful. The 2nd defendant further avers that plaintiff had been referred back to the Ministry of Education between 1.6.93 and 26.1.94 and was not in the employment of the 2nd defendant. The 2nd defendant denies withholding the salary for that period. Lastly 2nd defendant denies that plaintiff has suffered any damages.

It is the plaintiff's case that the first contract of 3 years was from 2.10.88 to 30.9.91 was performed. He has not made any claim in respect of the first contract.

Regarding the 2nd contract which plaintiff alleges was to run for 3 years from 1.10.91 to 30.9.94 and which is subject matter of the suit. Plaintiff did not produce that contract. Jairus Ombuyi (DW1) did however produce the agreement but testified that it was not approved by the Board of Management the 2nd defendant which was the employer. He produced the Minutes of the board dated 10.8.93 (Ex. D4) in which the Board found that the second contract had not been approved by the Board of Management. The minutes further show that the Board was dissatisfied with plaintiff's performance and was not willing at the time to renew the contract. The Board also made a finding that the contract was renewed without the Board's knowledge. Plaintiff does not say that the Board of Management indeed approved the renewal of the 2nd contract.

It is also the evidence of DW1 that the Permanent Secretary in the Ministry of Research and Technology by a letter dated 6.11.91 (Ex. D.3) recalled plaintiff to the Ministry with effect from 11.11.91.

Plaintiff admits in his evidence that he was transferred to Ministry of Research and Technology in November 1999 and in May 1993 to Ministry of Education.

Firstly, it is clear that although the 2nd contract was purportedly signed, it was never approved by the Board of Management of the 2nd defendant. The contract shows that it was a contract between plaintiff and the Board. Since the Board of Management did not in fact enter into a contract with plaintiff, then the contract is not legally binding.

Secondly, the evidence shows that plaintiff never worked for the 2nd defendant during the entire term of the alleged 2nd contract. It is true as DW1 testified that 2nd defendant paid plaintiff up to 26.2.94 in expectation of the approval of the contract but that fact alone does not establish a legally binding contract more so because plaintiff did not work for 2nd defendant for the period he was paid.

Thirdly, assuming that there was a valid contract of employment, the contract would be terminated by either party given the other party notice. By Clause 13, the 2nd defendant could terminate the contract by giving plaintiff 6 months notice or by paying salary equivalent to the notice in lieu of the notice. The termination of the contract would only have been wrongful if plaintiff was not given notice or paid salary equivalent to the notice.

In this case plaintiff was not given the notice but he admits that he was paid 6 months salary in lieu of notice although belatedly.

According to the law the contract was legally terminated as plaintiff was paid 6 months salary in lieu of notice. Where there is a period for termination of a contract the damages suffered are the wage for the period during which normal notices would have been current – *Ombanga vs Gailey & Robers Ltd* [1974] EA 522. As plaintiff was paid salary in lieu of the notice, he is not entitled to any more damages in respect of the termination of the contract include.

That is to say that he is not entitled to salary for the 8 months by which the contract was short.

The claim for damages for loss of earning capacity is misconceived. Plaintiff continued and continues to be employed by Ministry of Education. He did not suffer any incapacity to earn his salary.

The claim for general damages for mental anguish preliminary embarrassment is also misconceived. Such damages are not awardable in a contract of employment.

For the foregoing reasons I dismiss the plaintiff suit against 2nd defendant with costs.

E.M. GITHINJI

JUDGE

23.4.2002

Plaintiff present

Mr. Ogutu absent

Miss Guserwa present

Plaint explained