



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 4591 OF 1993.

JOHNSON KARIMI.....PLAINTIFF

VERSUS

KENYA TEA DEVELOPMENT AUTHORITY.....DEFENDANT

J U D G M E N T

This suit was heard over a year ago and written submissions were filed by the parties advocates the last submission by the Defendant having been filed on the 9.6.2000.

For reasons which do not appear on the face of the record, these submissions were not referred to me and it was not until the mention notice was filed on the 16.1.2001 that the matter came to my notice. It is therefore unfortunate that the judgment was not given earlier.

The Plaintiff's claim is that firstly a declaration be made that the defendant wrongfully and unlawfully breached the terms and conditions of his employment with the Defendant and is thus still in the employment of the Defendant and secondly a declaration that he is entitled to the salary and other entitlements as special damages set out in paragraph 8 of the plaint. This I think should read paragraph 7. Thirdly an order reinstating the Plaintiff in his employment and alternatively a declaration that the contract of employment was wrongfully terminated from the date of the judgment and lastly general damages for breach of contract and an order directing the Defendant to pay the Plaintiff's terminal benefits and finally the costs of this suit.

The Plaintiff was employed by the Defendant pursuant to a written letter of appointment dated the 8.1.1980 which provided that the appointment could only be terminated after the completion of three months written notice served by either party (See Exh. E and the heading "Probation")

The parties also accepted that the employment of the Plaintiff was subject to the Staff Regulations and Instructions (Exh.F).

Included in these regulations in the Procedure Applicable to all other staff by way of disciplinary action. The General Manager has power to suspend an employee whose case for disciplinary action is under consideration (See (B) on page 9). In this case the employee will be paid half of the normal salary for the period they remain under suspension (See (C) page 10).

An incident occurred relating to a cheque which had disappeared and was subsequently wrongfully encashed by a person other than the payee resulting in the moneys represented by the cheque being stolen by an unknown person. By its letter of the 17.9.92 the Defendant wrote to the Plaintiff setting out details of the occurrence accusing the Plaintiff of not carrying out proper procedures which it was claimed amounted to disobedience of lawful and proper instructions given by the Act (F) and suspending the Plaintiff from employment. The letter stated 'without salary'.

Thereafter an investigation was carried out by the Plaintiff into the matter See Exh. 2,3, 4 and 6.

The Plaintiff feeling aggrieved at the action taken wrote a letter to the Defendant Exh. 8 complaining about his suspension without salary. he wrote a reminder on the 9.11.92 (Exh.8) and then on the 17.5.1993 wrote to the Permanent Secretary Ministry of Agriculture Exh. 9. A further letter was written by the plaintiff on the 3.1.1994 to the Defendant making further representations.

On the 13.1.1994 the Defendant wrote to the Plaintiff stating that they considered that the Plaintiff was wholly liable for the loss of the sum of Shs.50,000/- due to the Plaintiffs conduct and terminated his services with effect from the date of this letter. Following the termination the Defendant informed the Plaintiff he would be entitled to payment of terminal benefits.

Evidence was given by the Plaintiff and Hilary Thomas Wandera (D.W.1)

The purport of the Plaintiff's evidence was that he was not guilty of any wrongdoing and had been wrongly accused. I did not find the Plaintiff a very satisfactory witness as he did not appear to me completely truthful. However the evidence against the Plaintiff was not sufficient to warrant a finding that he stole the money which was lost. He was however guilty of not carrying out a lawful order as he did not deal with the cheque in question as he was ordered by his superiors.

Most of the evidence of Miss Wandera was hearsay as I pointed out, when I asked the Plaintiff's Advocate if she was objecting to it. However she did not have any objection and Miss Wandera's evidence was recorded on the basis that she was familiar with the complaint as she dealt with all personnel matters. Miss Wandera claimed the Plaintiff has shown disrespect for those in authority and referred to Exh. C.

This witness also produced Exh. E and stated that the employment was subject to these Regulations which were superiors to the employment letter. She also produced Exh. F being a schedule of the sums paid to the Plaintiff subject to certain deductions but including the Plaintiff's provident Fund due. (Exh.4).

I allowed the Plaintiff to adduce a document which is attached the Plaintiff's affidavit of the 31.1.2000 and which he stated was not in his possession when he gave evidence. The Plaintiff claims that this document shows that his contention with regard to the cheque having been sent was correct. It is not clear who wrote this document and in my view not much turns on it for the reasons I will give.

I find that the Plaintiff's employment was not permanent until the age of 55 as he alleges but was subject to termination on three months notice. I also find that the Regulations Exh. E applied to his employment and that in accordance with Regulation Boon page 9 the Defendant was entitled to suspend the Plaintiff's employment as he was alleged to have committed an offence. The suspensions continued whilst investigations were carried out. This appears to have been for an inordinary long time but at the end of the investigations and once the Plaintiffs services were terminated as they were (Exh. 11) the only question was as to what the Plaintiff was entitled to receive in accordance with the contract.

It would have been wrong for the Plaintiff to be suspended without full pay but from Exh. G it appears he was given half pay as is set out therein.

I am satisfied that the Plaintiff did disobey a lawful order and that the termination of his services were justified and that in accordance with (b) and (f) of the Dismissal Regulations on page 7 the Defendant was entitled to dismiss the Plaintiff under (h) of Disciplinary Procedure on page 8. In this respect I accept that the findings of Mrs J.N. Mbugua Exh. B were correct and that the Plaintiff ignored the instructions of Mr. Mungai and gave the cheque in question to the Messenger Mr. Douglas Sawe which led to the loss of the cheque. I reject the Plaintiff's evidence he was not told to get second signature in the cheque and return the same to Mr. Mungai. I found the Plaintiff not to be truthful when cross-examined on this matter.

In the result, I find that the Plaintiff's services were properly terminated and that he has received all

moneys due to him and dismiss his claim with costs to the defendant.

Dated and delivered at Nairobi this 27th day of February, 2001.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.