

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 1077 OF 1991

HENRY NJENGAPLAINTIFF

- V E R S U S -

SHELL CHEMICALS CO.

OF EASTERN AFRICA LTD.....DEFENDANT

J U D G M E N T

Mr. Henry Njenga Itotia (hereinafter referred to as “the Plaintiff”) was employed by the Defendant as an Accounts Supervisor in 1974. His employment was terminated in 1988. Before the termination, the Defendant wrote two warning letters to the Plaintiff over his inability to meet certain deadlines. The Plaintiff did not respond to the first letter. He, however, responded to the second letter explaining the cause of delay on his part. The delay was, according to his explanation, caused by problems in computer inputs done in a different section of the Defendant company. The Defendant was not satisfied by that explanation since the Plaintiff had not informed his supervisors that he was experiencing difficulties. The Defendant company, then fearing that it might lose money due to the Plaintiff’s delays, transferred some duties to a third person. It subsequently terminated the Plaintiff’s employment upon paying him one month’s salary in lieu of notice as provided in the contract of service. The Plaintiff was also paid his accrued salary and provident dues. The Plaintiff now claims K.shs. 7,772,859.00 as lost earnings on the ground that he was dismissed maliciously.

The question before the court is whether the Plaintiff is entitled to his claim for malicious dismissal. The Plaintiff’s claim for K.shs. 7,772,859.00 is obviously specific. It relates to his alleged lost earnings.

This claim must fail in view of the fact that it was neither specifically pleaded nor proved. No evidence was led on how the Plaintiff arrived at that figure. The claim for general damages also fails. A contract of employment, despite its statutory peculiarities, remains to be a contract like any other. The law is that there can be no general damages for a breach of contract. In **Joseph Ungadi Kedera v. Ebby Kangisha Kawai (Personal Representative of Ephraim Kawai (Deceased))** KISUMU Civil Appeal No. 239 of 1997 (Unreported) (KWACH, LAKHA & OWUOR, JJ.A) the Court of Appeal put it succinctly as follows: “As to the award of K.shs. 250,000/= as general damages, Mr. Adere submitted that there can be no award of general damages for breach of contract..... We respectfully agree. There can be no general damages for breach of contract.”

The law on the measure of damages payable for breach of contract of employment is now well settled. The contract of employment being a contract must be terminated in accordance with the terms of the contract itself. Where the contract of employment provides for a period of notice before termination, the contract may be terminated upon the expiry of the notice if one has been given as stipulated or on the payment or forfeiture of the salary that would have been paid or received for the period had the notice been duly given. In **Ombanya v. Gailey & Roberts Ltd** (1974) E.A. 523 MULI, J. (as he then was) said as follows at p. 524:-

“I think it is established that where a person is employed and one of his terms of employment include a period of termination of that employment, the damages suffered are

the wages for the period during which his normal notice would have been current.”

The same theme runs in all the cases on the point (see **Alfred Githinji v. Mumias Sugar Co. Ltd.** NAIROBI Civil Appeal No. 194 of 1991 (unreported) (AKIWUMI, TUNOI & SHAH, JJ.A.); **Emmy Siganga v. Association of African Women For Research & Development Kenya Chapter (AAWORD)** NAIROBI H.C.C.C. NO. 2748 of 1992 (RAWAL (Mrs.), J.); and **Johnson B. Wairoma v. Securicor Kenya Ltd.** NAIROBI H.C.C.C. NO. 2838 OF 1996 (O’KUBASU, J.A.).

The Plaintiff has admitted to having been paid a month’s salary in lieu of notice. He was also paid his provident funds. He has nothing more to claim.

The Plaintiff also pleaded that his termination was in utter disregard to the principles of natural justice and equity since he was not given any reason or that the reasons given were inadequate and/or false. This matter was not urged at the hearing and I see no reason to go into it. In any event, it does not help the Plaintiff’s case as it has been held that rules of natural justice have no application to a simple contract of employment unless they form part of the contract which is not the case here. (see **Rift Valley Textiles Ltd v. Edward Onyango Oganda** NAKURU Civil Appeal No. 27 of 1992 (Unreported) (COCKAR, J.A. (as he then was), OMOLO & TUNOI, JJ.A.); Siganga Case supra; and Wairoma case supra).

I, therefore, dismiss this suit with costs to the Defendant.

DATED and DELIVERED at NAIROBI this 4th day of April, 2001.

ANARSHIR VISRAM,

J U D G E.