



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1427 OF 1994**

TIMOTHY NGUGI NJUGUNA PLAINTIFF

VERSUS

KENYA TOURIST DEVELOPMENT

CORPORATION & ANOTHER DEFENDANT

J U D G M E N T

After the plaintiff abandoned his prayers for general damages for wrongful dismissal, and his prayers for sum of Shs. 302,925 in respect of a pevision fund, huis claim remained the prayers for general damages for libel against the second defendant, terminal salary and benefits of Shs. 272,101, and then the standard prayers for costs and interests and any other or further relief.

The facts are not in dispute that the plaintiff was a farmer employee of the first defendant corporation, and that his services were ended by letter written by the second defendant. It is that letter which forms the subject of the claim for damages for defamation. It is also agreed that the plaintiff was paid certain of his terminal benefits and salary, but the exact entitlement is not agreed, as the defendants say they settled everything except a sum of Shs. 400 which they are prepared to pay to the plaintiff, but the plaintiff says his own calculations show he is entitled to more than this sum.

Going over the whole evidence, the court gets a general picture of some personal bad relationship between the plaintiff and the second defendant which seems to be the main driving force behind this suit. The plaintiff early introduced a political angle into the matter, and at some point sought to complain that his conduct had been investigated by officers who allegedly come from the same home area of the second defendant. He says without material to connect the two, that after the souring of relations between him and the second defendant there followed uncomplimentary correspondence about his work performance, and he links that correspondence to some perception that he was in opposition politics, apparently as he had learnt from an unnamed colleague of his “over lunch”.

The plaintiff says in his evidence that he stood for the good of the corporation, while the second defendant did not mind the corporation not getting its entitlement from business deals, e.g. when the shares of the corporation in the Panafric Hotel were sold to the Sarova Hotels. Unfortunately these different standpoints are not evidenced at all. But the plaintiff says that it was due to things like that which made him a casualty of the second defendant’s response. I do not have enough material on which I can make a finding of fact justifying this view of the matter by the plaintiff, and I do not believe him on this point. The plaintiff has not shown that whatever steps he took as his “duty as investments manager to ensure that no questions would arise” and that his “efforts were frustrated by the second defendant who even accused me of undermining him”, were in line with the corporation’s policy and objectives. Were his actions sanctioned by the corporation, or was he engaging in personal vendetta against the second

defendant, irrespective of the interests of the corporation? He did not address himself to this question in his evidence.

In the absence of clear evidence on these matters, it is difficult to see the letter of dismissal complained of as defamatory. The court is made to conclude that the plaintiff, filled with bitterness and anger arising from the bad relationship which subsisted between him and the second defendant, is unable to read and interpret the letter of dismissal objectively. He is appearing to read the letter under the cloud of extraneous matters. But more importantly, his evidence on the publication of the letter to the world is either too scanty or nonexistent. I find that the letter was not a libel, and it was not published.

As for his terminal salary and benefits, the plaintiff did not lay a basis for his method of calculations and computation. When I listened to him and to the defendant's witness, both explaining their computations from their respective points of view, I was satisfied that the defendants' computations and their baselines, were correct. The defendants properly worked out the plaintiff's dues and paid them out, withholding what was Government revenue out of those dues; but they admit they ought to pay the plaintiff a further sum of Shs. 400 mistakenly not yet paid.

On the whole evidence on both sides, this suit fails, except for the admitted sum of Shs. 400 which I hereby award to the plaintiff. Other than awarding to the plaintiff the sum of Shs. 400 admittedly

owed by the defendants to him, the suit is dismissed with costs, and it is hereby so ordered.

Signed and dated by me at Nairobi, this 21st day of June, 2001.

R. KULOBA

JUDGE

21.6.2001