



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

CIV CASE 387 OF 99

ANTHONY TILLARD COOKE 1ST PLAINTIFF

ESTHER COOKE 2ND PLAINTIFF

VERSUS

DAVID LINCOLN

T/A LIMURU INTERNATIONAL SCHOOL DEFENDANT

JUDGMENT

The plaintiffs who are husband and wife, have instituted this suit against the defendant for damages for breach of a contract of employment. The first plaintiff's claim is that by an agreement in writing dated 24.8.1998 between him and the defendant, the defendant agreed to employ the 1st plaintiff to work for the defendant as the Headmaster of the defendant's proposed school at Tigoni, Limuru with effect from 1.11.1998. It was an express term of the agreement that the 1st plaintiff would be entitled to the following:-

(a) A monthly salary of Shs.125,000.00; (b) A fully maintained motor vehicle; (c) A suitable residential accommodation; (d) An annual economy class air ticket to and from the U.K. in August of each year of the contract and one way ticket to the U.K. on termination; (e) Free education for the plaintiffs' children. It was a further term of the said agreement that the 1st plaintiff's services could be terminated by either party giving the other not less than 3 months notice in writing.

The defendant also agreed to employ the 2nd plaintiff as the defendant's domestic bursar and the 2nd plaintiff took the defendant's employment as such at a monthly salary of Shs.25,000.00 with effect from 1st November 1998. The two plaintiffs claim that the defendant failed to perform his part of the agreement save for the provision of some residential accommodation and payment to the 1st plaintiff of Shs.22,000.00. Although the defendant had filed a written statement of defence and counter claim in this matter and was in fact represented at the hearing of the case, no evidence was tendered on his behalf. Indeed the advocate who appeared for him did not even cross-examine the two plaintiffs on their evidence, ostensibly because she had no instructions on the matter.

In view of that, what was stated by the plaintiffs witnesses not only stands uncontroverted but also the

defendants counter claims was not supported by any evidence. The counter claim is accordingly dismissed with costs. That evidence by the plaintiffs clearly shows that the defendant hired the two plaintiffs on the terms and conditions stated above but failed to perform his part of the contract. Accordingly, I find the case by the plaintiffs against the defendant proved on a balance of probabilities. Regarding damages, the plaintiffs case was that he is a teacher by profession having trained as such at the Universities of Oxford and London.

He has worked as a teacher for the last 36 years. Currently, he is working for Aga Khan Educational Services in Uganda as an administrative manager. Prior to coming to Kenya, he had been working for 5 years as Head Teacher at Malawi's Kamuzu Academy. The plaintiff told this court that in June/July 1998 while still employed as Deputy Head of the Aga Khan Academy at Kampala, he was approached by a Mr. Robert Seaman who was acting on behalf of the defendant. He was informed that the defendant was starting a new school at Limuru and he wanted the 1st plaintiff to become the headmaster. After seeing the project, the 1st plaintiff decided to take up the job offer. Subsequently a contract was signed in Kampala on 24.8.1998 and on 1.11.1998, the plaintiffs reported for duty.

Initially, the plaintiffs stayed at Karen but after about 5 or 6 weeks, they moved to the headmaster's house at the school at Tigoni though it was not ready. There was no other teacher in the school and there were no pupils. Despite all that, the 1st plaintiff worked together with the defendant on planning the staffing of the school, academic appraisals and on drafting publicity material. The defendant did not however make any provision for the plaintiff's transport and except some occasional loan of the defendant's personal car, the plaintiffs and their children remained stuck at Tigoni with no means of transport.

Even with regard to remuneration, the defendant was not forthcoming save for a payment of Shs.50,000/= partly to reimburse the 1st plaintiff for relocation expenses; no other payment was made for the period between November 1998 to February 1999 when the plaintiffs because of the difficulties they were experiencing decided to leave Tigoni. Before making the decision to depart the plaintiffs situation had become so bad that they were unable to pay school fees for their children and had to rely on the goodwill of Mr. Seaman who had agreed to help out by admitting the two school going children of the plaintiff to a nearby school which he was running and at the same time agreeing not to demand school fees from the plaintiffs until such time as the plaintiffs were in a position to pay.

The 1st plaintiff's further evidence was that at the beginning of January 1999, it became clear that the defendant would not be able to honour his part of the contract and that the 1st plaintiff would be impoverished and unable to support his family. After discussing the matter with Mr. Mwangi, the 1st plaintiff started to look for alternative employment and eventually succeeded in getting employed again by the Aga Khan Educational Service in Kampala. He left the defendant's employment in the first week of February 1999 and took up the new employment on 8.2.1999. The evidence by the 2nd plaintiff was in all material respects similar to that of the 1st plaintiff. She signed a separate contract with the defendant to work for him as the proposed School's Domestic Bursar at a salary of Shs.25,000/=. She reported at the defendant's place at the same time with her husband and also left at the same time for similar reasons.

As observed above, the plaintiffs have established their case for breach of contract on a balance of probability and in the event, my task in this judgment is to assess what is due to them in terms of damages. With respect to the 1st plaintiff, he is obviously entitled to damages for loss of income equivalent to the salary he should have earned for the period between 1.11.1998 and 7.2.1999 when he was in the defendant's employment. The total is Shs.404,166.60. This sum must be reduced by Shs.22,000/= which the 1st plaintiff acknowledges he received. Accordingly the net sum payable to the 1st plaintiff in respect of loss of income is Shs.384,166.60. In the course of his evidence, the 1st plaintiff also talked of other expenses such as visa fees, hotel expenses and the like but some of these items are not pleaded while others relate to costs. They cannot therefore be awarded as damages.

The 2nd plaintiff is, for similar reasons as are stated above, entitled to damages equivalent to what she would have earned for the period she was at the defendant's employment. At a monthly salary of Shs.25,000/=: the total sum is Shs.80,833.30. The plaintiffs also claim general damages for breach of contract. There is no doubt that both plaintiffs as well as their children were put in a lot of trouble by the

defendant's failure to perform his part of the contract. He brought them from Uganda only to abandon them at an uncompleted school construction site at Tigoni where they remained stranded and impoverished without transport and with no means of transport or livelihood for a considerable time. They had to depend on the goodwill of other people to survive and to take their children to school since they were unable to pay school fees.

There can be no doubt that the conduct of the defendant was reprehensible; it must have caused the plaintiffs a lot of mental stress and embarrassment. Considering all the circumstances of the matter, I am satisfied that the plaintiffs are entitled to a substantial award by way of damages for breach of contract. No authorities were cited to me and I have been unable to find any relevant ones. Accordingly, bearing in mind all the circumstances of this case and particularly the emotional stress and embarrassment the plaintiffs went through, I award each of them Shs.200,000/= in that respect.

For the above reasons, there will be judgment for the plaintiffs against the defendant as follows:- (a) 1st Plaintiff – Damages for loss of income - Shs.384,166.60 General damages for breach of contract - Shs.200,000.00 Total - Shs.584,166.60 (b) 2nd Plaintiff - Damages for loss of income - Shs.80,833.30 General damages for breach of contract - Shs.200,000.00 Total - Shs.280,833.30 The defendant will also bear the plaintiffs' costs of this suit together with interest on both (a) and (b) above as well as on the costs.

Dated at Nairobi this 6th day of April, 2000.

T. MBALUTO

JUDGE