

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL CASE NO. 549 OF 2013

PLASTIC SACCO SOCIETY LTD APPELLANT

VERSUS

CHARLES ADOKO OKODARESPONDENT

*(Being an appeal from the Judgment of the Honourable PM Ms. S. Atambo delivered on September 2013
in Milimani CMCC No. 3830 of 2008)*

JUDGMENT

By a letter dated 16th January, 2001 the appellant informed the respondent that he had been hired to provide services for book keeping and accountancy with effect from 1st January, 2001 for a period of 8 years renewable on successful completion of the term.

A fee of Kshs. 48,000/= was to be paid per year subject to review from time to time depending on the volume of work undertaken each year. The terms and conditions for this engagement were then laid out in the said letter which was signed by the respondent and also officials of the appellant. There was no termination clause in this letter.

After two years the relationship between the parties was terminated following a committee meeting of the appellant which agreed to hire a new book keeper following recommendation of the inspection report from the Ministry.

The respondent was aggrieved by this move and sued the respondent for damages for the period of the remainder of the contract period that is 6 years. His claim was denied by the appellant but the lower court found in favour of the respondent on the basis that the respondent had proved his case against the appellant on a balance of probabilities and in any case the relationship ought to have been terminated in writing.

The total sum awarded by the lower court was Kshs. 336,000/= being the payment for 7 years the respondent was to render services to the appellant. This is because it transpired that he had been paid Ksh. 48,000/= for one year. Aggrieved by the judgment of the lower court, the appellant lodged this appeal. Several grounds have been raised in the Memorandum of Appeal and learned counsel appearing for the parties have filed their submissions.

The thrust of the appeal is that the lower court disregarded the evidence by the appellant and that the respondent did not discharge the burden of proof. Further, the court failed to find that the respondent was not an employee of the appellant but an independent contractor. The respondent also did not do anything to mitigate his loss and that he was only entitled to damages equivalent to a reasonable notice period.

It is clear that the respondent was not an employee of the appellant. If that were the case, the letter dated 16th January, 2001 would have been specific in that regard. His was a contract for service and not a contract of service. Decided cases have adequately addressed the difference between the two terms and I need not expound further.

I have already commented that the contract between the parties did not have a termination clause. That was a deficiency which none of the two parties have taken advantage of. In my judgment the respondent

was only entitled to payment for services rendered for the period he did so and in this case two years. However, he was entitled to a reasonable notice before termination of that engagement which in my judgment should be 3 months. There is evidence that he was paid 48,000/= and therefore there is a balance of Kshs. 48,000/= which I find he is entitled to.

A reasonable notice of 3 months is equivalent to Kshs.12, 000/= calculated at Kshs. 4,000/= per month because the respondent was supposed to be paid Kshs.48,000/= per year. Therefore this appeal is allowed and the lower court judgment set aside. There shall be judgment for the respondent in the total sum of Kshs. 60,000/= being Kshs. 48,000/= for the year not paid plus Kshs. 12,000/= being 3 months notice for termination of contract. He shall be entitled to costs of the suit and interest at court rates to take effect from the date the suit was filed.

Orders accordingly.

Dated and delivered at Nairobi this 12th day of July, 2016.

A.MBOGHOLI MSAGHA

JUDGE