



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 2337 OF 1993

AGGREY OTIENO OGOMBE.....PLAINTIFF

VERSUS

COFFEE BOARD OF KENYA.....DEFENDANT

J U D G M E N T

By a consent letter filed in court on 3rd December, 1997 both counsel for the parties asked the court to enter the following order:

“BY CONSENT judgment be entered against the defendant herein for wrongful dismissal”

The issue of damages and costs be assessed by the court”

On 26th January 1998 the Deputy registrar endorsed the order and subsequently both counsel made written submissions which I have on record.

The formula for calculating damages in a contract of service such as the one the plaintiff had with the defendant herein is well established. in Civil Appeal NO. 125 of 1996 Dalma B. Ogoye -v- K.N.T.C Ltd the Court of Appeal said:

“Since the appellant’s appointment was unlawfully terminated, the only damage he is entitled to in law is the amount he would have been paid if his employment had been brought to an end in the manner stipulated in his contract of service and no more.....the only remedy in a claim for wrongful dismissal is damages. Courts do not order reinstatement in such cases because such an order would be difficult to enforce. Besides, it would be plainly wrong to impose an employee who has fallen out of favour on a reluctant employer.”

The same principles were also applied in Civil Appeal No. 120 of 1997 Kenya Ports Authority -v- Edward Otieno. In fact in the original suit the respondent therein included particularly of loss of salary, pension, medical allowance, housing allowance, leave allowance etc. The learned judges had this to say:-

“In our judgment, where, as in the instant case, a contract of service includes a period of termination of employment the damages suffered are the wages for the period during which his normal notice would have been correct.”

The above cases are finding upon this court and I am bound to apply the principles set out therein in assessing damages payable to the plaintiff in the instant case.

The terms applicable to the plaintiff are set out in the memorandum of agreement annexed to the submissions. It is provided therein that, in cases where either the employer or employee decides to terminate employment, for permanent staff, one month's notice or one months pay in lieu of notice thereof will be given. The board shall reserve the right ot pay cash in lieu of notice in certain cases.

The plaintiff was dismissed on 24th January, 1990. Paragraph 3 of the plaint is admitted in the statement of defence. And so the plaintiff's salary was kshs. 4,000/- per month. He is said to have received half salary for the months of November and December, 1989. The arrears would amount to kshs. 4,000/-.

I am not in a position to address any other limb of damages under the authorities which I have cited above,

and so in the end I enter judgment for the plaintiff in the sum of kshs. 8,000/- plus costs and interest at court rates. I order that the interest shall start running from the month of November, 1989.

Orders accordingly.

Dated and delivered at Nairobi this 19th day of February, 1999.

A. MBOGHOLI MSAGHA

JUDGE