



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

CIVIL CASE NO. 1481 OF 1993

PETER NJOROGE WAINAINA.....PLAINTIFF

VERSUS

COFFEE BOARD OF KENYA.....DEFENDANT

J U D G M E N T

In my judgment delivered on 4th June, 1997 I found that the dismissal of the plaintiff was unlawful and therefore he was entitled to damages arising therefrom. Learned counsel having failed to reach an agreement thereon, the matter was placed before the court for the assessment of the said damages.

Both learned counsel have made their submission which I have on record. These I have read.

There was a contract of service between the plaintiff and the defendant. It provided for termination of employment by either party upon giving one month's salary in lieu of notice of course the defendant was in breach.

It is trite law that under such circumstances the damages awardable are the wages of the period during which his normal notice would have been correct. See Ombaya -v- Gailey & Roberts Ltd. (1974) E.A 522 and Civil Appeal NO. 120 of 1997 Kenya Ports Authority -v- Edward Otieno.

The court of Appeal decisions are binding on this court. And so the only remedy in a claim for wrongful dismissal is damages. The issue of reinstatement has been addressed by the learned counsel for the plaintiff. But with respect, as was held in the case of Dalmas B. Ogoye -v- K.N.T.C Ltd Civil appeal NO. 125 of 1996, 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.

With respect therefore, the approach is assessing damages adopted by the learned counsel for the plaintiff is misplaced. The learned counsel for the defendant has given what I believe is the right principle and approach. I have no reason to fault the same, guided by the decisions of the court of appeal.

The plaintiff was paid half salary for the months of November, and December, 1989. His monthly salary was then kshs. 3,230/-. He also worked for 24 days in the month of January, 1990. He was entitled to one month's salary in lieu of notice. His earnings were subject to PAYE. When all is computed, he is entitled to shs. 8,107.20.

The plaintiff was entitled to house allowance of shs. 1,150/- per month. This was not paid in November and December, 1989 and 24 days in January, 1990. This was also subject to PAYE. The balance is kshs. 2,887/

The only other limb of damages payable is the provident fund whereby the plaintiff's contribution was 5% while that of his employer was 75% of his salary. This adds up to kshs. 33,379/10.

The grand total of the foregoing computation comes to kshs. 44,373/50.

Accordingly there shall be judgment for the plaintiff in the sum of kshs.44,373/30 plus costs and interest at court rates.

I direct that interest shall run from November, 1989. Order accordingly.

Dated and delivered at Nairobi this 17th day of February, 1999

A. MBOGHOLI MSAGHA

JUDGE