



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 250 OF 1995**

**CARNAUDMETAL BOX KENYA LIMITED.....APPELLANT**

**VERSUS**

**NAMAN RIBBA JOASH.....RESPONDENT**

**J U D G M E N T**

In his suit in the lower court the respondent herein claimed general damages for wrongful termination of his services with the appellant, special damages made up of 26 years of service, three months salary in lieu of notice and one months leave. The claim was denied by the appellant who admitted having terminated the respondent's services but averred that he had been paid all his dues.

After a full trial the learned trial magistrate found that the termination of the respondent's services was unfair, unjust and unlawful. She then made an award of Kshs. 38,114/10 being equivalent to 6(six) months salary as general damages for wrongful termination of services. She rejected the other claims made by the respondent.

This is an appeal against the judgment of the learned trial magistrate brought by the appellant the original defendant who was the respondents employer.

There are eleven grounds of appeal set out in the memorandum of appeal but I do not intended to deal with each one of them specifically. I observe also that there was no cross appeal by the respondent against the findings of the learned trial magistrate.

Before the appeal was argued, I allowed the production of the Terms of Service dated 18/12/92 and 21/1/93 which I believed related to the proceedings but which regrettably were not availed to the learned trial magistrate. The step I took was, I believe, in line with the provisions of Order 41 Rule 22 of the Civil Procedure Rules and was not prejudicial to either party.

The learned trial magistrate made a specific finding that the services of the respondent were unlawfully terminated She was then bound to go back to the terms of the contract of Employment. In C.A. No.125 of 1996 Dalmis B. Ogoye -v- K.N.T.C. Ltd - the learned Judges of appeal said:

***“Since the appellant's appointment was unlawfully terminated the only damages 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 contract of service affecting the respondent is now before me. Clause 4 of the contract dated 18/12/92 provided for 45 days written notice by either party to terminate services or 45 days salary in lieu of such notice.

During the trial the defendant produced Ext 2 which included payment of salary in lieu of 45 days notice. Further the defendant produced ext1 being the Discharge Voucher executed by the respondent after receiving his final dues from the appellant. In that discharge voucher the respondent received:

***“ in full and final settlement of all monies due to me in respect of my services upto and including 31st January, 1994 and certify that I have no further claim whatsoever in respect of my services with the company.”***

With profound respect I see no evidence of undue influence in that document the contents of which speak for themselves.

In the end I see no evidentiary basis for the award made by the learned trial magistrate. The appeal must and hereby succeeds. I substitute a dismissal order of the the respondents in the lower court and order that appellant shall have the costs of both the suit in the lower court of this appeal.

**Orders accordingly.**

**Dated and delivered at Nairobi this 4th day of March, 1998.**

**A. MBOGHOLI MSAGHA**

**JUDGE**