



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, TUNOI & OWUOR, J.J.A.)
CIVIL APPEAL NO. 145 OF 1998

BETWEEN

KENYA BUS SERVICES LIMITED APPELLANT

AND

MELEKSADIK OKUTOIRESPONDENT

**(Appeal from the judgment and decree of the High Court of
Kenya at Nairobi (Mr. Justice D. K. S. Aganyanya)
dated 11th day of March 1998**

in

H.C.C.S. NO. 1129 OF 1991)

JUDGMENT OF THE COURT

Meleksadik Okutoi, the respondent in this appeal (hereinafter called "the plaintiff") filed a suit against Kenya Bus Services Ltd, the appellant, (hereinafter called "the defendant") in the superior court seeking, among other reliefs, special and general damages and an order for reinstatement following his dismissal by the defendant from its employment on 13th August, 1987. The plaintiff joined the defendant on 30th November, 1959 as a bus conductor and as at the date of his dismissal he had risen to the position of bus inspector.

The defendant filed a defence and denied the plaintiff's claim. In paragraph 6 of the defence the defendant averred that it terminated the plaintiff's services lawfully, with justifiable cause and in accordance with the law. The plaintiff was a member of the Transport and Allied Workers' Union and a chief steward at the defendant's premises. He was sacked verbally by a personnel officer and no explanation was given to him for his dismissal. His trade union intervened but the defendant would not budge. It was put to the plaintiff in cross-examination that he was dismissed because he was caught holding an illegal meeting on the defendant's premises but he denied this allegation.

Aganyanya J held that the plaintiff's dismissal was unlawful and awarded him general damages at the rate of Shs 3244/- per month (being his basic salary at the date of dismissal) from 1st September, 1987 to the date of judgment together with interest at court rates. The Judge also ordered that the plaintiff be paid his full pension entitlement.

The defendant has now appealed against this decision on 5 grounds. The first and second grounds of appeal which sought to challenge the Judge's finding that the plaintiff's dismissal was unlawful were abandoned by Mr. Billing, the learned counsel for the defendant. We think the Judge's finding on that

issue could not be impeached in view of the fact that the defendant called no evidence to rebut the plaintiff's claim that the termination of his employment was unlawful. Nor did the defendant adduce any evidence in support of the averment in paragraph 6 of its defence that the termination was lawful and in accordance with the law.

Grounds 3 and 5 of appeal attack the award of general damages made by the learned Judge. It was Mr. Billing's submission that in employment cases, where unlawful dismissal is proved, the damages to be awarded are calculated on the basis of what the employer would have been obliged to pay if he had terminated the contract of employment according to its terms. There is always a clause in the letter of appointment stipulating the manner in which the contract of service may be terminated. No such letter or other evidence was placed before the Judge. In his judgment the learned Judge appreciated that general damages are not normally awarded in cases of unlawful dismissal. He said -

"The next prayer was for general damages. In cases of unlawful dismissal courts have tended to award these on the basis simply of notice period. Good examples have already been given above. But it would be most oppressive if the plaintiff's case was decided likewise.

I take into account that the plaintiff had worked for the defendant for about if not more than 28 years - and that his duties were terminated on account of his difference with a third party. This was an extraneous reason which would not have formed the basis of his dismissal."

The conduct of the defendant may have been reprehensible but this cannot change the well known legal principles upon which damages are calculated in such cases. Since no evidence was led on the length of notice applicable in this case we think that 3 months would be reasonable. We allow this ground of appeal and reduce the damages payable to 3 months' basic salary plus house allowance with interest at 12% p.a. from 1st September, 1987 until payment in full.

Ground 4 relates to the issue of pension benefits. As we agree with the learned Judge that the plaintiff was unlawfully dismissed, he is entitled to his full pension benefits (his and the defendant's contributions). As these should have been paid to him at the time of his dismissal, the defendant must pay interest at the rate of 12% p.a. again from 1st September, 1987.

To the extent we have stated above the appeal succeeds and is allowed. The defendant shall have half of the taxed costs of this appeal. Orders accordingly.

Dated and delivered at Nairobi this 22nd day of January, 1999.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR