



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 894 OF 1998

OGUTU ONYANGO.....PLAINTIFF

versus

KENYA PORTS AUTHORITY.....DEFENDANT

R U L I N G

The plaintiff/applicant has filed a suit against the defendant respondent the thrust of which is that his services with the defendant who was his employer, were irregularly and unlawfully terminated.

As a result of the said termination, the plaintiff's salary has been stopped and the defendant has served him with a written notice to quit and vacate institutional House NO. F309 (FF5) Embakasi Village Nairobi.

The plaintiff has sought prayers that there be a declaration that he is still a lawful Employee of the defendant entitled to full salary and benefits, that the defendant be restrained from interfering with the plaintiff's peaceful occupation and enjoyment of the said house; damages; costs and interest.

Alongside the plaint, there was filed an application for injunction by way of Chamber summons under order 39 Rules 1,2 and 3 of the Civil Procedure Rules to restrain the defendant from evicting or interfering with the plaintiff's peaceful occupation and enjoyment of the said house.

The said application which is supported by an affidavit sworn by the plaintiff is strenuously opposed and grounds of opposition have been filed on behalf of the defendant. Both learned counsel have also made their respective submissions.

The plaintiff must have been allocated the subject house by virtue of his employment with the defendant. Some cases have also been cited.

In Civil Application no. NAI 20 of 1994 - Eric -v- J. Makokha & Others -v- Lawrence Sagini & Others. it was held, inter alia, that a breach of contract of personal service cannot be redressed by equitable remedies of injunction and specific performance. Further, that, damages are generally accepted remedy for redressing of contracts of personal service; this is too firmly established to be overthrown by side wind. In C.A NO. 125 of 1996 Dalmis B. Ogoye -v- K.N.T.C Ltd. the court of Appeal held:

“ 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”

With respect, I agree with the learned Judges in the Makokha Case, which in any case is binding on me,

that in the event of the plaintiff being successful in his suit for wrongful termination of his appointment, his proper legal remedy is damages and not declaration. That being so, the contract of employment having gone, the fringe benefit of subsidised housing went with it.

Accordingly the plaintiff's application must fail. The same is dismissed with costs.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of July, 1998.

A. MBOGHOLI MSAGHA

JUDGE