



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 4603 OF 1992**

**JAMES NDUNGU KAMAU ..... PLAINTIFF**

**VERSUS**

**KENYA POST TELECOMMUNICATIONS**

**CORPORATION ..... DEFENDANT**

**JUDGMENT**

The Plaintiff filed this suit against the Defendant Corporation on 27.8.92 claiming general damages and interest thereon and costs. The claim was based on unlawful retirement in that he was wrongly retired in the public interest.

In his evidence, the Plaintiff stated that he was employed on 11.10.66 as Postal officer from where he progressed through various stages to the grade of Senior Investigations Officer until 18.11.90 when he was terminated.

He said that first on 11.10.90 he received a letter suspending him from his duties for reasons that he had been reported to have been involved in fraudulent activities in complicity with certain subscribers. The letter did not mention who the subscribers were or the nature of fraud. See Exh.1.

Then on 17.10.90 he received another letter Ex.2 telling him the nature of fraud being that he knew of the existence of 20 pirate telephone lines in Eastleigh where uncharged international calls were made to the tune of about Eighty Million Shillings. He was supposed to show cause why he should not be dismissed. By letter of 26.10.90, he made his defence but that was rejected and he was on 3.21.90 reduced to the rank of postal superintendent, and transferred to the coast. But within 3 days after reporting, there on 18.12.90, he was given another letter dated 19.12.90 retiring him in the public interest.

The letter Exh.4 reads in part:

“The decision to restore you back on duty has been substituted with retirement in the public interest with effect from 25.10.90. You will be paid one month’s salary in lieu of notice and terminal leave (if any), you will also be paid for the days you worked for in the month December, 1990.”

He says he was dismissed at the age of 42 when infact he would have retired at the age of 55 and at that time, he enjoyed certain benefits. His house allowance was Kshs.5391/65, out patient Kshs.1600/= per year.

The Defendant gave no evidence in rebuttal but filed submission (written) by leave of court in which the defendant admitted that according to the plaintiff's terms of service, he was entitled to 3 months' notice for termination of the contract of employment and that the only damages payable is 3 months' wages in lieu of notice.

Parties had previously agreed on issues: first, was the plaintiff entitled to benefits stated in part 3 of the Plaintiff?

2. Was Plaintiff's service terminated as stated in paragraph 5 of the Plaintiff?
3. Was Plaintiff's suspension and subsequent retirement unlawful? In the alternative, was the said suspension and retirement in accordance with the terms and conditions of employment and in particular Posta CodeJ?
4. Did the Plaintiff suffer mental anguish, loss and damages as set out in paragraph 8 of the Plaintiff?
5. Did the Plaintiff give notice of intention to sue the defendant? and,
6. Who is to pay the costs?

Posta Code J referred to in the issues was not shown so that Plaintiff's terms of employment were not exhibited to the court. When asked what notice he was entitled to in case of termination, he did not now. Without this, the court cannot say whether the termination the public interest was or was not lawful.

In a case like this where it is held that the termination was unlawful, the damage payable would be his net salary and allowance multiplied by the number of years left to his normal retirement and thereafter, the loss of pension he might have earned, multiplied by the same period. This would suffer certain deductions.

In the case of KENYA OILFIELD LTD VS. PETER NJOROGI (Court of Appeal) Civil Appeal No.124 of 1985, the court said that "no award can be given for injured feelings of the employees by the nature of termination of his employment."

The statement of defence denied the claim and referred to section of Posta Code but did not show them. For these reasons, I would give judgment in terms of the admission by the defendant in the amount of three month's wages, housing allowance and leave allowance amounting to kshs.34513/= plus cost of the suit. I would answer the issues agreed as follows:-

Issues No.1 Not proved

Issue No.2 Not proved

Issue No.3 Not proved

Issues No 4 yes

Issue No.5 yes

Issues No.6 Defendant.

Delivered this 23rd day of January, 1997.

A.I. HAYANGA

JUDGE

Mr. Onyango holding brief for Onyango Ongeche for plaintiff

Mr. Wena for the defendant.