



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Civil Appeal 66 or 1995

CLEMENT J. MACHARIA
.....APPELLANT

AND

K. G. G. C. U. LTDRESPONDENT

(Appeal from the Ruling and Orders of the High Court of Kenya at Nakuru (Mr. Justice D. M. Rimita) dated 29th November, 1993

IN

H. C. C. C. NO. 221 OF 1990

JUDGMENT OF THE COURT

The appellant was, at all material times, employed by the respondent, Kenya Grain Growers Co-operative Union Limited (K.G.G.C.U.). He was employed on 4th April, 1962 at a basic salary of some K.Shs.300/= per month which salary was increased from time to time. The employment, to begin with, was terminable by a notice of one month on either side.

At the time the appellant's services with K.G.G.C.U. were terminated his monthly salary had reached K.Shs. 1,875/= per month, that is as at 4th July, 1981.

On 4th July, 1981 the appellant's services were terminated in terms of K.G.G.C.U.'s letter of 4th July, 1981 addressed to the appellant. The reasons given for such dismissal were that the appellant was rude to customers, was guilty of insubordination and had once (on 29th June, 1991) used abusive language to the manager under whom he worked.

The reasons for dismissal were eventually not in issue as the learned judge in the superior court (Rimita J.) correctly held that the appellant (despite such alleged wrongful dismissal) was paid his full

terminal dues, that is three months' salary in lieu of notice and leave pay. This was a net figure of K.Shs.4,627/40 in replacement of a stale cheque.

He was also paid a sum of Shs.5286/30 under the respondent's retirement benefit scheme, shs.152/= as refund of his contribution to welfare fund (adversity aid fund); and K.Shs.1513/= for twenty days service gratuity based on twenty days for each completed year of service upto 31st August, 1963 since the appellant had completed only one year of service when the service gratuity scheme was abolished.

The learned judge was not impressed by the demeanor of the appellant in the witness box and consequently did not find it necessary to go into the issue of unlawful dismissal on account of the appellant's benefits having been paid in full.

There were some differences in the signatures on the petty cash vouchers allegedly signed by the appellant and the learned judge, in our view, quite properly accepted the evidence of Isidora M.J. Romsalves who stated that the appellant collected moneys in question from her and acknowledged receipts. Just like the learned judge we see no reason to disbelieve Ms. Romsalves who was at the time of giving evidence no more in the employment of K.G.G.C.U. She had no axe to grind and her evidence was credit-worthy. The learned judge preferred her evidence as opposed to that of the appellant and we see no reason to disagree with the judge.

In relation to a contract of employment the employee is only entitled to receive what the contract stipulates. The appellant was paid his full entitlement. No general damages are payable for dismissal of a servant.

In the end result we dismiss this appeal with costs.

Dated and delivered at Nairobi this 1st day of March, 1996.

R. O. KWACH

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL