



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA
Civil Appeal 59 of 1994

CLIFF S. M. LIROVARS.....
APPELLANT

AND

THE OWNERS OF MOTOR VEHICLE "DHIRAN K".....
.....RESPONDENT

**(Appeal from the judgment of the High Court of Kenya at Mombasa (Mr. Justice T. Mbaluto)
dated 15th October, 1993,**

IN

ADM. CAUSE NO. 11 OF 1992)

JUDGMENT OF THE COURT

This appeal emanates from the judgment of the High Court of Kenya Admiralty Jurisdiction (Mbaluto, J.) dated 15th October, 1993 sitting at Mombasa.

The appellant was at the material time employed by the respondent as the Chief engineer for an indefinite period at a salary of \$2000 per month. The contract of service was reduced into writing. The said contract also contained a provision by which the employment of the appellant could be terminated by one months' notice. The respondent on 15th February, 1992, terminated the appellant's services. The appellant then instituted these proceedings for the recovery of salary for 12 months.

The learned judge held that the services of the appellant were terminated without notice on 15th February, 1992, when the appellant disappeared from the respondent's offices and was never seen again. The learned judge did not find for the appellant but decreed that the appellant was entitled to one month's salary only. From this decision the appellant has brought this appeal.

The grounds of appeal aver that the learned judge acted on a wrong principal of law in holding that the appellant was not entitled to the claim for a year's salary under the contract of employment. With the greatest respect to the learned advocate for the appellant his conception of the law as far as this appeal is

concerned is misconceived. It is trite law, and we need not cite the many existing authorities, that where there exists a termination clause of a period specified such as in this cause, an employee in the position of the appellant as herein, was entitled to one month's salary in lieu of notice following his dismissal by his employer and no more. If the respondent had paid the appellant one month's salary and dispensed with his services forthwith, the appellant would have had no cause of action.

In our view this appeal has no merit and is accordingly dismissed.

As for the cross-appeal, we equally think that it has no merit. We do not believe that the learned judge failed to give reasonable construction to the clause on probationary period contained in the service contract. The document itself, no doubt, is home-made and devoid of legal form. It is not the best of service contracts.

If the notice period of one month was not to be applicable during the twelve month probationary period then the parties should have said so in their contract. The cross-appeal, too, fails and is dismissed.

As the appeal and the cross-appeal have failed we make no order as to costs.

Dated and delivered at Mombasa this 24th day of January, 1995

R. S. C. OMOLO

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR