



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
CIVIL APPEAL NO. 27 OF 1992
CORAM: COCKAR, OMOLO & TUNOI, JJ.A.
RIFT VALLEY TEXTILES LIMITEDAPPELLANT
AND
EDWARD ONYANGO OGANDARESPONDENT

(Appeal from the judgment and decree of the High Court of
Kenya at Eldoret (Justice Aganyanya) dated 30th
August, 1991
in
H.C.C.C. NO. 123 OF 1988)

JUDGMENT OF THE COURT

Until the 7th or 9th June, 1988, Rift Valley Textiles Ltd., the appellant, was the employer of Edward Onyango Oganda, the respondent. It appears from the recorded evidence that on 7th June, 1988, the appellant verbally informed the respondent that the respondent had, as at that date been summarily dismissed from the appellant's employment. The appellant followed this up on 9th June, 1988 by a letter formally informing the respondent of his summary dismissal. The respondent was first employed by the appellant on 24th July, 1978 as an assistant shipping officer; his then salary was KShs.1,000/= per month with a further KShs.150/= per annum as leave allowance. On 5th May, 1986, the respondent was promoted to the position of a stores controller with an annual salary of K, 2,862, an accommodation allowance of K, 360 and a leave allowance of K, 25. He was also entitled to, upon termination of his employment, a gratuity payment of 1/12th of his basic annual salary for each year served over and above five years from the date of his employment. The gratuity would not be payable if he was dismissed on the ground of gross misconduct. The agreement also provided in clause 14 that it could be terminated by either party giving a notice of three months to the other or paying to the other for the notice period.

On 7th April, 1987, the appellant changed the respondent's designation to that of a purchasing officer but the other terms remained the same. The respondent's gross pay at the time of his purported summary dismissal was KShs.6,410/= which included KShs.1,000/= as housing allowance. He was also entitled to KShs.600/= annually as leave pay.

The appellant challenged his purported summary dismissal by a suit in the High Court at Eldoret. The suit which was filed on 1st October, 1988, claimed special damages amounting to KShs.54,575/= which was broken down as follows:- 1.Salary not paid for period of 7 days worked. KShs.1,495/=

2. Leave pay for 3 years worked. KShs.19,230/=

3. Leave travelling allowance for 3 years. KShs.1,800/=

4. Gratuity earned for a period of 5 years after working for 10 years. KShs.32,050/=

TOTAL KShs.54,575/=

We have no doubt at all that item no. 2 claimed as "leave pay for 3 years worked" and amounting to KShs.19,230/= was wrongly claimed under that title. There was no provision in the contract of employment for leave pay and we are satisfied that sum in fact represented three months pay in lieu of notice at KShs.6,410/= per month.

On 19th October, 1989, the parties reached the same settlement and the appellant agreed to pay and did pay to the respondent the KShs.54,575/= claimed as special damages. They, however, left for the determination of the court the question of general damages and wrongful dismissal over which they were apparently unable to agree upto the end.

On 18th April, 1991, the respondent gave evidence and in cross-examination admitted that he had been paid for three months in lieu of notice. One Michael Kosgei Kiriga (DW 1) gave evidence on behalf of the appellant and in his evidence he was apparently contending that the appellant was entitled to summarily dismiss the respondent. In our view, that contention was untenable. By agreeing to pay to the appellant the special damages of KShs.54,574/= which in fact included KShs.19,230/= as pay in lieu of the notice period, the appellant was clearly admitting that their purported summary dismissal of the respondent was unlawful and that they were prepared to pay him for the three month notice period. The learned trial judge found that the purported summary dismissal was unlawful and on the recorded evidence before him, he was perfectly entitled to find so. Indeed, as we have pointed out, the appellant itself admitted as much.

But the appellant appeals to this Court because having found and held that the summary dismissal was unlawful, the learned judge proceeded to award to the respondent twelve months gross salary as general damages and despite the respondent's repeated admission that he had been paid for the three month notice period, the judge again awarded to him a further three months salary in lieu of notice. Was the judge entitled in law to do this?

We have no doubt whatsoever that the law did not entitle the judge to do any of these things. The contract of employment between the appellant and the respondent specifically provided for a notice period and it also provided for what was to be done if either party was unable to comply with the said notice period, namely, to pay the other party for the notice period. In CYRUS NYAGA KABUTE V KIRINYAGA COUNTY COUNCIL, Civil Appeal No. 29 of 1985 (Unreported), the appellant had made prayers for, among others:-

(iii) general damages for loss of employment and retirement benefits from the date of judgment to the attainment of the appellant's 60th birth-day;

(iv) aggravated damages and general damages for breach of contract.

In rejecting these claims, this Court said:-

"Apart from that, even if the appellant were able to reopen that matter and supposing that he had shown that his dismissal

had not been justified, he would not have been able to get any of the prayers for which he prayed in the plaint. Even though the dismissal may be wrongful, it stands and what flows from the breach of the conditions of service, is damages according to the terms of contract. Those damages would not have been aggravated damages and would not have given him benefits upto his 60th birth-day, not

arrears of salary from July 1980. In fact appellant was given on normal retirement - arrears of salary upto June 1980, gratuity and payment in lieu of leave"

The position in the present appeal is exactly the same with that dealt with in the KABUTE case, supra. The respondent had been paid damages according to the terms of his contract. He had worked for seven days in the month before he was wrongfully dismissed; he was paid KShs.1,495/= for that period. He had a notice period of three months and he was paid KShs.19,230/= for that. Again, he was entitled to a leave allowance of KShs.600/= per year and he had not gone on leave for three years. He was paid Kshs.1,800/= for that. Finally, he was entitled to a gratuity payment upon the termination of his contract and on that head he was paid a total of KShs.32,050/=. In our view, even though the respondent's summary dismissal was unlawful, he had been paid all that he was entitled to be paid under and in accordance with the terms of his contract with the appellant. The learned judge says in his judgment and we quote him:-

"Since the plaintiff was not given notice of three months as agreed in the letter of appointment, his summary dismissal to

me was against the rules of natural justice and that the defendant should be ordered to pay aggravated damages for the wrongful dismissal."

With respect to the learned judge, the rules of natural justice have no application to a simple contract of employment, unless the parties themselves have specifically provided in their contract that such rules shall apply. Where a notice period is provided in the contract of employment, as was the case here, then an employer need not assign any reason for giving the notice to terminate the contract and if the employer is not obliged to assign a reason, the question of offering to the employee a chance to be heard before giving the notice does not and cannot arise. Again if the employee were to be minded to leave his employment, say for a better paid job and he gives notice of his intention to leave, the employee is not obliged to assign any reason for his intention to terminate the contract and it would be ridiculous for the employer to insist that he be given a hearing before the employee leaves. As we have said, unless there be a specific provision for the application of the rules of natural justice to a simple contract of employment, those rules are irrelevant and cannot find a cause of action.

We have already held that the respondent had been paid all that he was entitled to be paid for the wrongful termination of his employment. The learned judge was accordingly wrong in awarding to him his gross salary for twelve months plus an additional three months' salary in lieu of notice. In the event, we allow the appeal set aside these orders of the judge and substitute them with an order that apart from the KShs.54,575/= already paid to the respondent by the appellant, the respondent was not entitled to any further payment.

On costs we award to the appellant the costs of the appeal, but the costs in the High Court must be given to the respondent because the appellant paid the KShs.54,575/= only after the suit had been filed and was in fact ready to proceed to hearing. These, then, shall be our orders in the appeal.

Dated and delivered at Nakuru this 19th day of May, 1994.

A. M. COCKAR

JUDGE OF APPEAL

R. S. C. OMOLO

JUDGE OF APPEAL

P. K. TUNOI

JUDGE OF APPEAL

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

DEPUTY REGISTRAR