



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 1548 OF 1982

JAMES PG KARIUKI PLAINTIFF

Versus

NATIONAL TYPEWRITER SALES LTD DEFENDANT

JUDGMENT

This is a claim for special and general damages for breach of contract.

By a letter dated May 12, 1980 the plaintiff was offered employment by the defendant company as the company's sales and Marketing Manager at a monthly salary of Kshs 6,000. The employment was to commence with effect from May 15, 1980. According to the letter of employment the plaintiff was subject to such directions or instructions as may from time to time be given by the directors of the company through the General Manager, to have the general control of the sales department. Other conditions and terms of service included service of a probation period of three months during which either party could determine the employment by giving the other party one month's notice. In addition the plaintiff was entitled to thirty days paid leave on completion of each twelve month continuous service with the company.

The plaintiff's case is that the defendant company is in breach of the contract of employment terminated the plaintiff's employment on or about September 30, 1981 without any reasonable cause. In support of this case the plaintiff adduced evidence to the effect that since he commenced his employment he worked without receiving any warning from the defendant company until sometime in October, 1981 when he was informed by the Chief Accountant of the defendant company that the Managing Director of the defendant had given instructions that he be removed from the payroll with effect from November, 1981. The plaintiff says that he worked for the defendant up to the end of October, 1981 and was paid up to the end of the same month. In the plaint, however, the plaintiff had stated that his salary has stopped on or about September 30, 1981 and in his letter to the Managing Director of the defendant company (Exhibit 4) dated October 8, 1981 he states that his services were terminated with effect from October 1, 1981. The witness called by the defendant was not able to state the date of termination of services; the only thing he was able to confirm with regard to the fact being that salary was paid to the plaintiff up to and including the month of October, 1981. It is probable that the plaintiff owing to the long lapse of time between the termination of service and the hearing of this case, has confused the actual date of termination and the last day he received his monthly salary. In any event the termination cannot have been later than October 8, 1981 in view of the contents of Exhibit 4. I therefore find that on the balance of probabilities, the plaintiff's services with the defendant were terminated on or about September 30, 1981 as stated in the plaint and not in October, 1981.

In its defence the company has admitted that it terminated the employment of the plaintiff but claims that

the termination was lawful and justifiable on several grounds amongst which were the plaintiff's failure to perform his work and absenting himself from work without leave or other lawful cause. The only witness called by the defendant was Mr Jonathan Ileri who quite emphatically stated that he did not know the circumstances under which the plaintiff left the services of the defendant company. The defendant has therefore failed to justify the termination of employment of the plaintiff and accordingly I find that the plaintiff's claim that the defendant terminated his services in breach of the contract of employment as fully proved.

Having dealt with the question of termination of contract I now proceed to consider the question of damages. The plaintiff claims contains the following special damages:

- a) Kshs 18,000 for loss of three months salary in lieu of notice
- b) Kshs 6,000 for loss of accrued leave of thirty days
- c) Kshs 2,000 for severance pay at ten days per each completed year of service.

In addition to the above the plaintiff claims general damages for having suffered in mind and in soul as well as in his health as a result of finding himself suddenly out of job.

No evidence was led by the plaintiff to prove the claim of Kshs 2,000 for severance pay. Similarly the claim for general damages was not proved. The claim for severance pay and for general damages therefore fails.

As regards the claim for Kshs 18,000 for loss of three monthly salary in lieu of notice I find that the plaintiff was, when his services were terminated on or about September 30, 1981 entitled to three months notice having completed his probationary period. However, since he was paid for one month after termination of his services, he is entitled to only two months' pay. I also find that the plaintiff was entitled to thirty days leave pay after having completed twelve months continuous service with the defendant company.

I therefore enter judgment for the plaintiff as follows:

- a) Kshs 12,000 for loss of two months salary in lieu of notice.
- b) Kshs 6,000 for loss of accrued leave.
- c) Costs of the suit and
- d) Interest on a, b and c above at court rates.

T Mbaluto

Judge