



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Nyarangi, Masime JJA & Gicheru Ag JA)

CIVIL APPEAL NO 85 OF 1987

NDUNDA.....APPELLANT

VERSUS

MUSEMBI.....RESPONDENT

JUDGMENT

November 18, 1988, **Nyarangi, Masime JJA & Gicheru Ag JA** delivered the following Judgment.

The appellant who was an employee of the respondent was charged with criminal offences of forgery and stealing. During the pendency of the prosecution the appellant was suspended from employment. He then sought employment elsewhere and on 14.3.85 obtained a job with a third party which he took from that date. Having obtained alternative employment the appellant offered to resign from the employment of the respondent and his offer was accepted on 1.4.1985. The respondent however reserved its right to take disciplinary action against him in the event he was convicted as charged. Upon conclusion of the prosecution on 2.5.1985 he was convicted as charged whereupon the respondent purported to terminate his service with effect from the date of his original suspension and wrote to him to that effect dated 7.5.1985. It was the appellant's case that as a result of the letter purporting to terminate his service he lost his job with the third party. In the meantime the appellant appealed successfully against his conviction and sentence.

In his suit in the High Court he argued that as the respondent's letter of 7.5.1985 purported to terminate his service with effect from the date of the original suspension the contract of employment subsisted, despite the appellant's resignation. In the event, he argued the termination was in breach of regulation 25(2) of the "Public Service Commission (Local Authority Officers) Regulations 1984 LN No 201 of 1984 whereby disciplinary proceedings against officers who have been prosecuted must await the conclusion of all criminal proceedings.

The High Court dismissed the appellant's claims for special and general damages and he now appeals to this court.

We have considered the pleadings and all the submissions of the parties. In our view the appellant's contract of employment was terminated by his offer or resignation which was accepted by the respondent. Correspondence by the respondent's chief executive purporting to resurrect that contract was ineffective as the appellant was already engaged by a third party. Regulation 25(2) of the PSC (Local Authority Officers) Regulations would not therefore apply to him. In the circumstances we find no merit in this appeal against the reasoned judgment of the superior court and order that it be dismissed with costs.

Dated and delivered at Nairobi this 18th day of November , 1988

J.O. NYARANGI

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JUDGE OF APPEAL

J.R.O. MASIME

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JUDGE OF APPEAL

J.E. GICHERU

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Ag. JUDGE OF APPEAL

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

DEPUTY REGISTRAR