



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: Kneller JA, Chesoni & Nyarangi Ag JJA)**

**CIVIL APPEAL NO 27 OF 1984**

**Between**

**OWENO.....APPELLANT**

**AND**

**MUNICIPAL COUNCIL OF KISUMU.....RESPONDENT**

*(Appeal from the High Court at Kisumu, Schofield J)*

**JUDGMENT**

June 22, 1984, **Chesoni Ag JA** delivered the following Judgment.

The appellant was, from April 14, 1980, employed on secondment from the Ministry of Co-operative Development, by the Municipality of Kisumu, the respondent herein, as Town Treasurer. On October 14, 1982, the respondent, in a letter of the even date (Exhibit 6) terminated the appellant's secondment with it with immediate effect. That letter said *inter alia*,

“You will be paid all the benefits which may be done to you, such as your own contributions to the Kenya Local Government Officers' Superannuation Fund, 90 days accumulated leave and any other legitimate entitlement.”

There was dispute as to the settlement of some of the appellant's benefits, and for the purposes of this appeal these were the terminal leave of 23 days and his house allowance for owner occupied house. However, at the time the appellant filed this suit in the High Court six of his claims had either only partially or wholly not been met, but the respondent paid most of them after filing and upon judgment of the High Court in the suit leaving only the two we have already referred to.

As to terminal leave the appellant claimed payment for 114 days, but the learned judge (Schofield J) held that according to the terms and conditions governing the plaintiff's employment they allowed him to accumulate leave in up to 90 days only and any days in excess of 90 were deemed to be forfeited. He relied on paragraph 19(f) of the Terms and Conditions of Service for Employees in the Salaried Grades (Exh 10) paragraph 1 of those terms and conditions provides that those terms and conditions shall not apply to officers on contract, on secondment, temporary, casual or locum terms except in so far as the Council may from time to time direct.

There was no evidence that the council had directed that these terms and conditions do apply to the appellant. Although paragraph 4 of the Secondments to the EA Community, Statutory Boards and Other

Similar Organizations personnel Circular No 28 of November 25, 1968 that during the term of secondment a seconded officer shall be subject to rules of the organization to which he is seconded and will enjoy all the privileges normally granted by that organization, it is doubtful whether that circular covers secondments to local authorities and, if it does, I would be inclined to hold that paragraph 1 of EX 10 prevails in respect of secondments to local authorities so that unless the particular council directs EX 10 does not apply to seconded officers. I would, therefore, hold that the rate and terms and conditions of leave contained under paragraph 19 of Exhibit 10 did not apply to the appellant. His terminal leave should have been calculated at the Central Government rates of 30 days per annum ie 2 ½ days a month. The result would be as follows:

**1980 - 8 1/2 months at 2 ½ = 21.25 days**

**1981 - 12 months at 2 ½ = 30 days**

**1982 - 12 months at 2 ½ = 30 days**

**1983 – ½ month at 2 ½ = 1.25 days**

**Total = 82.50 days**

**Rounded to 83 days**

**27819.80/90 x 83 – Kshs 25,656.05**

There is an overpayment of Kshs 2, 163.75 under this head of claim. But there was no cross-appeal on it.

As to the claim for owner occupied house allowance since I have held that the terms and conditions of Ex 10 do not apply to the appellant no resolution of the Council was required and the terms is the Central Government whereby he was entitled to such an allowance apply to him.

The house was valued at Kshs 126,000 (Ex 14). He occupied his own house from January 1982 and his claim according to the plaint is limited to the period of January to October 14, 1982, though one would have expected it to cover the period of the three months' notice. Be that as it may he was entitled to be paid 15% of Kshs 126,000 for 9 months and 4 days that is:-

**126,000 x 15/100 x 9 = Kshs 14,175.00**

**126,000 x 15/100 x 4/31= Kshs 203.20**

**Total Kshs 14,378.20**

I would not interfere with the award under head 6(c) as there is no crossappeal and for head 6(e) I would award the appellant Kshs 14,378.20.

For the reasons state I would dismiss the appeal against the High Court finding on paragraph 6(e) of the plaint. In the result I would order the respondent council to pay to the appellant a further sum of Kshs 14,378.20.

As the appellant has lost in part and succeeded also in part I would award the appellant half the taxed costs.

**Kneller JA.** I agree, and the orders of the court are those that **Chesoni Ag JA** has proposed in his judgment.

**Nyarangi Ag JA.** I agree.

**Dated and delivered at Kisumu this 22nd day of June, 1984.**

**A.A KNELLER**

.....

**JUDGE OF APPEAL**

**Z.R CHESONI**

.....

**AG.JUDGE OF APPEAL**

**J.O NYARANGI**

.....

**AG.JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**