



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 156 OF 2015

(BEFORE D. K. N. MARETE)

TEA RESEARCH FOUNDATION OF KENYA.....PLAINTIFF

VERSUS

DR. PATRISIO NJIRU NJERU.....DEFENDANT

JUDGEMENT

This matter was originated by way of a plaint dated 2nd August, 2011.

The respondent in a Defendant's Statement of Defence dated 12th February, 2013 denies the claim and prays that the same be dismissed with costs.

The claimant's case is at all material time the defendant was an employee of the plaintiff as a Food Technologist.

The plaintiff's other case is that on or about June, 2006, at the request of the defendant, the plaintiff granted the defendant a fully paid study leave for a period of three years from June, 2006 to 30th July, 2009 in which period the defendant was to undertake doctoral studies at the University of Kiel, Germany. In consideration of this leave, the defendant executed a bond by which he bound himself to complete his studies within three years and also work for the plaintiff for three years after such completion of studies.

The plaintiff's further case is that the defendant would pursue his studies diligently and to conclusion as long as the bond remained in force and always observe its terms, stipulations and provisions contained or implied in his letter of appointment or any service agreement *inter partes*.

The other term of the bond was that in default of return to work upon completion of studies and also remaining at work for three years thereon, the defendant would pay to the plaintiff a sum of Kshs.5,040,000.00 plus interest at the rate of 15%.

It is the plaintiff's case that on or about 11th August, 2009 the defendant reported back to work and undertook his duties until 11th September, 2009 when without any justifiable cause or reason he absented himself and has continued so to do to date. It has been established that the defendant has taken up employment with a university.

She prays as follows;

a. An order compelling the Defendant to specifically perform his obligations under the Bond executed.

OR IN THE ALTERNATIVE:

Liquidated damages in the sum of Kshs.5,040,000/=.

b. Interest at the contractual rate of 15% (Fifteen percent) per annum from the date of execution of the Bond.

c. Costs of this suit.

d. Such further orders as the court may deem fit or just to grant.

The defendant's case is one of denial of the claim. He particularly denies the existence of the bond in dispute and avers that if it exists, he was coerced into executing the same by the plaintiff.

It is his further case that any such contractual arrangement as alleged by the plaintiff is contrary to the Plaintiff's Employee Contract and Policies as the defendant was still on probation and not eligible for study leave. He also justifies desertion from duty on grounds of the plaintiff's failure to furnish a conducive working environment upon his return to work. Again, his place of residence while in office was also being a danger to his personal security.

The matter came to court severally until 1st December, 2017 when the parties agreed on determination by way of written submissions.

The issues for determination therefore are;

1. Whether the defendant was granted a paid study leave to pursue his doctorate studies in Germany;
2. Whether the Grant of the paid study leave was premised on a Bond executed by the parties herein;
3. If the answer to (b) above, is in the affirmative, what were the terms and conditions of the Bond;
4. Whether the Respondent breached his obligations under the Bond; and
5. Is the plaintiff entitled to the relief sought?
6. Who bears the costs of this cause?

The 1st to 4th issues outlined above border around the issue of study leave and the bond issued in furtherance to the study leave thereof. These are closely interrelated and intertwined and can be determined from the respective cases of the parties.

The plaintiff presents her case as follows;

11. During the entirety of this period, the Claimant was duly paid his dues as is evident from the Bundle of Documents annexed as Item no. 4 and to the Claimant's list of documents filed dated 23rd August, 2013 and filed in court on 28th August, 2013. This is also evidenced by the bundle of documents comprising tax deductions (P9A forms) for the period between 2007 and 2008 made in respect of the Respondent.

13. The claimant however alleges that, "...he was required to sign a certain document before he could be allowed to pursue his scholarship...". He further claims that he then met one of the

Claimant's representatives in a restaurant and signed a document which was placed in front him in exchange for a letter releasing him for scholarship. Your Lordship, this is a baffling allegation granted that the Respondent is a very learned individual who cannot reasonably be expected and/or presumed to have casually executed such a critical document affecting his employment.

14. The Respondent's allegations implying that he did not understand the import of the document (bond) that he executed are therefore falsehoods contrived to absolve him of his fundamental breach of its terms.

17. Your Lordship, this question is easily answered by considering the provisions of the bond dated 29th May, 2006.

Briefly stated, the Bond notably provides that:

...I the Employee am bound unto the foundation for a period of Three years during which time I will pursue the Course and a further three years during which period I shall work for the Foundation or in the alternative in the sum of Kenya Shillings Five Million and Forty and Forty Thousand (Shs.5,040,000/=) plus interest thereon at the rate of fifteen per cent per annum hereinafter provided to be paid to the Foundation for which payment to be well and truly made I bind myself, my heirs, executors and administrators and assigns by these presents...

This is a clear cut matter. It is succinct from the onset. The plaintiff's case overwhelms that of the defendant on a preponderance of evidence. The defendant's version and evidence is evasive. It is unsubstantiated and outrightly not true. It is unbelievable and lacks the requisite veracity for tenability. It would not require any effort to spell out a case for the plaintiff in the circumstances. The matter tilts in favour of the plaintiff and I find as such. This answers issues no. 1, 2, 3 and 4 for determination.

The 5th issue for determination is whether the plaintiff is entitled to the relief sought. She is. Having succeeded on her case of breach of contract by the defendant she is entitled to the relief sought.

I am therefore inclined to allow the claim and award relief as follows;

- i. The defendant be and is hereby ordered to pay the plaintiff the amount of Kshs.5,040,000.00 being the contractual sum under the Bond.
- ii. The defendant be and is hereby ordered to pay the plaintiff interest on the contractual amount of Kshs.5,040,000.00 at 15% per annum effective from the date of execution of the Bond.
- iii. The costs of this plaint shall be borne by the defendant.

Delivered, dated and signed this 11th day of December, 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Mwitwa instructed by Bett & Company Advocates for the plaintiff.
2. Miss Maitai instructed by Maina & Maina Advocates for the defendant.