IN THE HIGH COURT OF KIRIBATI

CIVIL CASE NO. 146 OF 2011

	[KIAMARO RITERI	**PLAINTIFF**
	[	
BETWEEN	**[AND**	
	[	
	[BETIO SHIPYARD LTD	**DEFENDANT**

Before: The Hon Mr Justice Vincent Zehurikize

6 December 2016 & 13 March 2017

Ms Kiata Kabure for the Plaintiff
Ms Taaira Timeon for the Defendant

JUDGMENT

Zehurikize, J: The plaintiff sued the defendant for recovery of $2,540.00, general damages for breach of contract and interest on the claimed sum and costs of the suit.

The facts giving rise to the cause of action are as follows:

The plaintiff was on 12 September 2007 employed by the defendant as a Boat builder/Carpenter for a period of 85 working days.

After the expiry of the contract the plaintiff continued working for the defendant but no new contract was executed between the parties.

On 13 October 2008 the defendant terminated the plaintiff's employment without notice hence this suit.

The above course of events appear not to be disputed by the defendant save that it is contended that after the expiry of the original contract of 85 days the plaintiff was employed on casual basis thus the defendant had the right to terminate his employment whenever it felt that his services were no longer needed without notice.

As stressed by Ms Kabure Counsel for the plaintiff, the crux of the plaintiff's case is that the dismissal was unfair because he was not accorded a hearing. In reply to this the defendant contends that the plaintiff was given a hearing when he appealed to the Board.

Further, Counsel for the plaintiff drew Court's attention to the provisions of s.56 and 65 of the *Employment Ordinance* and asserted that the defendant did not have Conditions of Service as later argued by the defence. That even if s.13(3) of the alleged Conditions of Service were to apply, still the plaintiff was entitled to a fair hearing. She cited *Metutera v Kiribati Shipping Services Ltd* KI CA No. 7/2007 to fortify her point.

In reply Ms Timeon Counsel for the defendant clarified that the National Conditions of Service do not apply to this case. That they apply to Government employees. Instead she urged that the dismissal of the plaintiff was proper and in accordance with Clause 13(3) of the defendant's Conditions of Service.

From the evidence adduced by the parties and the able submissions presented by both Counsel, I find the only issue in this case is whether the plaintiff's employment was lawfully terminated? In other words was he entitled to a notice and to a hearing before he could be terminated?

The uncontested evidence is that at the expiration of the 85 day contract, the plaintiff continued working but with no written contract or otherwise specifying any specific period of time for his employment. In such circumstances I have no option but to find that he was retained as a casual or temporary work. This begs the question of whether, under that kind of arrangement, he was entitled to a notice or hearing before his employment could be terminated.

Ms Kabure for the plaintiff argued to the effect that he could be terminated without notice under the circumstances stipulated in s.65 of the *Employment Ordinance*, but that the reason given for her client's dismissal is not covered under the said section 65.

I wish to observe that the provisions of s.65 of the *Employment Ordinance* apply to formal contracts of employment made in accordance with the provisions of s.56 of the *Ordinance*. It is not applicable to an informal employment based on a day by day engagement as in this case. Section 65 applied to the initial contract of 85 days, but not to this informal engagement.

The other question still to be considered is whether despite the informality and temporariness of the contract the plaintiff was nevertheless entitled to a hearing.

On this issue Ms Kabure contended that her client was entitled to a hearing and she cited *Metutera* (supra). I have considered submissions by both Counsel on this point and I am inclined to agree with the defence Counsel that the defendant had the liberty to terminate the employment at any time when it felt it no longer needed the service of the plaintiff. He was just a temporary worker whose services could be dispensed with at any time.

However in the instant case the defendant proceeded under clause 13(3) of their Conditions of Service wherein the plaintiff could be dismissed summarily without notice nor hearing. But according to the defence, the plaintiff was in fact accorded a hearing before the Board.

It is important to note the defendant, though a Government company, is a legal entity and quite independent from its shareholders. It is a legal person with power to sue and liability to be sued. Its employees are not subject to National Conditions of Service which apply to Civil Servants, but to the defendant's Conditions of Service.

Clause 13(3) of the defendant's Conditions of Service provides:

> **"The employee may summarily dismiss an employee for gross misconduct or breach of discipline including drinking or being absent from work other than in accordance with the Betio Shipyard Ltd General Manager or his supervising officer's permission, and or....."**

In the instant case the plaintiff was found to be drunk while on duty and in my view this was in breach of the above Condition of Service entitling the defendant to dismiss him summarily. But if any hearing was needed, I find that the same was afforded to the plaintiff. By letter of 22 October 2008 (Exhibit P3) the plaintiff wrote to the Chairman BSL Board of Directors under what he headed as "Re: Appeal against decision of Management".

In that letter the plaintiff fully explained his side of the case. But by letter of 5 December 2008 the Board dismissed the appeal and confirmed the decision of the Management. The Board in fact gave four reasons for their decision.

Following *Metutera* (supra), reasonable opportunity to be heard can be by the Board hearing the complainant in person or by letter. In the instant case, the plaintiff was given an opportunity to be heard by a letter he wrote to the Board which considered it in a meeting held on 27 November 2008 (see Exhibit P4). They took the decision after considering his appeal. That way he was accorded a hearing if any was needed in the circumstances of the case.

From what I have already said this hearing was just *ex gratis* as the plaintiff was not even entitled to a hearing.

In view of what I have tried to discuss above I find that the plaintiff's employment was properly terminated. He was not entitled to a notice nor even a hearing, although the latter was afforded to him. The plaintiff failed to prove his claim on a balance of probabilities. It follows therefore that no remedies are available to the plaintiff.

However, given the circumstances of this case and the status of the defendant as opposed to that of the plaintiff, a mere casual labourer, I will not award costs of the suit to the defendant.

Consequently the plaintiff's suit is dismissed with no order as to costs.

Dated the 2nd day of May 2017

THE HON MR JUSTICE VINCENT ZEHURIKIZE
Judge