

File No. 48008

July 31, 2006

Judge - Habtamu Worku

Appellant – W/t (Miss) Rahel Melis – present

Respondent – BS School Group Private Ltd Co.

Attorney – Ato Tesfaye Derese – present

Judgment

This is an appeal preferred from the judgment rendered by the Federal First Instance Court which held that the termination of the contract of employment the appellant – plaintiff had with the respondent – defendant is lawful.

As the appellate court has caused the memorandum of appeal to be served on the respondent, it has submitted its reply to the appeal.

The court considers the case as follows. The Federal First Instance Court has decided on the case considering that there is sufficient proof that the appellant, a care giver, did not carry out her obligations to keep the room she works in clean, to have the windows and doors open so as to let fresh air in and that she became unwilling to continue her work when she was warned of her refusal to perform the mentioned duties. On the other hand, the file shows that the appellant has been arguing all along that she is not assigned to perform the mentioned works and that she has been terminated orally as of December 23, 2006.

The court has also examined the testimony of the witnesses called to the case and has learnt that they have not testified sufficiently that the appellant has been absent from work on her own motion as of December 23, 2006 and that the said

duties were assigned specifically to the appellant. Again the lower court has rejected the testimony of the appellant's witnesses who were called to testify that the appellant was not assigned to perform the above mentioned works on the ground that they are not impartial as they are the plaintiff's co-workers and that their testimony is irrelevant as regards the termination of the contract of employment.

Hence the appellate court understands that the lower court, i.e., the Federal First Instance court has been inconsistent as it has rejected the evidence the appellant had produced for the above mentioned reasons and at the same time has based its decision on the non performance of the duties which are said to be assigned to the appellant, though contended by her.

Reverting to the merits of the case, the appellate court has found it important to primarily examine on which party the burden of proof shall rest regarding the obligation of the appellant in those mentioned duties and the appellant's absence from work based on her unwillingness to act according to the warning. The court has also examined as to whether or not it is necessary to hear the evidence the appellant produces.

The labour law, Proclamation No. 377/2003, and the ILO Convention (No. 158) on termination of contract of employment which was adopted in 1982 and which Ethiopia has ratified, under article 4, state that "inadequate performance of duties" is one of the grounds for termination of contract of employment in relation with conduct of the worker.

Finally the court holds that those duties alleged to be assigned to the appellant and which were considered as the cause for the termination of the contract of employment in question and the allegation that the appellant has absented herself from work on her own motion are two points which shall constitute the issue of these case and that the employer shall produce sufficient evidence to

prove the two facts. The stand that the burden of proof falls on the employer is in line with the stipulation of article 9/2//a/ of the above mentioned Convention, which Ethiopia has ratified. Therefore, as the file shows that the respondent (the employer) has not produced evidence to show valid reasons for the termination of the contract of employment, the appellant must not be required to produce any evidence in support of her allegations.

Thus this appellate court has found the decision of the lower court which considers that the termination of the contract of employment lawful to be incorrect.

Decree

1. The judgment rendered by the Federal First Instance Court in file No. 09994 on June 9, 2006 is reversed according to art. 348/1/ of the Civil Procedure Code.
2. The respondent shall pay to the appellant severance pay, wage in lieu of notice period and payment in lieu of two years' annual leave. The Federal First Instance Court shall execute the decree.
3. The appellant is entitled to file an itemized bill of costs and incidents to the suit.

The file is closed and returned to the archives.

Signature
Habtamu Worku.