**Barclays Bank of Kenya Limited v Njau**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of judgment:** 31 March 2006

**Case Number:** 314/01

**Before:** Omolo, O’kubasu and Githinji JJA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Employment law – Failure to include notice period before termination of the contract – Discretion*

*of court to infer reasonable notice – Amount of damages payable for unlawful dismissal – Factors in*

*Calculating the amount of damages payable.*

*[2] Jurisdiction – Principle of* stare decisis *– Whether an inferior court has the jurisdiction to overturn*

*The decision of a Superior Court.*

**Editor’s Summary**

The respondent was employed by the appellant as a clerk in 1969 and he rose through the ranks to the position of a Supervisor with a monthly salary of KShs 25 015. The employment contract between the parties did not however expressly provide for a notice period. The appellant later on summarily dismissed the respondent on 12 March 1993, whereupon the respondent sued for wrongful dismissal.

The trial judge held that the appellant had been malicious in dismissing the respondent and therefore the dismissal was wrongful. Hence this appeal.

**Held** – The trial judge correctly held that the respondent was wrongfully dismissed.

Where the contract of employment embodies a notice period, then damages to a person dismissed unlawfully is to be worked out on the basis of the notice period. Where no such period is provided for in the contract of employment, as is the position in this appeal, then a reasonable period of notice is to be implied. (*Kyobe v East African Airways* [1972] EA 403; *Alfred Githinji v Mumias Sugar Company* *Limited* civil appeal number 194 of 2001 [UR]; *Rift Valley Textiles Limited v Edward Onyango Oganda* civil appeal number 27 of 1992; *Central Bank of Kenya Limited v Nkabu* [2002] KLR 149 followed). While a judge of an inferior court is perfectly entitled to entertain doubts, even grave doubts, on the correctness of the decision of a court superior to his and whose decisions are binding on him, such a judge has no jurisdiction to overrule the decision of the court superior to his. (*Abu Chiaba Mohammed v Mohammed Bwana Bakari and others* civil appeal number 238 of 2003 [UR] followed). Established principles of law generally remain the same in each case and it is the application of those principles to the facts of the case in hand that might vary from case to case.

The court has discretion to determine what the reasonable period of notice ought to be in a particular case where such period is not provided for in the contract of employment between an employer and employee.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Abu Chiaba Mohamed v Mohamed Bwana Bakari and others* civil appeal number 238 of 2003 (UR) – **F**

*Alfred J Githinji v Mumias Sugar Company Limited* civil appeal number 194 of 2001 (UR) – **F**

*Central Bank of Kenya Limited v Nkabu* [2002] KLR 149 – **F**

*East African Airways v Knight* [1975] EA 165

*Kyobe v East African Airways* [1972] EA 403 – **F**

*National Cereals and Produce Board v Ongaro* [1999] LLR 883 (CAK)

*Rift Valley Textiles Limited v Oganda* [1992] LLR 308 (CAK) –