

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 409 OF 2007**

**BETWEEN:**

**NARAYAN SHANKAR LINGHAM** (f/n Subarmani) of  
Lot 14 Vere Rd, Laucala Beach Estate, Suva, Businessman

**PLAINTIFF**

**AND:**

**NASINU TOWN COUNCIL**

**DEFENDANT**

**COUNSELS** : Mr. O'Driscoll G for the Plaintiff  
: Ms. Savou M for the Defendant  
**Date of Hearing** : 28<sup>th</sup> April, 2014  
**Date of Judgment** : 29<sup>th</sup> January, 2016

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**J U D G M E N T**

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**INTRODUCTION**

1. The Plaintiff was a Health Inspector cum Building Surveyor of the Defendant local government entity. He was given an official vehicle and it met with an accident. At the time of the accident the Plaintiff was driving the vehicle and he was returning from the Mayor's house after having few drinks. The vehicle driven by the Plaintiff collided with the vehicle in front and was charged for three counts. The two charges relating to driving under influence of liquor were withdrawn as the breathalyser test was done in contravention of the regulations. The test was done more than one hour after the arrest. He was convicted for the charge of dangerous driving. Initially the Plaintiff was suspended from his employment and given an opportunity to resign but he did not resign. He was terminated from employment. The Plaintiff gave evidence and the documents were marked from the agreed bundle of documents. The Defendant did not call a witness.

## FACTS

2. The following facts were admitted in the pre-trial conference minutes.
  - (a) The Plaintiff was an employee of the Defendant.
  - (b) The contract of employment was for 3 years subject to renewal.
  - (c) On 1<sup>st</sup> January, 2001 the Plaintiff's probation period commenced.
  - (d) On 1<sup>st</sup> January, 2002 the Plaintiff commenced his 3 years contract term that was subject to renewal. That in December, 2004 he completed his first three years and from the 1<sup>st</sup> January 2005, Plaintiff commenced his 2<sup>nd</sup> term of contract being another three year to be concluded 31<sup>st</sup> December, 2007.
  - (e) According to the contract either party could terminate the contract with 60 day notice that includes the misconduct if any committed by the Plaintiff.
  - (f) The misconduct was subject to right to be heard by the Plaintiff under the principles of natural justice.
  - (g) On 9<sup>th</sup> December, 2005, the Plaintiff was involved in an accident with Defendant's vehicle and he was subsequently charged for drunk and drive and Dangerous Driving and escaping from lawful custody by the Resident Magistrate.
  - (h) On 17<sup>th</sup> February, 2006, the Plaintiff was dismissed from his employment.
  - (i) He was dismissed without 60 day notice stipulated in the employment contract.

## ANALYSIS

3. The facts of this case are not in disputed. The Defendant admitted that it did not give 60 day notice to the Plaintiff before dismissal. The terms of employment are stipulated in the document No 2 in the Agreed Bundle of Document. The clause 8 of the said contract reads as follows:

***'That the appointment/employment of the Employee shall be terminated within sixty (60) days notice from either of the party.'***
4. The employment could be terminated by either party after 60 days notice, according to the above clause. Both parties in the pre-trial conference had admitted that this provision even applied to the termination based on misconduct. It is also admitted that said notice was not given to the Plaintiff in this instance.
5. On the said admissions the Defendant had breached the employment contract by not giving 60 day notice contained in the employment contract, and for that Damages should



be awarded for the breach. The damages for breach of contract based on the loss to the claimant. In this instance the loss is equal to 60 days salary.

6. The Plaintiff while giving evidence admitted that he consumed alcoholic drinks with the Mayor before he started his journey in which he met with the accident. Whether he had exceeded the legally permissible limit to form a criminal charge, at the time of the start of his journey is not clear. He was able to drive the vehicle some distance before the accident. At the time of the accident his level of intoxication was not measured. The breathalyser test was taken more than 2 hours after the arrest. At that time his level of intoxication was above the legally permissible limit but the test was not carried out within the stipulated time period contained in the regulations.
7. The two charges relating driving under influence of liquor were withdrawn by the prosecution, as the test was not done within time stipulated. The Plaintiff was charged for dangerous driving and he pleaded guilty to it.
8. A statement was recorded regarding this incident by the Defendant and the Plaintiff was initially suspended from services by the letter dated 13<sup>th</sup> December, 2005 with immediate effect. In the same letter the Defendant had granted an opportunity to the Plaintiff to resign. During that time he was given half pay.
9. The Plaintiff was terminated from his services on 17<sup>th</sup> February, 2006. Admittedly he was not given 60 days' notice. In the circumstances there is a violation of the employment contract by the Defendant. For this the Plaintiff is entitled for damages.
10. The clause 8 of the employment contract quoted earlier, allows either party to terminate the contract with or without reason after 60 days notice. So, by not complying with this provision the damage to the Plaintiff cannot be more than 60 days pay.
11. The Plaintiff relied on the Fiji Supreme Court decision of **Central Manufacturing Company Ltd v Kant** [2003] FJSC 5; CBV0010.2002 decided on 24 October 2003 (unreported). In that case the employment contract was oral and written mixed

contract. In that case it was held that there was no distinction on payment of salary in lieu of the stipulated time period for notice.

*'it can scarcely make any difference whether a person is told that he is dismissed forthwith, and given payment of salary in lieu of notice, or told that he is still employed but is not to perform any further duties. Accordingly we prefer the Canadian approach to this issue to that apparently not taken in the United Kingdom.'*

12. The next issue is whether the Plaintiff is entitled damages based on unfair dismissal. In the **Central Manufacturing Company Ltd v Kant** (supra) case Fiji Supreme Court held,  
*'In our view the Court of Appeal correctly that there is an implied term in the modern contract of employment that requires an employer to deal fairly with an employee, even in the context of dismissal. The content of that duty plainly does not extend to a requirement that reasons be given, or that a hearing be afforded at least where the employer has that right to dismiss without cause, and to make a payment in lieu of notice. It does extend, however to treating the employee fairly, and with appropriate respect and dignity, in carrying out the dismissal. **Each case must of course depend upon its own particular facts...**'* (emphasis added)
13. In **Central Manufacturing Company Ltd v Kant** (supra) an award of \$5,000 was made having decided that the dismissal was carried out in a manner that was 'unnecessarily humiliating and distressing'.
14. There was no such evidence given by the Plaintiff that he was dismissed in humiliating manner. He only tried to point out two incidents where Defendant's vehicles were involved with accidents. He admitted that in none of the cases resulted criminal prosecution against the persons who drove the vehicle. So the two examples he gave cannot be good comparisons. Admittedly the Plaintiff drove an official vehicle after consumption of alcohol and this is also a factor to be considered.
15. The Plaintiff met with an accident and he was arrested and also convicted for dangerous driving. His level of alcohol in blood was found to be above the permitted level after two hours from the arrest. Though he could not be charged for criminal offence this indicate that he had driven an official vehicle negligently. He had consumed alcohol and driven the official vehicle after office hours. He was given an opportunity to resign, but he did not exercise that option. Considering the facts of this case I cannot see his dismissal as



unfair or humiliating. In any event he could be terminated with 60 days notice. So the Plaintiff's loss in such an instance is 60 days salary. He was suspended and was on half salary for nearly two months without a termination and was given the option of resigning. So in fact the Plaintiff obtained ½ salary for nearly 2 months.

16. The Plaintiff gave evidence and said that at that time his annual salary was \$ 42,000 and this was not disputed in the cross-examination. The amount of special damages for failure to give 60 day notice is the salary for 60 days and that is \$6,904.11  $[(42,000/356) \times 60]$ . Interest of 3% P.A. is granted from 17<sup>th</sup> February 2006 to 28<sup>th</sup> April 2014.

### CONCLUSION


17. The Plaintiff was not given 60 day notice before dismissal. In the Pre trial conference both parties admitted that said notice was required even on misconduct. The Defendant had breached the contract of employment as no such notice was given. The damages for such breach are 60 days salary, which is equivalent to \$ 6,904.11. The Defendant had not acted unfairly in dismissing the Plaintiff considering the circumstances of the case. The Plaintiff is entitled for the cost of this action summarily assessed at \$5,000.

### FINAL ORDERS

- [a] The Plaintiff is granted damages payable by the Defendant in the sum of \$6,904.11
- [b] Interest of 3% P.A. is granted for the above sum from 17<sup>th</sup> February 2006 to 28<sup>th</sup> April 2014.
- [c] The cost of this action is \$5,000

Dated at Suva this 29<sup>th</sup> day of January, 2016



  
Justice Deepthi Amaratunga  
High Court, Suva