

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

HCCS NO. 327 OF 2003

PETER MUKENYE MAGOOLA ::: PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY ::: DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH — AMOKO

JUDGMENT:

The Plaintiff, Mr. Peter Mukenyé Magoola is a former employee of the Defendant. Uganda Revenue Authority (URA) is a body corporate set up by the URA Act (cap 196), Laws of Uganda.

The Plaintiff brought this suit to recover:

1. Shs.77,641,200- as special damages.
2. General damages for wrongful dismissal/termination.
3. Punitive damages.
4. Interest on (1) and (2).
5. Costs of the suit.

The brief facts giving rise to the claim are that the Defendant terminated the Plaintiff's employment contract on the 10/7/98. The Plaintiff contends that the termination was wrongful and amounted to breach of contract. That he has also suffered loss and damage as a result thereof, for which he holds the Defendant liable.

The Defendant denied the allegations and contended that the Plaintiffs contract was terminated in accordance with the provisions of the Defendant's Human Resource Management Manual (HRMM), which governed the same. That the Plaintiff was even offered payment in lieu of

notice upon termination which he refused/ignored and/or failed to collect from the Defendant. The suit is therefore bad in law, misconceived and should be dismissed with costs.

The Plaintiff filed a reply to the defence in which he denied that he was even offered any payment of the terminal benefits due to him or any part thereof. He repeated his prayers in the plaint.

At the Scheduling Conference, the following facts were agreed upon by both parties:

1. That the Plaintiff was an employee of the Defendant as Revenue Assistant, Grade 3.
2. That the Plaintiff's appointment was governed by the URA Regulations.
3. On the 12/2/98 the Plaintiff was suspended under clause 13.1 (f) of the HRMM.
4. On the 10/7/98 the Plaintiff's services were terminated under clause 14.2 of the HRMM.
5. The Plaintiff was offered 2 months' salary in lieu of notice.
6. He has made several appeals against the termination.
7. He has not received any benefits or entitlements.

The following issues were agreed upon for determination by the Court:

1. Whether the Plaintiff's dismissal was wrongful.
2. If so, whether the Plaintiff is entitled to the reliefs sought.

At the letters and documents attached to the plaint were admitted as exhibits. The Defendant tendered the HRMM as it's only Exhibit.

Each party called one witness each. Mr. Edward Wakida represented the Plaintiff while Mr. Hudson Musoke represented the Defendant. They filed written submissions.

The first issue is whether the Plaintiff contract was wrongful terminated. In law, wrongful termination is termination in breach of the relevant provision of the contract of employment. To determine whether the Plaintiff's contract was wrongful terminated or not it is therefore pertinent to refer to his contract of employment. It is an agreed fact that the Plaintiff's appointment was governed by the URA Regulations. It is also agreed that the Plaintiff was suspended on the 12/2/98 under clause 13.1 (f) of the HRMM and on the 10/7/98, his services were terminated

under clause 14.2 of the same I-IRMM which spelt out the terms and condition of the Plaintiff's contract with the Defendant.

The Plaintiff's first complaint is under paragraph 4 (ii) of the plaint, against his suspension on the 12 day of January 1998, pending investigations. The Defendant's response to this complaint is found in paragraph 4 (c) of the plaint, namely, that the suspension was for reasons stated in annexure 'B' to the plaint and was done within the HRMM. Annexure 'B' was tendered as Exhibit P3, is a letter dated 12/1/98 from the Defendant's Board Secretary to the Plaintiff then stationed at what is called in Customs "the Longroom." It is headed "*SUSPENSION WITHOUT PAY*". It says:

"Reference is made to International Audit Reports and Motor Vehicle Valuations of 19th December 1997, in which you are implicated for ignoring Customs regulations and guidelines, which resulted in loss of revenue to URA. I am therefore directed to suspend you without pay, under clause 13.1 (f) (i) of the Human Resource Management Manual with immediate effect, pending an investigation of the matter. You should formally hand over to your immediate supervisor and a/so provide your postal and physical address while on suspension, should the need to contact you arise."

Clause 13 of the HRMM is entitled "DISCIPLINE." Clause 13.1 is entitled "OFFENCES AND PENALTIES." Clause 13.1 (f) is entitled "INTERDICTION" and sub clause (i) under which the Plaintiff was suspended provides that:

"(i) where a staff is alleged to have committed an offence involving fraud, he shall be interdicted without pay, pending the outcome of an investigation into the allegation."

When the Plaintiff received this letter he made an appeal to the Defendant by a letter dated 14/5/98, Exhibit P5 and he gave an explanation of the circumstances which led to the loss of Revenue and maintained that it was not a deliberate action.

It is clear that under clause 13.1 (f) (i) the Defendant can interdict without pay, a staff member who is alleged to have committed a fraud, pending the outcome of investigation into the

allegation. The Plaintiff was given an opportunity to appeal, which he did. I therefore agree with Mr. Musoke that the suspension was in accordance with the HRMM. It was not wrongful.

The main complaint is really the termination of the contract. The letter of termination dated 10/7/98 was tendered as Exhibit P.4. It says:

RE: TERMINATION OF SERVICE”

I am directed to notify you of your termination from the employment of URA under clause 14.2 of the URA HUMAN RESOURCE MANAGEMENT (HRM) Manual with effect from the date hereof.

You will be entitled to 2 months payment in lieu of notice plus any outstanding entitlements and terminal benefits due to you less indebtedness on hand over. By copy hereof, the Commissioner for Finance & Administration is advised to process payment of the same.

Allow me to wish you well in your future endeavours.

*Signer — James K Byamukama
BOARD SECRETARY”*

Clause 14 of the HRMM is headed:

“TERMINATION OF SERVICE’. Clause 14.2 headed” TERMINATION OF APPOINTMENT” It provides that:

“(a). The Authority reserves the right to terminate the services of any staff by giving due notice (but not necessarily the reasons thereto).

(b). Except in the case of gross misconduct or as otherwise provided in an employment contract, termination notice for Management Staff shall require three months notice or payment of three months’ salary in lieu.

(c). All other staff shall be given one months notice or one month’s salary in lieu of notice.”

Clause 14 (2) applied to Mr. Mugoola who was a Revenue Officer Grade III at the material time. According to the Plaintiff he was not called to defend himself before termination. He even wrote a second letter of appeal after termination dated 14/6/99. (Exhibit P5), seeking an explanation as to why he was dismissed. He received a response from the Defendant's Board Secretary on 17/12/99 to the effect that the Staff Appeals Committee had considered the Plaintiff's appeal and had dismissed it as it was found not to have any merits. They did not summon him while considering the appeal. He even approached the IGG to ask the Defendant the reasons why his services had been terminated. IGG asked the Defendant's Commissioner, and the Commissioner replied by a letter dated 9/3/2001; and the reasons given for termination of the contract was under declaration of assets. The Plaintiff then went as far as collecting letters from the LC1 Chairperson of his area (Iki Iki) and the Town Clerk Pallisa (Exhibits P8 and P9) to the effect that he did not own any of the said properties. He attached all these to his final letter of appeal but the Defendant did not reply. That is when he approached his lawyers. The Defendant even gave him a letter stating that he was not involved in any fraud. (Exhibit P10), when he tried to take up a political job.

Counsel for the Defendant submitted that the Defendant was not under any obligation to give/assign a reason for termination of service under the said clause. That the wording of the clause permits it. The Plaintiff was offered two months payment in lieu of notice but he declined to collect it. Subsequent communications are not binding on the Defendant. The termination was therefore lawful.

The Plaintiffs counsel maintained that the termination was unlawful because the Plaintiff was not given any notice of the charges against him. He was charged with a different offence from the one convicted of. He was never given a hearing thereby causing breach of natural Justice. He was discharged of alleged fraud, yet not reinstated or paid. He was dismissed on charges whose investigations are not complete to date.

All these arguments make sense but they are defeated by the provisions of clause 14.2 (a) of the HRMM which governed the contract. The words of the clause are clear. They gave the Defendant powers to terminate the services of any staff by giving notice (but not necessarily the reasons

thereof). The clause is definitely draconian and contrary to the principles of natural Justice, but it remains the governing rule as long as it has not been removed from the HRMM.

The termination of the Plaintiff's contract was therefore lawful under their contract of employment. Issue number one is accordingly answered in the negative.

The second issue is whether he is entitled to the remedies sought. Clause 14.2 (b) provides for the payment of three months' salary in lieu of notice and not two months as stated in the termination letter. That is what the Plaintiff is entitled to. The Defendant has stated that it is ready and willing to pay the same less any indebtedness by the Plaintiff. The Plaintiff is at liberty to collect the same or leave it.

An employer under common law has an inalienable right to dismiss an employee without notice. An employer cannot be forced to employ anybody. This right is limited, governed by the terms of the contract where it exists. The Court's duty is to interpret the terms of the contract and not to re-write it.

All in all, I find no merit in the Plaintiff's case and I dismiss it with costs to the Defendant.

M.S. Arach — Amoko

JUDGE

31/8/2004

Judgment read in Court in the presence of:

1. Mr. Hudson Musoke for the Defendant.
2. Mr. Okuni — Court clerk.
3. Plaintiff and counsel — Absent.

Matter cause listed.

M.S. Arach — Amoko

JUDGE

31/8/2004

