

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
HCT-00-CC-CS- 228 OF 2003

BYARUHANGA MUHUMUZA=====PLAINTIFF

VERSUS

CALTEX OIL (U) LTD=====DEFENDANT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

JUDGMENT

The Plaintiff, Byaruhaga Muhumuza Alfred's claim is that from 1st January 1999 to November 2001, he was an employee of the Defendant Company, Caltex Oil (Uganda) Limited. During the Plaintiff's term of employment with the Defendant Company, the Plaintiff applied for and was granted a car loan under a Chattel Mortgage Scheme, under which the Defendant guaranteed the repayment of the said Chattel Mortgage with the Barclays Bank of Uganda. Under the scheme the Plaintiff acquired a Toyota Camry Registration No. UAA 200U.

The Plaintiff claims that in November 2001 he resigned from his employment with the Defendant Company. Under the car loan

financing scheme the total repayment comprising of the principal loan of Shs. 21,000,000/= together with interest amounted to Shs. 28,120,176/=. Against that figure the Plaintiff had, by the time of his resignation, paid Shs. 23,288,817/= plus other payments allegedly not credited by the Defendant on the chattel mortgage/car financing loan. That upon resignation the Plaintiff sought to pay off all the amount outstanding on the car loan and that he proceeded to the Human Resources Manager of the Defendant Company to off set payment in satisfaction of the car loan but that it was refused or rejected by the Defendant. That instead, the Defendant took possession of the Plaintiff's car and gave it to another employee who is currently using it.

The Plaintiff contends that the Defendant made erroneous Debit Notes on the Plaintiff's account by, inter alia, making entries of insurance recoveries against payments made by the Plaintiff instead of crediting the same to repaying the chattel mortgage/car-financing loan.

Further the Plaintiff claims that from the 16th November 2001 when the Defendant took possession of the Motor Vehicle to date the Plaintiff has resorted to the use of alternative transport at cost of Shs. 60,000/= per day.

It is also the Plaintiffs claim that at the time of his resignation he was not paid his salary for the days of the month worked,

terminal benefits and a refund of his provident fund savings. That the usual practice of staff who leaves the Defendant employment, is to compute the amount due as salary, terminal benefits and provident fund saving, with the Defendant's Human Resource Manager who however declined to compute the amount due and owing to the Plaintiff.

The Plaintiff therefore sought for: -

- (1) Declaration that he is the owner of Motor Vehicle Registration No. UAA 200U Toyota Camry, which he is entitled to redeem under the chattel mortgage with the Defendant.
- (2) Recovery of the Motor Vehicle in the same state of repair and mechanical condition as of 14th November 2001.
- (3) An adjustment and reconciliation of the Motor Vehicle accounts between the Plaintiff and the Defendant for the determination of the amount payable for its redemption.
- (4) Loss of user or in the alternative hire charges of the Plaintiff's Motor Vehicle by the Defendant less the amount found due and payable under item 2 above by the Plaintiff to the Defendant.
- (5) An Order directing the Plaintiff to compute

- (a) The Plaintiff salary arrears and terminal benefits coupled with an order for payment of the same.
 - (b) The provident fund savings due to the Plaintiff coupled with an order for its refund.
- (6) General damages.

The Defendant's case is that in November 2001 the Plaintiff was dismissed from his job on the basis that he had been assisting in duping fuel at fuel stations in Soroti and Katakwi. That at the time of his dismissal he had not completed repaying the car loan he had obtained under the chattel mortgage scheme repayment of which the Defendant had guaranteed with the Barclay Bank of Uganda. At the time the Plaintiff left the Defendant Company he owed Shs. 10,034,275/= arising out car loan.

The following facts were agreed upon by the parties during the scheduling conference: -

1. That the Plaintiff was employed by the Defendant Company from 1st January 1999 to November 2001.
2. While in the employment the Plaintiff was entitled to benefits and allowances and most importantly a Motor Vehicle under the Defendant's employee's car loan scheme.
3. Pursuant to the said scheme the Plaintiff acquired Motor Vehicle Registration Number UAA 200U Toyota Camry under a chattels mortgage dated 1st April 1999.

4. Upon leaving employment the Defendant took possession of the said Motor Vehicles.

The issues agreed upon for Court's determination are: -

1. Whether the Plaintiff was summarily dismissed or whether he resigned.
2. Whether the Plaintiff was entitled to any benefits at the time he left the Defendant's employment.
3. Whether the Defendant lawfully took over possession of the Motor Vehicle at the time the Plaintiff lefts its employment.
4. What remedies and reliefs are available to the Plaintiff.

Issue No. 1. Whether the Plaintiff was summarily dismissal or whether he resigned.

The Plaintiff in his testimony stated that he formally resigned from the Defendant Company on 14th November 2001. That he handed a resignation letter, exhibit P3, to the Defendant's Manager Human Resources who verbally accepted it. That he also handed other a handover report, keys of the Defendants house he was occupying at the time and the Company documents which were then in his possession. The letter is referenced "*Resignation from work as Retail Sales Executive*" and in part states:

"I humbly wish to submit my resignation letter from duty as a Caltex Sales Executive effective today Wednesday 14th Nov. 2001."

On behalf of the Defendant Company Kenneth Byangwa, DW1, a Lubricants Marketing Executive with the Defendant Company, testified that at the material time the Plaintiff was the Defendants Marketing Executive in charge of retail operations Eastern Uganda, a fact admitted by the Plaintiff. That sometime in November 2001 he travelled to Soroti to investigate fuel dumping at the Defendant's stations in the region. The witness explained that the activity by which fuel belonging to another Company is off-loaded at a station belonging to the Defendant is termed "*dumping*" That in Soroti he found a truck not belonging to the Defendant dumping fuel at the Defendant's station.

DW2, Russell Moro, a Legal Officer with the Defendant Company, testified that sometime on 14th November 2001 he attended a meeting, also attended by the Company's General Manager, Retail Marketing Manager, Sales Executive, Ag. Manager Human Resources and one Julius Okeny a Retailer Soroti Service Station. Minutes of the meeting were tendered as exhibit D16. That at the meeting Julius Okeny regretted the dumping incident and informed the meeting that the Plaintiff had introduced the idea to him. That when the Plaintiff was called to defend himself he admitted that he

had assisted the dealer only once but that he had not expected the dealer to continue with the practice. That the meeting resolved to dismiss the Plaintiff. DW3 Rachael Mirembe Namale, the current acting Human Resource Manager of the Defendant, testified that she is in possession of the Plaintiffs personal file on which is a letter of dismissal. She stated that there was no record on the file to show that the Plaintiff had tendered in his resignation.

The Plaintiff on the other hand denied ever having been dismissed. He testified that he got to know about the said letter of dismissal six months after his resignation and after instituting this suit when his lawyer showed a copy of it to him. He denied having appeared before any Disciplinary Committee and denied any involvement in illegal fuel transactions.

Mr. Kihika submitted that from the testimonies of the Defendant's witnesses and taking into account the conduct and character of the Plaintiff as seen in exhibits D9 to D11 there was no doubt that the Plaintiff was dismissed from his employment as evidenced by the letter of dismissal (exhibit D1) as he had been in breach of the Defendant's Code of Conduct and Staff regulation manual which he had pledged to abide by. He referred to exhibits D13 and D7. Counsel cited **Eletu Vs. Uganda Airlines Corporation [1984] HCB 39** where it was held that: -

“Summary dismissal is dismissal without notice. At common law to justify such dismissal the breach of duty must be a serious one, a breaching amounting in effect to repudiation by the servant of his obligation under the contract of employment such as disobedience of lawful orders, misconduct, drunkenness.... In summary dismissal the employer gives no notice but in termination he must give notice or pay in lieu of such notice”.

Exhibit D1 the letter of dismissal dated 14th November 2001 states:

“Mr. Byaruhaga.

Re: Dismissal.

Reference made to the meeting held today 14th November 2001 in the COU. Boardroom.

As you are aware the incident that took place at Soroti service station on 13th November 2001 in which Mr. Julius Okeny the dealer of the said station was caught in the act of dumping product into the station. Your role as the Sales Executive was to ensure that this practice is eliminated. Instead, by your own admission, you tried to protect the parties that were involved in the malpractice.

You also admitted having assisted the dealer to dump product at Katakwi service station on a different occasion. You obviously acted with intent to defraud the Company

from personal gain, which is contrary to the Company's Standards of Business Conduct and a breach of the terms and conditions of your employment.

You are with immediate effect dismissed from the service of Caltex Oil Uganda Ltd."

Both the Plaintiff's letter of resignation, Exhibit P3 and the Defendant's letter of dismissal exhibit, D1, are dated 14th Nov. 2001. Under the Caltex Oil (Uganda) Limited Staff Regulations Manual - Exhibit D7 - at page 26 the following types of terminations are listed:

- (a) Retirement.
- (b) Death
- (c) Resignation
- (d) Dismissal for cause.
- (e) Physical Disability.
- (f) Lack of work
- (g) Reduction in force and other reasons.

Relevant in the instant case is resignation or dismissal. The issue is by which mode of the two was the Plaintiff's employment terminated.

It is trite or burden of proof that he who alleges or asserts facts has a burden to prove them. See sections 101 - 103 Evidence Act. The Plaintiff wants this court to find that he resigned from

his employment with the defendant Company effective from 14th November 2001. Resignation is provided for at page 33 of Caltex Staff Regulations Manual, Exhibit D7, where it provides: -

“1. RESIGNATION.

- (a) *The Company is entitled to receive the necessary notice in writing as specified in these regulations, expiring on a date of the month of the employee’s intention to resign.*

- (b) *An employee who resigns should be requested to submit a letter of resignation. Regardless of whether a letter of resignation is received, a letter of acceptance of his written or verbal resignation should be promptly returned to the employee establishing the effective date of his termination, the date through which salary is to be paid, and any other pertinent condition or instructions.*

- (c) *The employee will normally be required to work out the period of his notice, except where a Manager considers that his continued presence may counter productive to the Company’s operations, in which case he may be paid up to the date on which his notice would terminate and released immediately.*

- (d) *.....”*

The Plaintiff had served the Company from 1st January 1999 to 14th November 2001 when his employment with the Defendant was terminated. That is a period of two years, and half months. The Regulations at page 29 provided that notice of termination on either side will be fifteen days if the service has lasted at least twelve months but less than three years. On acceptance of the resignation the regulations provides that prior approval of the appropriate company executive must be obtained before an employee can be released.

The Plaintiff's testimony is that on 14th November 2001 he handed his resignation letter to the Manager Human Resources who accepted it verbally and the Plaintiff left work and did not come back to work. His testimony shows that there was no fifteen-day's notice of his resignation given to the Defendant, there was no approval or written acceptance of the resignation by the Defendant. The Plaintiff was not released from employment upon resignation. The Plaintiff was bound by the Staff Regulations, which he failed to comply with while tendering his resignation. Therefore whether the Plaintiff is to be believed that he tendered resignation letter exhibit P3 to the Defendants Manager Human Resources or not, he has, on a balance of probabilities failed to prove that he complied with his employment terms and conditions relating to resignation. I accordingly find that the Plaintiffs employment with the

Defendant was not terminated by resignation. If the Plaintiff testimony is to be believed that he voluntarily left his employment with the Defendant Company then his conduct amounted to one thing - abscondment from duty.

On the other hand the Defendant wants this court to find that the Plaintiff's employment with the Defendant Company was terminated by summary dismissal on 14th November 2001. By exhibit D13 A the Plaintiff was given a copy of the Caltex Standards of Business Conduct Booklet, which he acknowledged receipt and undertook to comply with, vide exhibit D13 B. Exhibit D 14 is a February 2000 edition of the booklet, which at the bottom of its contents page states that all the previous publications of the Caltex Standards of Business Conduct were superseded by this booklet. On page 12 the book makes provision for conflicts of interest and states: -

“ Caltex requires that its employees not engage in or give the appearance of engaging in any activity involving any conflict or reasonably foreseeable conflict, between their personal interests and the interest of Caltex.”

Then it gives an illustrative list of examples of activities, which violate Caltex, Conflict of Interest Standards among, which is the following:-

“.....

- *A more than minimal financial interest in an organisation dealing or seeking to deal with Caltex as a supplier or customers or which is a competitor of Caltex.*
- *Directing any business or financial opportunity for personal gain or assisting or enabling others to do so, if it can be reasonably anticipated that Caltex would be interested in such opportunity.”*

The Defendant contends that the Plaintiff was engaged in activities, which were compromising the interests of the Defendant as his employer and for his personal gain which warranted disciplinary action. That a disciplinary action was taken as a result of which the applicant was summarily dismissed.

Regulation SR 300. 1 at page 23 of the Staff Regulations Manual spells out offences, which would render a member of Staff involved liable to disciplinary action including instant dismissal. Such offences include theft, fraud or dishonesty in connection with the Company’s business or property, misconduct and undeclared conflict of interest, among others. Regulation SR 300.2 requires that where disciplinary action has to be taken, the member of Staff concerned should be given a right to fair hearing. The decision to dismiss must be a Company decision made after consultation with the Human Resources Department. Under the Regulations dismissal can be resorted to where the member of Staff has committed a gross offence.

In the dismissal letter exhibit D1 the Plaintiff is accused of abating dumping at the service station operated by one Julius Okeny at Soroti, abating dumping at Katakwi service station and defrauding the Company for personal gain contrary to the Company's Standards of Business Conduct. Clearly the above accusations are activities, which would amount to conflict of interest provided for in the Caltex Standards of Business Conduct - Exhibit D14. This would be diverting the company's business for personal gain and/or assisting others to do so. Such would be offences under Regulation SR 300.1 of the Staff Regulations Manual and would render the Plaintiff liable to disciplinary action including dismissal.

To prove its case the Defendant company relied on the testimony of DW1 and DW2 and exhibits D9, D10, D11 and D16. It is both the Plaintiff's and the Defendants evidence that at all material times the Plaintiff was the defendant's Marketing/Sales Executive in charge of Retail Operations t/a Eastern Uganda which included the area from Jinja to Soroti and Katakwi.

DW1 Kenneth Byangwa testified that in November 2001 he found a truck not belonging to the Defendant dumping fuel in the Defendants station at Soroti. The fuel did not originate from the defendant. Clearly this amounted to diversion of the Defendants business and financial benefits. DW2 testified that

the incident was in a meeting held on 14th November 2001 admitted by Julius Okeny the Defendants operator of the station. That when the Plaintiff was called in the meeting and asked to defend himself he admitted once having assisted the dealer in the commission of the malpractice. In that meeting it was established that the Plaintiff had, by facilitating the dealer to dump fuel in the company station, defrauded the company. It was decided that the Plaintiff should be dismissed forthwith. That following that decision the Plaintiff was dismissed. This is reflected in minutes of the meeting held on 14th November 2001 - Exhibit D16. Raphael Mirembe Namale (DW3), the current Acting Human Resource Manager testified that records on the Plaintiffs file indicate that he was dismissed on 14th November 2001. The letter of dismissal was received in evidence as exhibit D1. The letter was dated 14th November 2001 and it stated that the Plaintiff was dismissed with immediate effect.

On the defence evidence outlined above I find that the Plaintiff was on 14th November 2001 dismissed from his employment with the Defendant. As to whether such dismissal was lawful or not was not an issue flamed for my determination and it was not addressed by the pleadings of any of the parties. In **Nairobi City Council Vs. Thabiti Enterprise Ltd [1995 - 1998] 2 EA 231,** it was held that a judge had no power or jurisdiction to decide an issue which had not be pleaded unless the pleadings were suitably amended. Also in **Galaxy Paint**

Co. Ltd Vs. Falcon Grounds Ltd [2000] 2 EA 385 it was held that the issue for determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issue arising from the pleadings or such issues as the parties framed for the Court determination. That unless pleadings were amended parties were confined to their pleading. A party is bound by his pleadings. I will therefore not venture into the legality of the dismissal. In final answer to the first issue my finding is that the Plaintiff was summarily dismissed from his employment with the Defendant.

Issue No: 2 Whether the Plaintiff was entitled to any benefits at the time he left the Defendants employment.

In paragraph 4 (b) of the Plaintiff it is pleaded that while in the employment of the Defendant, the Plaintiff was entitled to benefits and allowances.

In that regard the Plaintiff's prayer in the plaint is, inter alia, for an order directing the Defendant to compute the Plaintiff's salary arrears and terminal benefits and for an order directing the Defendant to compute the provident fund savings due to the Plaintiff and payment or refund of the same. In its written statement of defence the Defendant contended that upon dismissal the Plaintiff lost all rights to benefits.

In his testimony the Plaintiff stated that on his resignation he held a meeting with the Manager Human Resources and requested for payment of his salary for the month of his resignation, his monthly allowances and terminal benefits to be computed in accordance with the Caltex Staff Manual. That he had worked his out benefits with the Human Resources Manager, which had come up to

- ✓ Provident fund saving - Shs. 2,600,952/=
- ✓ Mileage claim - Shs. 1,552,200/=
- ✓ Terminal benefits to be determined by the company as aforestated. The benefits have never been paid.

Counsel for the Plaintiff submitted that the Plaintiff was entitled to benefits, terminal and Salary arrears. His submission was based on the contention that the Plaintiff had resigned. On the other hand counsel for the Defendant submitted that the Plaintiff was summarily dismissed and as such was not entitled to any benefits. Caltex oil (Uganda) Ltd Staff Regulations Manual at page 33 provides that in the case of resignation, a member of staff will received his accrued provident benefits as per rules of the fund,

NSSF benefits plus any accrued leave pay. I have already held that the Plaintiff was summarily dismissed; therefore he cannot recover under this provision.

Regarding the provident fund savings counsel for the Defendant submitted that the Plaintiff is not entitled to the contributions

made because he was in breach of rule 19 of the provident funds rule. Exhibit D8 is a bundle of documents which include a Memorandum addressed to the Plaintiff, the Fund Designation of Beneficiary Form whereby the Plaintiff applied for membership, the Fund Trustee Deed and a schedule of the Fund Rules. These documents show that the plaintiff was a member of the Provident Fund. The fund is managed by a board of trustees. Member's contributions to the fund are equal to 5% or 10% of his monthly salary deductible by the Company from his salary and paid to the Trustees. The Plaintiff had opted to contribute 10%. Each month during the period of the fund the Company contributes to the fund for the credit of each member an amount equal to that contributed by the member. Rule 12 of the Provident Fund Rules provides:

"12 Payments of benefits with respect to a member under this Fund shall be made only in the event of discontinuance of his membership in accordance with Rule 4 hereof...."

Rules 4 provides: -

"Membership in the Fund shall continue until the member dies, becomes permanently and totally disabled, ceases to be an employee, suspends his contributions to the Fund under Rule 25 hereof, or is subject of forfeiture under Rule 20 but in no event beyond the last day of the calendar

month in which the member attains the age of fifty five (55)..."

Relevant in the instant case is that the Plaintiff had ceased to be an employee of the company. The rule does not make any distinction as to the manner in which the member ceases to be an employee. However rule 19 entitled "*Dishonesty - Limitation of Benefits*" provides: -

"Anything herein to the contrary notwithstanding, and regardless of the member's length of continuous service if the company shall establish to the satisfaction of the Trustees that a member has committed a dishonest act thereby causing any loss or expense to the company all his rights to any benefits whatsoever from the company's contributions to its account shall thereafter terminate and such contributions shall in the first place be used to make good such loss or expense and the balance shall be forfeited to the fund."

For a member to lose his benefits under the above rule it is mandatory that the company must establish to the satisfaction of the Trustees one that a member has committed a dishonest act, and two that he has thereby caused any loss or expense to the Company. There is no evidence that the company did so satisfy the Trustees. Secondly where the Trustees have been so

satisfied the member only loses his rights to benefits from the Company's contributions and not his personal contributions.

Pursuant to Rules 4 and 12 read together the Plaintiff benefits under the Fund became payable when he was dismissed. Rule 17 requires the benefits when they became payable to be made as promptly as possible. Rule 13 provides for the mode of computation of amounts payable to a member under the Fund. It is the Plaintiff's prayer that an order is made directing the Defendant to compute the provident fund savings due to the Plaintiff coupled with an order for its refund. In view of my finding above, the Plaintiff is entitled to his benefits under the provident fund.

Regarding salary arrears and retirement benefits, in **Eletu -Vs- Uganda Airline Corporation [1984] HCB 39** it was held that it is trite that salary and other terminal benefits should be claimed by way of special damages which must be pleaded and strictly proved. Therefore, there should have been a separate sub-heading particularising the special damages in the plaint. In paragraph 4 (l) it is pleaded that at the time of the Plaintiff's resignation (termination of service with the Defendant), the Plaintiff was not paid his salary for the days worked and terminal benefits. And prayer (e) is for an order directing the Defendant to compute the Plaintiff's salary arrears and terminal benefits coupled with an order for payment of the same.

The plaint is short of particularising the Plaintiff's claim for salary arrears and retirement benefit. Further the Plaintiff did not adduce any evidence to show how much he had earned by way of monthly salary and unpaid by the termination of his services. No evidence as to the benefits he was entitled to or termination of service or how much he was entitled under that head. Counsel for the Plaintiff submitted that the Plaintiff did not particularise the benefits and salary arrears as special damages because a reconciliation of accounts was in the circumstance required to be done by the Defendant and be analysed by the Plaintiff. With due respect I do not agree. An employees salary and retirement benefits are always within the employee's terms and conditions of employment communicated on employment and changes therein are normally communicated to the employee. Therefore the employee's salary and retirement benefit's would always be within his knowledge.

A dismissed employee is only entitled to recover arrears of salaries due to him and benefits that have accrued for the completed period of service. See **Elizabeth Imagara & 2 others -Vs- AG. High Court C.S No. 64 of 1993 (High Court Judgment Vol. 3 Civil page 91)**. Such would be accrued earnings or benefits but none was pleaded or proved in the instant case. I accordingly find that the Plaintiffs claim for salary arrears and retirement benefits fails.

Issue No. 3 whether the Defendant lawfully took over possession of the Motor Vehicle at the time the Plaintiff left its employment.

It was an agreed fact that while in the Defendants employment, the Plaintiff was entitled to acquire and did acquire a Motor Vehicle Toyota Camry Registration No. UAA 200U under the Caltex Staff Loan's Scheme pursuant to a Chattel Mortgage Deed dated 1st October 1999 (Exhibit P1). It was further agreed that upon the Plaintiffs leaving employment the Defendant took possession of the said vehicle.

Under the Chattel Mortgage the Defendant provided a guarantee to M/s Barclays Bank of Uganda for the repayment of loan advanced to the Plaintiff for the purchase of the motor vehicle plus interest thereon. The Plaintiff under the Chattel Mortgage agreed to provide by way of security for the repayment of all rentals together with interests, costs and expenses the said motor vehicle. Of particular importance to this case the Chattel Mortgage provided: -

"3.1 It shall be lawful for Caltex...to enter onto any premises on which the Chattel is....and seize or take possession of the same and on expiration of fourteen (14) days from the date of such seizure or taking possession to sell it either by public auction or private treaty without recourse to court..."

- 3.2 *Until the Mortgagor makes default in the payment of any monies hereby secured....or until the Mortgagor leaves Caltex's employment..., the Mortgagor may retain possession and use of the property herein assigned.*
- 3.3 *If at any time during the continuance of this instrument default is made by the Mortgagor in payment of any instalment of principal on the day when the same ought to be paid according to the terms thereof or...then and in every such case Caltex or its agents may immediately thereupon or at any time thereafter without any previous or further notice or concurrence or the part of the Mortgagor and notwithstanding any subsequent acceptance of any payment of principal money or interest due or this security enter upon any lands or premises whereon the Chattel for the time being may be and take possession thereof and sell or dispose of the same by private sale or public auction....*

Any deficiency between the aforesaid purchase price and the sum due to Caltex hereunder at the time of such sale together with all expenses pertaining to the same shall be made good by the Mortgagor and be recoverable by Caltex as liquidated damages but

any excess to the aforesaid shall belong to the Mortgagor”

The Plaintiff testified that on leaving employment he was required to park the vehicle at the Defendant’s premises and surrender the keys until he had settled the balance outstanding on the Car Loan Scheme. That on 20th November 2001 the Plaintiff held a meeting with the Defendant’s Human Resource Manager in which the outstanding balance was calculated to be Shs. 5,000,000/= . That armed with cash in the said sum, the Plaintiff went to the Human Resource Manager for a clearance to enable him pay the money to the cashier. It was then that the Human Resource Manager told the Plaintiff that she had instructions not to hand back the Car and she refused to accept the money.

In its written statement of defence the Defendant stated that at the termination of the Plaintiffs employment the Plaintiff owed a sum of Shs. 10,034,275/= under the Car Loan Scheme. Exhibit D4 a fax dated 11th December 2001 from Barclays Bank to the Defendants Human Resource Manager shows that the Plaintiffs loan was outstanding in the above figure. The Plaintiff, in his reply to the Defendant’s written statement of defence paragraph 3, detailed out deposits made on the loan account deducted directly for his salary by the Defendant and indicated the

total balance due, interest inclusive, to be Shs. 10,034,275/= as at 14th November 2001. It is trite that a party is bound by his pleadings. I accordingly find that at the termination of the Plaintiff employment there was an outstanding balance due under the Car Loan Scheme in the sum of Shs. 10,034,275/=.

The Plaintiff, as shown by Exhibit P5, was the registered owner of the Motor Vehicle. As such, under section 30 of the Traffic and Road Safety Act, Cap 361, the Plaintiff is the presumed owner of the vehicle unless a contrary is proved. However under the Chattel Mortgage, the Defendant Company had a lien on the vehicle until the Plaintiff had paid all the moneys due under the mortgage, reference is made to clause 3.5 of the Chattel Mortgage Deed (Exhibit P1). Pursuant to clause 3.2 of the Chattel Mortgage the Plaintiff on leaving the Defendant's employment lost his right to retain possession and use of the motor vehicle since there were outstanding payments on the loan.

The Plaintiff in his testimony argued that there was a car maintenance scheme under which 15% of his monthly salary was deducted and retained by the Defendant. That on that account he had accumulated savings amounting to Shs. 4,713,771/=. He contended that this money was his, held by the Defendant entrust for him. The Plaintiff testified that in the

discussions with the Human Resource Manager that the above figure was to be offset from the loan balance which would reduce the balance due to Shs. 5,320,504/=. The existence of this scheme was not denied by the Defendant. The Defendants only pleading with regard to this scheme was that the Plaintiff was not entitled to make payment by way of setoff under the terms of the Chattel Mortgage. The Defendant relied on clause 2.11 (a) of the Chattel Mortgage as reflected in Plaintiff cross-examination. The clause provided: -

“All existing and future claims and rights to setoff by the Mortgagor against moneys payable under this instruct are hereby waived...”

Clearly pursuant to the above provision the Plaintiffs claim under the car maintenance scheme could not be setoff by the Plaintiff against the money that was outstanding under the loan.

That being that it is not disputed that the Plaintiff is entitled to his savings under the car maintenance scheme. The Plaintiffs evidence in this regard was not challenged. In **Uganda Revenue Authority -Vs- Stephen Mabosi - SCCA No. 26 of 1995 and James Serubiri & Fred Musisi - Vs - Uganda, Criminal Appeal No. 5 of 1990**, the holdings were to the effect that an omission or neglect to challenge the evidence in - chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted. The

Plaintiff was only challenged on how he arrived at the figure of Shs. 4,713,771/= which he claimed had accumulated in his favour under the scheme. The Plaintiff did not produce in evidence the monthly pay slips or the Account allegedly maintained with the Defendant. Therefore the Plaintiff has failed to prove the sum Shs. 4,713,771/= as the amount which had accumulated on his account under the car maintenance scheme.

The Plaintiff testified about other claims, which he contended should have been used to offset his indebtedness under the car loan. In paragraph 4(g) of the plaint it was pleaded that the Defendant had made erroneous debits on the Plaintiffs personal account with the Defendant Company. In paragraph 5 of his reply to the written statement of defence and in his testimony the Plaintiff listed various entries on his personal account, which he claimed had been erroneously debited thereon. He argued that due to the erroneous debits entries the Defendant Company had claim that the Plaintiff owes it a total sum of Shs. 11,709,198/03. He stated that, to the contrary, he owes the Defendant Company only a sum of Shs 2,140,597/=. He contended that the difference between the two figures, which is Shs. 9,568,599/03, was erroneous. He prayed of an order that the Defendant should write off the erroneous debits of Shs. 9,568,599/03, setoff the sum of Shs. 2,140,597/= admitted by the Plaintiff as his true indebtedness to the Defendant from the funds owed by the Defendant to him. From the balance due to

him setoff the amount due to the Bank under the car loan scheme and release the car to him.

Among his claims due from Defendant Company the Plaintiff claimed that he was entitled to a mileage on the use of his car. That for the month of November he was entitled to Shs. 1,552,200/= and had filed in itinerary sheets which he stated were in the possession of the Defendant. The Plaintiff did not adduce any evidence to prove the entitlement to mileage claims. No evidence of the unpaid itinerancy sheets was adduced. Though the sheets were stated to be in the possession of the Defendant the Plaintiff was free to utilise Order 10 of the Civil Procedure Rules, which was not done.

In his reply to the Written Statement of Defence the Plaintiff among the erroneous debit entries listed is a sum of Shs. 4,357,094/= which the Plaintiff testified had been written off by the Defendant for the period 1999 - 2001 for all cars acquired under the car loan scheme. The Plaintiff testified that he had ascertained the figure from a letter dated 13th August 2001 - exhibit D15. By that letter the Plaintiff was informed that he owed the Defendant Company an outstanding balance on the car insurance in a total sum of Shs.4, 357,094/=. The amount was deductible effective August 1st, 2001 in 36 equal monthly instalments of Shs. 121,030/= until the amount was fully recovered. The Plaintiff however claimed that he was entitled to a rebate in the above sum. He testified that by a

communication dated 20th March 2002 all the insurance monies recoverable on vehicles acquired by staff under the car loan scheme were written off by the Defendant Company. The evidence shows that the above sum had accrued before the Plaintiff had left the Defendant's employment. The alleged communication of the rebate of 28th March 2002, which was itself after the departure of the Plaintiff, was not exhibited in court. The Plaintiff has thereby failed to prove that he was a beneficiary to the rebate allegedly communication on 28th March 2002, if at it was there.

In his testimony the Plaintiff also claimed a sum of Shs. 4,086,452/= which he stated had been erroneously debited on his account as excess phone bills. The excess phone bills would be set off from his allowances. He stated that by the time he left the company he had no excess phone bills but was surprised when he discovered in 2003 that the company continued to debit his account with telephone bills for the periods covering even years after he had left the Company. However no record of such debits of excess telephone bills were exhibited in court and it was not claimed in any of the Plaintiffs pleadings.

With regard to the other debits claimed in paragraph 5 of the Plaintiff's reply to the written statement of defence as erroneously made on his personal account with the Defendant

no evidence was adduced to prove the debits. The Plaintiff's personal account was not produced in evidence.

My finding above notwithstanding, pursuant to clause 2.11 (c) of the chattel mortgage the Plaintiffs claims as outlined above even if proved could not be set off by the Plaintiff against the money that was outstanding under the Car Loan Scheme. That takes me back to the main issue whether the Defendant lawfully took over possession of the Motor Vehicle at the time the Plaintiff left its employment. As I have already found, hereinabove, both in his Reply to the Written Statement of Defence and in his testimony during cross-examination, the Plaintiff admits that the outstanding balance due to Barclays Bank under the Car Loan Scheme was Shs. 10,034,275/= as at the termination of his employment. Pursuant to clause 3.2 of the Chattel Mortgage the Plaintiff on leaving the Defendants employment lost his right to retain possession and use of the Motor Vehicle. In default of payment the Defendant Company is by clause 3.3 empowered to take possession of the Mortgage Chattel, in the instant case the vehicle. However having taken possession the company was supposed on the expiry of 14 days for taking possession to sale or dispose of the vehicle by private sale or public auction. The proceeds are to be employed to settle the balance due to the Defendant under the Mortgage and the seizure or disposal expenses, then the balance is passed over to the Mortgagor, in the instant case the Plaintiff.

The fax dated 11th December 2001 from Barclays Bank to the Human Resources Manager (Exhibit D4) showed that the Plaintiffs Car Loan was outstanding in the total sum of Shs. 10,034,275/=. The letter exhibit D3 dated 10th December 2001 shows that by cheque No. 506193 the Defendant paid the above sum to Barclays Bank in settlement of the account balance and accrued interest on the Plaintiff's Loan. The Motor Vehicle inspection/valuation report dated 11th December 2001 - Exhibit D6 - shows that the Motor Vehicle market value was put at Shs. 7,300,000/= by **M/s Kavuma & Advocates.** By a memorandum dated 18th December 2001 - exhibit D5 - the Defendant offered to sale the Motor Vehicle to on Joseph Bukenya at Shs. 8,667,138/= again under the Car Loan Scheme. This offer was accepted by the said Joseph Bukenya on 20th December 2001. The above evidence shows at the provisions of the Chattel Mortgage on seizure of the Mortgaged property were complied with by the Defendant Company. I accordingly find that the Defendant lawfully took possession of the Motor Vehicle.

Lastly is the issue of remedies and reliefs available to the Plaintiff. In making my final order I am guided by my findings and decisions made herein above and section 98 of the Civil Procedure Act, which grants this court inherit powers to make such orders as may be necessary for the ends of justice or to

prevent abuse of the process of court. Below are my final findings and orders:

1. The Plaintiff was on 14th November 2001 summarily dismissed from the Defendant Company's employment.
2. The Plaintiff is entitled to payment of his benefits under the Provident Fund Savings. It is accordingly ordered that the Defendant do cause the Plaintiff's benefits under the fund to be computed and paid to the Plaintiff.
3. The Plaintiffs claim for salary arrears and terminal benefits was neither specifically pleaded nor strictly proved. It accordingly fails.
4. The Plaintiffs Savings under the Car Maintenance Scheme was Plaintiff's money held by the Defendant in trust for the Plaintiff. The Plaintiff is entitled to recover his savings under the scheme. I accordingly order the Defendant do compute the Plaintiffs savings under the scheme up to the date of termination of his employment and pay the same to the Plaintiff.
5. Pursuant to the provisions of the Chattel Mortgage between the Plaintiff and the Defendant Company dated 1st April 1999 and binding on both parties the Defendant Company lawfully took over possession of

the Motor Vehicle at the time the Plaintiff left its employment, and lawfully sold or disposed of it. Consequently the Plaintiffs prayers relating thereto fail.

The Plaintiff had in his pleadings prayed for general damages. Unfortunately the issue of general damages was, throughout the Plaintiffs testimony and in his counsel's submissions abandoned. In the circumstances I make no award under this head.

The Plaintiff's suit has partial succeeded and partially failed. In view thereof the Plaintiff is awarded 50% of the costs of this suit.

I so order.

Lameck N. Mukasa

JUDGE

5/05/06