

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CC-CS-208 OF 2002**

**TOMMY OTTO =====PLAINTIFF
VERSUS
UGANDA WILDLIFE AUTHORITY =====DEFENDANT**

BEFORE: HON. JUSTICE LAMECK N. MUKASA

JUDGMENT

The Plaintiff Tommy Joe Otto brought this suit against Uganda Wildlife Authority seeking general and special damages for wrongful dismissal, payment in lieu of notice, re-statement and costs. The brief facts are that sometime in November 2001 an anonymous letter was written threatening the park management of Mt. Elgon National Park of the Defendant. On 12th November 2001 the Plaintiff was suspended pending investigations as to the author of the letter. On 3rd December 2001 the Plaintiff was dismissed for authorship of the anonymous letter. The Plaintiff contends that the dismissal was wrongful thus this suit. The Defendant's case is that the dismissal was based upon a laboratory report ref. No. 5246 dated 26th November 2001, which showed that it was the Plaintiff who authored the anonymous letter and that in doing so, the Plaintiff had done breach of duty which led to his dismissal.

The following facts were agreed upon by the parties: -

1. The Plaintiff was an employee of the Defendant until 3rd December 2001.
2. On 12th November 2001 the Plaintiff was suspended from duty by the Defendant.
3. On 3rd December 2001 the Plaintiff was dismissed from the Defendants employed.

The following issues were agreed for the court's determination:-

1. Whether the Plaintiff's dismissal was unlawful?

2. If so, whether the Plaintiff is entitled to re-instatement?
3. Whether the Plaintiff is entitled to the other remedies claimed?

The first issue is **whether the Plaintiffs dismissal was unlawful?** The Plaintiff in his testimony stated that on 1st October 2001 he was called to the Chief warden's Office where the Chief warden showed him an anonymous letter and told him that the letter had been written by him. The Chief Warden read out the letter to the Plaintiff in the presence of the accountant Steven Kalenzi, Junior Warden – Law Enforcement Katamiggwa Wilson and Warden Community Conservation Kato Stonewall. The Plaintiff was later, on the same day, given a letter instructing him to go on leave pending investigations. The Plaintiff being a senior staff disputed the Chief Warden's Authority to send him on leave. The Plaintiff communicated with the Headquarters where he was advised either to stay at work or go on leave. The Plaintiff opted to go on normal leave, which started on 12th October 2001. When he reported back for duty the Plaintiff was served with a suspension letter dated 12th November 2001 – exhibit P1. In that letter the Plaintiff was suspended from duty until otherwise informed. On 3rd December 2001 the Plaintiff was handed a letter – exhibit P2 – which stated:-

“...you have been dismissed from Uganda Wildlife Authority (UWA) service with effect from 3rd December 2001 and with loss of all your terminal benefits.”

In the dismissal letter it was stated that the Plaintiff was the Chief suspect in the authorship of an anonymous letter that had been written threatening the Park management. That a request was sought from the Government Analyst to determine whether or not the questioned handwriting on the envelope and anonymous letter were written by the author of the specimens given, which were of the Plaintiffs own handwriting. That the Government Analyst in his report had found that there was strong evidence that the author of the specimens wrote the questioned anonymous letter. That the report had been discussed by the Top Management meeting of December 3, 2001 and had decided to summarily dismiss the Plaintiff. The report was by A.M Ntairwa a Government Analyst and marked Lab. No: 52462 received as exhibit P3.

The Plaintiff contended that he was neither given a complaint of his alleged misconduct, he was not given any report on the investigations carried out prior to his dismissal and was not called by the Defendant's Board of Trustees or the Executive to answer any charges.

The Plaintiff testified that he was on 5th December 2001 informed by Rev. Engola Etwal, the chairman of the Board of Trustees, that the Board's term of office had expired. He was advised to report to the I.G.G. Following investigations initiated by the I.G.G another report, dated 17th April 2002 signed by Ezali Samuel (PW2), a Forensic Examiner of Questioned Documents was made – exhibit P5. The Plaintiff contended that the Report – exhibit P5 – cleared him from the authorship of the anonymous letter.

Mr. Mulooba, counsel for the Defendant had at the hearing objected to the Report by Ezali Samuel (PW2) being received in evidence. His objection was over ruled and the Report was received as Exhibit P5. I promised to give detailed reasons in the judgment, which I now proved to give. The report was tendered in evidence by its author Ezali Samuel. Among the documents listed by the Plaintiff to be relied upon were contradictory reports from the government analyst. The list was filed together with the plaint as required by order 6 rule 1 (b) of the Civil Procedure Rules. At the scheduling conference counsel for the Plaintiff indicated that he was to rely on the documents as listed in the Plaintiffs list of documents. Therefore there was no question of the Defendant being ambushed by tendering the report in evidence.

PW2 clarified that the Report Exhibit P5 was marked “*Lab No. 5246 - re examination*” because it was a re-examination of the same documents, which had been earlier examined under the same Lab. Number by his colleague Apollo Ntarirwa. The witness further stated that they were three Analysis's in the office, namely himself, Apollo Ntarirwa and Olanya Joseph. That the witness as in charge questioned documents, caused Olanya Joseph also to make an independent examination of the same documents. After studying Olanya Joseph's report the witness wrote a letter exhibit P4 (ii) to the Inspector General of Police. In that letter the witness stated that the position of the lab was that the person whose specimen writings was submitted did not write the questioned anonymous letter.

Olanya Joseph Okwanya testified that he had examined the same documents and made a Report Lab. No. 5246 – Re- submission dated 18th April 2002 and received in evidence as exhibit P7. The witnesses' opinion was also that the author of the sample handwritings did not write the questioned anonymous letter.

The defence witness Byakika Eseza Catherine, who was the Defendant's Training Manager at the material time, testified that the Plaintiff had been dismissed by the Management

Committee on the basis of the Report of the Handwriting Expert. The witness identified Exhibit P3 as the report. The witness stated that the threat in the anonymous letter amounted to gross misconduct, which would result into instant dismissal of the author without notice and without any entitlement to a hearing or benefits. The witness stated that in the letter the author was threatening to kill his bosses. That such threats being made by a person who is by the nature of his employment armed with a gun were taken seriously and the continued employment in the UWA of such a person was considered dangerous. The witness further testified that as an Assistant Warden the Plaintiff was at junior level and the junior staff are disciplined by the Management unlike the Senior Staff who are disciplined by the Board of Trustees. However on being shown the Plaintiffs Identity Card – exhibit P8 – in cross – examination, the witness admitted that the Plaintiff was a Warden Community Conservation and that as a Warden was a Senior Officer. The witness also tendered in evidence the Terms and Conditions of Service of Senior Officer of Uganda Wildlife Authority received as exhibit P9.

In his submission Mr. Alenyo, counsel for the Plaintiff contended that the Plaintiff was denied his Constitutional right to be heard. He referred to Articles 20 (2) and 44 (c) of the Constitution. He therefore submitted that such dismissal without the Plaintiff being heard was unlawful. On the other hand Mr. Mulooba, for the Defendant, submitted that it is settled law that where the employee is guilty of sufficient misconduct in his capacity as an employee, he may be dismissed summarily without notice. That it has been established that misconduct means “*bad, improper or unprofessional behaviour*”. That it has also been decided that unsatisfactory conduct is the same as misconduct. He cited the case of **Barclays Bank (U) Ltd vs. Godfrey Mubiru SCC.A No. 1 of 1998**. He argued that the Plaintiff was guilty of misconduct and was justifiably summarily dismissed.

Article 44 of the constitution provides: -

“44. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-

...

(c) The right to fair hearing;

While Article 20(2) provides: -

“(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected upheld and promoted by all organs and agencies of Government and by all persons”.

The Plaintiff, as any other individual, has an inherent right to a fair hearing and the Defendant has a constitutional duty to respect, uphold and promote that right.

However in **Eletu .vs. Uganda Airlines Corporation [1984] HCB 39** Manyindo J, as he then 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 breach amounting in effect to a repudiation by the servant of his obligation under the contract of employment such as disobedience of lawful orders, misconduct, drunkenness, immorality, assaulting fellow workers, incompetence and neglect. In summary dismissal the employer gives no notice but in termination he must give notice or pay in lieu of notice.

The holding in the above case was cited with approval by Tsekooko, JSC in **Barclays Bank of Uganda Ltd. vs. Godfrey Mubiru** (supra) where the learned judge stated: -

“... I understand dismissal without notice or summary dismissal to mean that the respondent could be dismissed without being heard if he breached the contract conditions, or if he was found guilty of unsatisfactory conduct... I therefore do not...accept the conclusions of the learned judge...that the appellant could not dismiss the Respondent before hearing the Respondent.”

Also Kanyehamba, JSC, in his judgment, in the above case, stated; -

“It follows of course, that summary dismissal is without notice and dismissal without notice also implies dismissal without a right to be heard first.”

The Supreme Court is a court of record and its decisions are binding on this court. I must however observe that though the above Supreme Court case is of 1998 no consideration or reference was made to Articles 20 and 44 of the Constitution, which came into force in 1995. The rules of natural justice as stipulated in the provisions of the Constitution on the Bills of Rights was voiced by Ssekandi, Ag. J (as he then was) in **AM.Jabi. vs. Mbale Municipal Council [1975] HCB 190** when he held that it was a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving breach of disciplinary regulation or of misconduct. An employee on permanent terms was entitled to know the charges against him and to be given an opportunity to give any grounds on which he relied on exculpate himself. Where that was not done, it could properly be said that the dismissal was wrongful.

It is the Defendants contention that the Plaintiff was summarily dismissed for gross misconduct and not entitled to notice or to a right to be heard. The above notwithstanding, in summary dismissal court is required to investigate whether the circumstances of the alleged misconduct justified a Summary Dismissal.

In **Barclays Bank of Uganda Ltd. vs. Godfrey Mubiru (supra)** Tsekoko JSC referred to Chitty on Contracts 26th Ed Vol 2 at page 824 para 3973 where under the heading MISCONDUCT the book states: -

“Where the employee is guilty of sufficient misconduct in his capacity as an employee, he may be dismissed summarily without notice and before the expiration of a fixed period of employment.”

The learned Judge also quoted from the Oxford Dictionary 1994 Ed, which defines misconduct to mean: -

“Bad, improper or unprofessional behaviour”.

Then the judge went on to hold: -

“I am satisfied that ---- the Respondent was liable to summary dismissal if the appellant established unsatisfactory conduct which to me is the same thing as misconduct.”

And in **Eletu .vs. Uganda Airline corporation** (supra) it was held that whether mere negligence is sufficient to justify dismissal is a question of fact and degree. In that case court held that summary dismissal was unjustified.

In the instant case Byakika Eseza Catherine (DW1) testified that the Plaintiff was dismissed on the basis of the Handwriting Experts Report wherein the Plaintiff was stated to be the author of an anonymous letter – exhibit D4. That as the author of the letter the Plaintiff was found guilty of gross misconduct in that he had threatened to kill his bosses. The letter was addressed to Mr. Katamagwa Wilson, Mr. Katto and Mr. Okonya James. While being cross-examined Byakika stated that the offending part of the letter was the part, which stated: -

“These people have collected money to hire gunmen to kill you. They have not ruled out even hiring your own rangers to shoot and kill you at short range.”

The witness said that this is the paragraph where the Plaintiff was threatening to kill the said three people.

DW2, Kato Stonewall, one of the addressees in the anonymous letter, while being cross – examined was asked about his opinion on the intentions of the author of the letter as could be derived for the last paragraph and the witness stated that the author was cautioning the addressees of the letter. The paragraph stated: -

“Be very careful and do not harass these people any more. They have brought outside boys but they will also use your own boys, ranger to kill you. Do not eat in any restaurant or drink freely.”

This witness in his evidence in Chief identified exhibit D1 as a letter written by District CID Officer Mbale to the Chief Park Warden Mt. Elgon National Park in respect to the anonymous letter. The letter in part stated: -

“ However, the contents do not constitute a criminal offence but rather the author is an inside informer who has received a well guided information as regards to your relationship with the encroachers who look unsatisfied with government decision to remove them from the gazetted areas. Such informants at times are useful. If they came out openly.

You therefore need to monitor the information and put everybody on immediate alertness and observation.”

I have personally carefully studied the anonymous letter and I have found that its author was describing himself as a concerned friend of the addressees. He was warning them of a plan being hashed by encroachers on the park to hire gunmen to kill them. The author cautioned them to check their movements, their eating and socialisation habits. The author could not give his name also for fear for his life. I find it unreasonable for the Defendants Management Committee to have interpreted such a humanitarian spirit exhibited by the author as an intention by the author to kill the addressees. The circumstances above did not justify a summary dismissal.

The terms and conditions of service of Senior Officers, exhibit P9, in the preamble stated: -

“1 (a) These terms and conditions of service shall apply to all Senior Staff of Uganda Wildlife Authority.”

“Senior Staff” was defined therein to “include all employees of the Uganda Wildlife Authority of the rank of Junior Warden and above.”

In his testimony the Plaintiff stated that he was employed as Junior Warden, Community Conservation. DW2, Kato Stonewall, a Senior Warden Community Conservation corroborated the Plaintiff’s testimony that at the time of his dismissal the Plaintiff was a Junior Warden Community conservation. While being cross-examined the witness confirmed that Terms and Conditions of Service similar to Exhibit P9 were in force in 2001 when the Plaintiff was dismissed. He stated that in November 2002 the Defendant published a new Human Resource Manual in which *“Senior Staff”* begins from *“Senior Warden”*.

DW1, Byakika Esaga Catherine testified that Junior Staff are disciplined by Management while Senior Staff are disciplined by the Board of Trustee. She however contracted herself on the rank of the Plaintiff and on the existence of the Terms and Conditions of Service. Her contractions were major and could not be disregarded since they concerned the core of the subject at issue. The issues were whether the Plaintiff was a Senior or Junior Staff of the Defendant and whether the Management Committee had the mandate to discipline him.

On termination section H of the Terms and Condition of Service states: -

“3 1(iv) the Board or Executive Director, may for a reason or reasons, considered in their sole and absolute discretion to be valid, dismiss an Officer – Such dismissal shall normally be proceeded by three written notices duly served on the officer. The three months notice does not apply to an officer on probation and shall not, however, prejudice instant dismissal of an officer who commits an offence which the Trustees, in their sole and absolute discretion consider to call for such action.”

Section D on disciplinary procedure provides: -

“21 (i) If a member of staff fails to comply with any of the provisions (of section B and C) of these terms and conditions of service he shall be liable for disciplinary action by Management or the Board.

(ii) If a member of staff is deemed to be guilty of misconduct specified in section D (i) above or any other form of misconduct, he shall be given a warning.”

The defence case is that the Plaintiff was found guilty of misconduct. But there is no evidence that he was given a warning, so the above provision was not complied with. The Plaintiff was subjected to what has been termed as “*instant dismissal*” under condition 31 (iv) above. However that is a privy of the Board of Trustees and not the Management Committee. Also condition 23 states that a member of staff may be suspended from duty pending investigation into the circumstances or cases leading to such suspension. That was the first step taken in the instant case. The condition further provides that should the staff be found guilty he will have his services terminated in a manner decided by the Board. Under the Terms and Conditions of Service the “Board” is defined to mean the Board of Trustees established under section 8(1) of the Uganda Wildlife statute, 1996. Therefore it was not the Management Committee of the Defendant.

On penalties condition 23(ii) provides: -

“Without prejudice to the above, the Board shall be entitled to immediately dismiss a member of Staff for gross misconduct.”

The above provisions show that under the Terms and Conditions of Service of Senior Officer, which were prevailing at the material time, it was only the Board of Trustees mandated to summarily dismiss a senior member of staff for gross misconduct. Therefore the Plaintiff’s summary dismissal by the Management Committee was unlawful. The Terms and Conditions of Service formed part of the contractual relationship between the Plaintiff and the Defendant; therefore the Defendant ought to have followed the procedure for dismissal as stipulated therein. See **Jabi .vs. Mbale Municipal Council (supra)** .

The Plaintiff’s dismissal was based on the Report by DW3, Apollo Mutashwera Ntarirwa. This witness in his testimony accepted to have written and signed two reports, that is Exhibits P3 and Exhibit P10 both dated 26th November 2001 and marked Lab No: 5246. In Exhibit P3 the witness wrote: -

“From the above, it is, in my opinion, highly probable that the writer of the specimens (TONNY J. OTTO) wrote the questioned handwritings on the anonymous letter.”

While in Exhibit P10 he wrote: -

“From the above, it is in my opinion, highly possible that the writer of the specimens (TONNY J. OTTO) wrote the questioned handwritings on the anonymous letter.”

(The underlining is mine). None of the two reports was a copy the other. So two independent reports were issued on the same matter by the same officer. When cross-examined about his use of the words the witness’ explanation was that he had used the word “probable” because the evidence before him was not conclusive. That if it had been conclusive he would have used the words like *“In my opinion he wrote it.”* In his view any body reading his report where he had used the words *“highly probable”* should have understood that he required more information to come to a conclusive opinion. The witness’ evidence shows that the Management Committee based its decision on a Report, which was not conclusive.

Considering all the above my finding on the first issue is that the Plaintiff was unlawfully summarily dismissed. That brings me to the second issue **whether in the circumstances the Plaintiff is entitled to re-instatement.** Mr. Alenyo, for the Plaintiff submitted that the decision to dismiss the Plaintiff was null and void, it was never, therefore the Plaintiff has a right to his employment. In most cases a dismissal of an employee is the end result of a strained relationship between the employer and his employee or boss. It is therefore fundamental that, before court can exercise its discretion to make an order of re-instatement on a finding of unlawful dismissal, it considers whether it is practicable for the employer to comply with the order. The industrial Court has a prime duty of protecting the rights of workers. Its view on re-statement was clearly stated in **ATGWU .VS. UTC LTD (I.C.C NO. 19 OF 1971** where the Respondent, UTC was found to have wrongfully dismissed two employees.

The Court observed: -

“As regards re-instatement, this court has stated time and again that it can not order re-instatement of any employee of any company even if he may be wrongfully dismissed. The only alternative remedy in such circumstances is to order payment of compensation.”

In **Jabi .vs. Mbale Municipal Council** (supra) the learned Judge held that where the dismissal was wrongful by whatever reason, the appropriate reparation for such dismissal was

compensation and not reinstatement on the job for an employer had an unfettered right to dispense with the services of his employee.

Considering all the above and the circumstances of the Plaintiff's dismissal I decline to make an order for re-instatement of the Plaintiff in his employment.

Lastly is the issue **whether the Plaintiff is entitled to the other remedies claimed.** In paragraph 3 of the Plaint it is pleaded that the Plaintiffs claim against the Defendant is for special and general damages for wrongful dismissal on the Defendant organisation. In paragraph 12 of the Plaint particulars of special damages are set down as follows: -

1. Accommodation since Oct. 2001 Feb. to 2002 - 7,500,000/=
2. Transport for 5 months since Oct. 01 to Feb. 02 - 1,500,000/=
3. Maintenance for 5 months since Oct. 01 to Feb. 02-11,000,000/=

There was no evidence adduced by the Plaintiff with regard to special damages. The law is that special damages must not only be specifically pleaded but must also be strictly proved. See **Kyambadde .vs. Mpigi District Administration [1983] HCB 44, Asuman Mutekanga .vs. Equator Growers (U) Ltd S.C.C.A No. 7 of 1995.**

The Plaintiff also prayed for general damages. In principle general damages are imposed or presumed to have accrued from a wrong complained of on account of the fact that they are its immediate, direct and proximate result. See **Davis Byamuhenga Vs Shiran KMD Ltd [1997] HCB 71.** In his submission counsel for the Plaintiff submitted that the negation of the Plaintiff's right to be heard is a grave constitutional breach and prayed for an award of Shs. 20,000,000/= as general damages. In **Eletu .Vs. Uganda the Airline Corporation [1974] HCB 41** it was held that damages for wrongful dismissal should normally be based on the wages which the employee would have received if a valid notice had been given to him or the date of dismissal, since he was entitled to be put in the same position as if the contract had been performed. In **Gulaballi Ushillan .Vs. Kampala Pharmaceuticals Ltd. SCCA No. 6 of 1998** Court made a distinction between a contract which makes no provision for termination prior to expiry of the fixed period and one in which there is a provision enabling either party to terminate the employment. It was held that in the event of wrongful termination by the employee, the employee in the former contract would be entitled to recover as damages the equivalent of remuneration for the balance of the contract period

whereas in the latter case, the wronged employee would be entitled to recover as damages the equivalent of recommendation for the period stipulated in the contract for notice. In the instant case the Terms and conditions of Service, Exhibit P9, provided that the Board or Executive Director may dismiss a Senior Staff by prior three month's written notice. Therefore the Plaintiff was entitled to three month's notice or payment in lieu of notice.

A dismissed employee is also entitled to recover arrears of salaries due to him and benefits that have accrued for the complete period of service. See **Elizabeth & other .vs. Attorney General HCCS No. 64 of 1993.** The evidence in this case is that the Plaintiff was on 12th November 2001 suspended on half pay until the 3rd December 2001 when he was dismissed. The Plaintiff is therefore entitled to the unpaid half of his salary for the period of suspension. He is also entitled to his salary for the period of three months being the period of notice he was entitled to. The Plaintiff is also entitled to the benefits that he was entitled to in the course of his employment for the notice period and the period while on suspension. Unfortunately no evidence was adduced as to the Plaintiff's salary or monthly allowances. As was observed by Justice Butagira in **Fulungensio Sernako vs. Edirisa Ssebugwano [1979] HCB 15** in an action for damages one of the duties of counsel should be to put before court material which would enable it to arrive at a reasonable figure by way of damages. In this respect counsel owes duty to their clients as well as to court to help in arriving at a reasonable award. No effort was made by counsel to discharge that duty. However section 98 of the Civil Procedure Act gives this court unlimited inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court. Further Article 126 (c) of the Constitution enjoins courts to ensure that adequate compensation is awarded to victims of wrongs. The Plaintiff is therefore awarded general damages for wrongful dismissal the measure of which shall be his monthly salary and allowances at the time of dismissal multiplied by three and half month being three months notice period he was entitled to and the half month's pay for the period of one month he was on suspension. The Plaintiff's general damage, as will be computed as above, will attract interest at the court rate from the date judgment until payment in full. He is also awarded costs of this suit.

Lameck N. Mukasa

JUDGE

17/05/06