

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**HCCS NO. 588 OF 2013**

**GATHAARA DAVIS:..... PLAINTIFF**

**VERSUS**

**MBEA BROKERAGE SERVICES LIMITED :.....DEFENDANT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

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

The Plaintiff Gathaara Davis sued the Defendant Mbea Brokerage Services Limited for recovery of UGX.80,473,500/= by way of unpaid salaries, reimbursement arrears and unpaid leave. He also prays for general damages for breach of contract; interest and costs of the suit. He further claims for UGX 20,880,000/= as NSSF Contribution and an order that Motor vehicle UAF 750X a Suzuki Model be transferred into his names.

The background to this suit is that the Plaintiff was an employee of the Defendant with a given monthly pay of UGX. 5, 800, 000/=. This contract was terminated when the Plaintiff gave a one month notice.

Prior to his resignation the Plaintiff had in January 2012 been transferred by the Defendant to her branch office in Kigali as Head of the Sales and Trading as well as being a Director. It's the Plaintiff's claim that while in Kigali the Defendant failed to pay him for the period of January 2012 to June 2012. He was denied leave for two years, his NSSF Contribution was never remitted though deducted and a motor vehicle that was supposed to be released to him was retained by the Defendant. He also claimed for reimbursement of money he spent on office running.

The foregoing he said led to his resignation and when the Defendant failed to address his claims, he brought this suit.

In its defence the Defendant contended that this suit was not necessary because if the Plaintiff had handed over formerly, the claims in the suit would have been resolved. As for reimbursement of money expended in the office running, the Defendant contended that it could not have arisen because it was company policy that employees would requisition for such things as stationary and other services which would be provided by the Defendant. That in any case what was required was reconciliation for the right position to be ascertained. That whether the Plaintiff was entitled to the motor vehicle would be resolved through reconciliation.

The Defendant denied ever stopping the Plaintiff from taking his leave.

By way of counterclaim, the Defendant, sought recovery of her property allegedly in the possession of the Plaintiff, it listed these as a Company Motor vehicle Nissan Blue Bird Reg UAJ 800J, laptop computers, Cellular Phones and others unnamed all worth UGX .74,575,783/=.

The Defendant also alleged that the Plaintiff was involved in fraudulent trading in breach of their agreement for which it prayed for damages, interest and costs. Special damages of UGX.74,575,783/= being value of Company property, interest and costs.

Issues for resolution were;

1. Whether the Plaintiff was entitled to salary and leave arrears?
2. Whether the Plaintiff was entitled to reimbursement of UGX. 23,548,000/=?
3. Whether the Plaintiff was involved in fraudulent trading?
4. Remedies.

I shall begin with the issue of leave arrears. From the evidence on record, the Defendant conceded that it was originally the Company staff policy to convert leave arrears to monthly terms. DW1 stated that this policy was found difficult to implement because it was not easy to ascertain the actual leave days taken. The Defendant contended that the policy was disposed off but there is nothing in writing to show so. On the 7<sup>th</sup> December 2012 the Plaintiff wrote to the Managing Director of the Defendant claiming among other things leave arrears, **ExhP2**. The Managing Director did not protest the claim.

On the 8<sup>th</sup> January 2013 the Managing Director wrote back to the Plaintiff and asked him about his activities in Rwanda, **ExhP3**. This is when he would have protested on the issue of leave arrears. He instead dealt on a proper handover. Since it is not in dispute that leave arrears were before this incident a component of the Defendant Policy, and there is no evidence that it was discarded, its court's finding that the leave arrears were available.

The Plaintiff stated that he had spent two years in Rwanda without leave and that he had accumulated UGX. 23,615,000/= as leave arrears. The fact that the Plaintiff did not take leave was not disputed and neither did the Defendant dispute the sum as claimed.

The sum total is that court finds that the Plaintiff was entitled to leave arrears of UGX 23,615,000/= which is awarded.

Turning to the salary arrears, the Plaintiff testified that between the months of January to November 2012 his salary was not paid save for a partial payment in November 2012.

The Defendant contended that the Plaintiff had been paid all the salary arrears. The Defendant's statement indicated that at one time they owed the Plaintiff salary in arrears. The Defendant however did not show proof of payment like a credit transfer into the Plaintiff's account or any acknowledgment of receipt by the Plaintiff.

Furthermore, the Defendant earlier stated in the pleadings that the right figures would be determined by reconciliation. On 26<sup>th</sup> May 2015 the court gave them time to reconcile the figures. The Defendants were not even in the time given able to come up with proof of payment. There is therefore no doubt that the Defendant owes the Plaintiff salary arrears as claimed. He is therefore awarded UGX. 33,284,000/= in salary arrears.

Turning to reimbursements of UGX 23,548,000/= as money spent on the activities of the Defendant, these were special damages which had to be clearly pleaded and strictly proved.

The particulars of these activities were not given nor proved with receipts or otherwise to support the claim. He did not state on what he spent the money. The stationary he mentioned was not supported by documents. In any case stationary alone could not have cost UGX 23,548,000/=. There is therefore no proof that the Plaintiff spent UGX 23,548,000/=. The claim is denied.

The Defendant claimed that the Plaintiff was involved in fraudulent trading. That he was working in another company which was in competition with the Defendant. That because of the fraudulent acts the Defendant had suffered damages which it claimed.

The Plaintiff denied the claim and contended that his involvement with the company was to make money for the Defendant and that he in fact got USD 60,000 from the Defendant. He further stated that he got directly involved with Baraka Capital Limited after he had resigned. The Defendants called Andrew Owiny who testified that the Plaintiff had been involved in Baraka Capital Limited. The Defendants however did not state when this happened.

In a document headed Defence by MBEA Uganda which was filed by the Defendant, it was clear that while the Defendant alleged that the Plaintiff had sent letters of invitation to some Europeans in the month of December in his capacity as Director of the Defendant Company Rwanda, these letters, or copies thereof were not availed to court. While the Defendant alleged that the Plaintiff issued cheques in the month of December on behalf of the Defendant, their stubs were not availed to court. There were allegations that he sent emails to MBEA Uganda as MBEA Rwanda Company Director in the month of December. With this the Defendants intended to prove that the month of December when he dealt with Baraka he was also Director in MBEA and therefore acted fraudulently. These emails were also not produced. On the contrary the Managing Director further strengthened the Plaintiff's case that by that time he no longer had anything to do with the Defendant.

**ExhP2** dated 7<sup>th</sup> December 2012 indicated that the issue of resignation had already been discussed between the Plaintiff and Defendant's Managing Director Andrew Owiny Managing Director DW1, it read in part;

*“as per our previous communication on the subject please find attached my official resignation”*

Resignation had been discussed as early as 21st November 2012. The Plaintiff wrote to DW1 on the issue of resignation;

*“My resignation letter addressed to you was ready a long time ago and I will send it to you in the next 48 hours.”*

The mail also shows that they had discussed it 10 days earlier. On November 26<sup>th</sup> 2012 DW1 thanked the Plaintiff for the good work and gave him blessings in the new life. In an earlier one DW1, wrote on the Plaintiff's departure;

*“Davis I have and respect you sssooooo MUCH, and can never hold you back from your calling.”*

All the foregoing communication clearly shows that in December when the Plaintiff got involved with Baraka, he was no longer working with the Defendant.

Moreover the very issue of fraud was raised before the Rwanda Regulatory Authority and it found the Plaintiff free of any wrong doing. As a result I do not find the Plaintiff guilty of fraudulent trading.

Turning to the NSSF Contribution, there is no dispute because on the 4<sup>th</sup> June 2015 the Defendant conceded that NSSF Contribution was rightly claimed. The Plaintiff is therefore granted his prayer of UGX 20,880,000/=.

Turning to general damages, the settled position is that the award is in the discretion of court, and is always as the law will presume to be natural and probable consequence of the Defendant's act or omission; **James Fredrick Nsubuga v Attorney General, HCCS No.13 of 1993.**

A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been in had she or he not suffered the wrong and when assessing the quantum of damages, courts are namely guided by the value of the subject matter, the economic inconveniences that a party may have been put through and the nature and extent of the breach; **Kibimba Rice Ltd vs Umar Salim, SCCA 17/92; Uganda Commercial Bank vs Kigozi [ 2002] 1 EA 305.**

In the instant case, the Defendant committed breaches by not effecting payments for salary arrears, and contributions for NSSF. These breaches were however contributed to by the Plaintiff's failure to handover company property. After the Defendant had received communication of the Plaintiff's resignation, the Managing Director DW1, wrote to the Plaintiff, **ExhP3**, asking him to “ensure an appropriate handover.” The letter demanded amongst others;

Management accounts comprising draft financial statements for MBEA Rwanda for the year to 31<sup>st</sup> December 2012 (together with supporting documents, including invoices and petty cash reconciliation). Further;

*“Before your departure is effected, please ensure that you promptly return all property owned by the Group that is in your safe custody including amongst others, Nissan Motor Vehicle UAJ 800J, a laptop, USB internet modems and the various household items at the staff House rented by MBEA Rwanda Kagugu.*

*Please also arrange to hand over the keys and physical possession of the staff House at Kagugu, as well as the keys for both the MBEA Rwanda and MBEA Uganda offices.”*

During cross examination the Plaintiff admitted that he had a company vehicle he was holding to. As for the logbook, DW1 told court that the Defendant was willingly to hand it over as soon as the Plaintiff fulfilled the requirements of a formal handover which was a company procedure. The Plaintiff did not protest and having been a Director in the Defendant Company must have been well versed with the procedure.

In my view having resigned it was incumbent upon the Plaintiff to formally handover Company property, he instead retained them. Sticking to Company property after resignation on its own contributed to the delay of processing the payments. Where the Plaintiff has himself contributed to the omission of an act complained of, he can only be awarded nominal damages.

Moreover the Plaintiff led no evidence to the extent of damages suffered. Taking into account all the circumstances surrounding this instant case, I find an award of UGX 1,000,000/= as general damages appropriate.

The Defendant counterclaimed seeking motor vehicle Reg UAJ 800J, laptop computers, cellular phones and other office and household items that were not named. She gave them a value of UGX 74,575,789/=. She however did not show how these values were arrived at. There was no evidence of cost or report from an assessor to show their value.

The Plaintiff/Counter defendant did not dispute being in possession. He in fact conceded that he was in possession of items claimed. It is therefore my finding that the Counterclaimant is entitled to the items claimed save that they cannot be in cash since no evidence to prove their value was adduced.

Damages for fraudulent trading are denied since the Counterclaimant did not prove it. Neither have they proved any damages suffered.

The sum total is that Judgment is entered in the following terms;

1. The Defendant pays UGX. 33,284,000/= to the Plaintiff as salary arrears.
2. Defendant pays to the Plaintiff UGX. 20,880,000/= as NSSF Contribution.
3. The Defendant pays to the Plaintiff UGX 23,615,000/= as unpaid leave.
4. A transfer of Motor Vehicle UAF 750 X to the Plaintiff by the Defendant be effected.
5. Defendant pays UGX 1,000,000/= to the Plaintiff as damages.
6. All monetary awards to attract interest at court rate from date of judgment till payment in full.
7. The Defendant pays to the Plaintiff half of the taxed costs.

**Counterclaim**

8. The Plaintiff returns all the Defendant's property as claimed in prayer 1 of the Counterclaim namely Company vehicle, laptop computers, cellular phones, office and household items.

It is so ordered.

Given at Kampala this 28<sup>th</sup> of June 2017.

**HON. JUSTICE DAVID WANGUTUSI**  
**JUDGE OF HIGH COURT.**