

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 626 OF 2010

JULIUS BITATULE-----PLAINTIFF

VERSUS

ATTORNEY GENERAL-----RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts of the plaintiff's case are that on 11th December 2003 was appointed by the Ministry of Energy and mineral development as a depot Manager for a period of 24 months effective 1st January 2004. The defendant thereafter kept renewing the plaintiff contract until the contract was due to expire in May 2008.

The plaintiff continued in employment when the last contract expired in May 2008 pending renewal of his contract until 26th June 2008 when he was arrested and on 7th July 2008 the plaintiff's contract was terminated.

Prior to the termination of the plaintiff's contract of employment, there had been a shortage of fuel in the storage tanks which was allegedly visited on the plaintiff and he was arrested on 26th June 2018 and he was detained for 7 days without being formally charged, and was detained at Central Police Station Kampala for 7 days but was later charged with offences of Embezzlement and Causing Financial Loss and was remanded to Luzira Murchison Bay Prison from 2nd July until he was granted bail by the High Court on 5th August 2008.

The plaintiff was tried and acquitted of offences of Embezzlement and causing Financial Loss by Buganda Road Chief Magistrates Court on the 21st day of July 2009.

At the time of the plaintiff's termination from employment, he was owed a sum of 18,037,500/= as unpaid salary arrears and gratuity and upon service of a Statutory Notice he was paid 13,998,500/= as Unpaid salary arrears and gratuity during the plaintiff's period of service.

The plaintiff sued the defendant for the unfair termination of Employment, recovery of salary arrears of 4,038,750/= and gratuity as special damages, general and punitive damages for

unlawful/ and wrongful termination of his employment contract, unlawful arrest, false imprisonment, malicious prosecution, interest on pecuniary awards and costs of the suit.

AGREED FACTS

According to the record of proceedings, the following are the agreed facts;

- That under Section 19(1)(c) of the Income Tax Act gratuity is taxed as Pay As You Earn(PAYE).
- The plaintiff agrees that he was paid all his salary arrears and gratuity.
- The plaintiff was appointed Depot Manager of Jinja Storage Tanks for an initial period of two years.
- That appointment was renewed for 2 years by letter dated 22nd December 2005 and later for a further 3 months by letter dated 6/03/2008.
- On 1st/03/2007, the plaintiff was interdicted and the interdiction was lifted on 6/03/2008.
- The plaintiff was arrested, detained and charged at Buganda Road Chief magistrates Court on 2nd July 2008 with Embezzlement and Causing Financial Loss.
- The plaintiff was discharged by court on all the charges.

AGREED ISSUES.

- (1) Whether plaintiff was lawfully terminated from employment by the defendant?
- (2) Whether the arrest, imprisonment and prosecution of the plaintiff were lawful?
- (3) Whether the Plaintiff is entitled to the reliefs sought?

At the trial both parties led evidence of one witness each in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

Issue 1

Whether plaintiff was lawfully terminated from employment by the defendant?

The plaintiff counsel submitted that in as much as the contract of employment had expired on 31st May 2008, it was the plaintiff's evidence that he continued working pending renewal of his employment. In his testimony he stated that;

“ I never got any communication about my extension of my contract and I continued carrying out my duties. I continued getting my salary... that was the practice all through the practice....”

On the basis of the above testimony, the plaintiff counsel submitted that the plaintiff was still an employee of the defendant at the time of his arrest and detention on 26th June 2008.

The defendant's counsel submitted that the alleged payment of his salary for the months of June 2008 did not amount to renewal of his contract.

According to the letter of termination Exh P6 reproduced hereunder;

July 7,2008

Mr Bitatule Julius
Depot Manager
Jinja Storage Tanks
Jinja

TERMINATION OF EMPLOYMENT

This is to inform you that your contract as a Depot Manager at Jinja Storage Tanks has not been renewed after it expired on June 30,2008. This follows the undergoing investigations into the loss of products at the Storage facility associated with all members of staff at the facility.

Non-renewal of your contract does not exonerate you from the undergoing investigations and you will as a result be called upon to answer any queries at any time, as and when need arises.

Consequently, all payments due to you are withheld until you are exonerated or investigations are completed.

Please make a comprehensive hand over to the Ag Depot Manager in accordance with the Uganda Government Standing Orders Chapter 1 subsection f (e).

F.A Kabagambe-Kaliisa
PERMANENT SECRETARY

The defence counsel further submitted that the defence witness Steven Barisigara in his testimony corrected the date of termination which is indicated as 30th June 2008, it should have been 31st May 2008.

According to the available evidence of the plaintiff and the letter of termination it is clear that there was an existing contract of employment after expiry of the 3 months contract which had expired on 31st May 2008.

The explanation or correction which the defence witness attempted to make should be taken with caution since he is not the author of the document cannot be taken as the position of what was indeed intended and it can also be true that the defence witness was trying to correct the said letter in order to suit his testimony in court.

If at all it was an error in dates set out in the letter of termination, why did it take the Permanent Secretary over one month to write the termination letter? Why wasn't it written on 31st May 2008 or 1st June 2008.

The said letter of termination which is dated 7th July, 2008 leaves only one presumption that indeed the plaintiff was still an employee of the defendant and that is why the termination came after the month had already commenced and the plaintiff was at work and that is the reason why such a letter was written.

Otherwise the defendant would not have written such a letter of termination if the plaintiff was not working or if his contract had indeed expired as counsel for the defendant would like this court to believe.

The plaintiff had a legitimate expectation that his contract would be renewed and was indeed made to believe that since he was being offered work and was also paid the salary of June 2008 when the original contract had expired, he legitimately expected to be treated fairly before the employment was terminated.

It is the finding of this court that the plaintiff was an employee of the defendant by conduct after the expiration of the renewed 3 months contract. He was therefore entitled to the terms and conditions of his earlier contract.

It can be deduced that the termination of the plaintiff's employment was unfair and wrongful since the letter of termination did not give any reason for the termination of the contract of employment.

This issue is resolved in the affirmative.

ISSUE TWO

Whether the arrest, imprisonment and prosecution of the plaintiff were lawful?

False Imprisonment

It was an agreed fact that the plaintiff was arrested and detained for 7 days at central Police Station Kampala on instructions of the Permanent Secretary Ministry of Energy and Mineral Development.

The plaintiff was arrested on 26th June 2008 and remained in detention until 2nd July 2008. The plaintiff further contended that there was no warrant of arrest issued but was rather arrested on instructions of the Permanent Secretary.

The constitution provides that a person arrested shall be brought to a court of law within 48 hours. The detention of the applicant beyond the 48 hours was indeed a violation of his constitutional fundamental rights which would entitle him to general damages.

In the case of ***Mugwanya Patrick vs Attorney General High Court Civil Suit No. 154 of 2009*** Justice Stephen Musota (as he then was) stated that;

“ The civil tort of false imprisonment consists of unlawful detention of the plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint....where an arrest is made on a valid warrant it is not false imprisonment; but where the warrant or imprisonment is proved to have been effected in bad faith then it is false imprisonment.”

Therefore the arrest and detention of the plaintiff for more than mandatory 48 hours or 2 days was indeed wrongful imprisonment by the defendant’s agents.

Malicious Prosecution

In the case of ***Mugabi John vs Attorney General HCCS No. 133 of 2002*** Justice Bashaija K Andrew stated the essential elements of Malicious Prosecution to include;

- The proceedings must have been instituted by the defendant.
- The defendant must have acted without probable cause.
- The defendant must have acted maliciously.
- The proceedings must have been terminated in favour of the plaintiff.

The plaintiff was charged of Embezzlement contrary to section 268 of the Penal Code Act and Causing Financial Loss contrary to section 269 before Buganda Road Chief Magistrates Court vide ***Criminal Case No. 807 of 2008; Uganda vs Julius Bitature.***

Whether the defendant’s agents acted with reasonable and probable cause? Reasonable and probable cause has been defined in the case of ***Attorney General vs Farajara [1977] HCB 29 at 30*** as follows;

“...an honest belief in the guilt of the accused based upon full conviction founded upon reasonable grounds of existence of a state of circumstances which assuming them to be true, would reasonably lead any ordinary prudent and cautious man placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed.”

According to the charge sheet, the plaintiff was charged of Embezzlement and causing Financial Loss. According to the particulars of the said offences;

“ Julius Bitature being an employee of Government as a Depot Manager between May 2008 and June 2008 at Jinja Storage Tanks depot Jinja stole 11,864 litres of Petrol and 5,477 litres of diesel all valued at Ug shs 44,000,000/= being the property of his employer, received and took possession by him by virtue of his office.”

The learned trial Magistrate Grade One noted that the ingredients of respective sections are very clear. Corroboration is also necessary as a matter of practice as indicated in respective authorities. Against the above, including the testimony of PW 1, I am reluctant to put the accused person to his defence.

It appears the prosecution sanctioned the plaintiff's file without sufficient grounds or evidence that the accused was probably guilty.

In the case of *Glinsk vs McIver [1962] AC 726* Lord Devlin held that;

“ reasonable and probable cause means that there must be sufficient ground for thinking that the accused was probably guilty but not that the prosecutor necessarily believes in the probability of conviction...”

I agree with the submission of counsel for the plaintiff that the police investigations and available evidence was too shallow to make a right thinking person like a police officer to think that the plaintiff was probably guilty of embezzlement and causing financial loss. The charges were premised on an audit and the said audit report was never in possession of the prosecution in order to form an opinion of probable cause.

The plaintiff was arrested upon a complaint by the Permanent Secretary of Ministry of Energy and Mineral Development. It would appear that the respondent was the only person charged and it is not clear what the basis of the prosecution was. In absence of genuine reasons for the prosecution, it can be implied that the prosecution was malicious.

The plaintiff was discharged of the said offences.

Once the detention or imprisonment is established the onus shifts to the defendant to show that it was reasonably justifiable and no such attempt was made in the instant case. See *Sekaddu vs Ssebadduka HCCA No. 30 of 1964 [1968] EA 213*

I therefore find that the arrest, imprisonment, detention and prosecution of the plaintiff was wrongful, illegal and malicious.

ISSUE 3

Whether the Plaintiff is entitled to the reliefs sought?

Special damages

According to the court record, the plaintiff agrees that he was paid all his salaries and gratuity. This would mean that the plaintiff is not entitled to any of the alleged special damages since it arises out of the plaintiff's computation of his gratuity and salary arrears. Which he has agreed was fully paid.

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See **Bendicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

General damages

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See **Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21**

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See **Ouma vs Nairobi City Council [1976] KLR 298**.

In the present case, the plaintiff has sought general damages for unlawful termination of employment. Since the plaintiff's termination had been turned into a monthly contract it would mean it was liable to being terminated at any time once the requisite notice was given. Considering the circumstances of the case, the plaintiff is awarded a sum of 3,500,000/= as damages for wrongful termination of his contract of Employment.

The plaintiff has also sought general damages for unlawful arrest, malicious prosecution, false imprisonment and inconvenience.

He testified that; “ *his reputation was damaged, I was humiliated. My family suffered anguish. Some people do not want to deal with me; they think I am a thief.*”

The court awards the plaintiff a sum of 100,000,000/= for the quantum of general damages for suffering arising out of the arrest and illegal detention/false imprisonment and malicious prosecution.

Punitive Damages

The plaintiff also sought punitive or exemplary damages for malicious prosecution and False imprisonment.

Punitive damages are intended to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. See ***Rookes vs Barnard & Others [1964] AC 1129***

In the case of ***Obongo vs Municipal Council of Kisumu [1971] EA 91*** the court held that; “ ***It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive***”.

The plaintiff was detained for 7 days without being charged in any court of law and this is contrary Article 23(4) of the Constitution. Any violation of the Constitution by the defendant’s agents who are mandated to protect and uphold it must attract a punitive sanction against the offenders or violators.

I award punitive damages of 45,000,000/= for the malicious prosecution and false imprisonment of the plaintiff.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

General damages and Punitive damages shall attract an interest of 10% from the date of judgment.

Costs

The plaintiff is awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA

JUDGE

23rd /08/2018