

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO. 560 OF 1996
ROBINAH SAJJABI :::::::::::::::::::::::::::::::::::PLAINTIFF
VERSUS
UGANDA COMMERCIAL BANK :::::::::::::::::::::::::::::::::::DEFENDANT
BEFORE: THE HON MR. JUSTICE E.S. LUGAYIZI
JUDGEMENT

The plaintiff sued the defendant for, among other things, wrongful termination of contract of service and prayed Court to grant her the following remedies,

- (a) special damages of shs. 21,552,5481=;
- (b) a court order for payment of pension dues to be assessed by this Honourable Court;
- (c) general damages for wrongful detention and imprisonment;
- (d) costs; and
- (e) any further relief Court may deem fit.

In its WSD the defendant denied the plaintiff's claim and insisted that it lawfully terminated the plaintiff's service on account of gross misconduct. At the time of hearing the suit both the plaintiff and the defendant agreed that in the event the plaintiff's suit succeeded the defendant would, among other things, pay the plaintiff the following amounts,

- (a) Shs. 3,274,413/= as accumulated leave;
- (b) shs. 3,514,598/= as arrears of salary;
- (c) shs. 1,045,150/= as honorarium
- (d) shs. 6,394,959/= as terminal benefits.
- (e) Shs. 115,939/= in lieu of notice of termination.

The parties further agreed that, in the above event, the plaintiff would also be entitled to pension which the Privatisation Unit will work out. In view of the foregoing, therefore, the issues that Court must resolve are two, namely,

1. Whether the plaintiff's employment was lawfully terminated?
2. The available remedies?

During the hearing of the suit the plaintiff called one witness in support of her case, namely, herself (i.e. PW1). She briefly testified as follows. That in the early part of 1982 she took up employment with the defendant as a clerk. She worked diligently until the early part of December 1994 when the defendant suspended her from duty on the allegation that she was involved in a bank fraud. She was arrested, interrogated, searched and detained by the police. She spent 3 days in a crowded, filthy cell at Kampala Central Police Station. After her release on police bond she continued to report to the police, from time to time. Eventually, the police referred her back to the defendant's personnel department where the defendant handed her a letter dated 18th September 1995. That letter terminated her service with the defendant, but it gave no reason for the termination. In her opinion the termination of her service was wrongful because it did not follow her terms and conditions of service; and that has greatly inconvenienced her and caused her anguish.

In its defence the defendant relied on the testimony of Jennifer Magombe (DW1) which was briefly as follows. That at the time the defendant terminated the plaintiff's service she was her supervisor in the clearing department. The nature of their work was, among other things, to receive cheques from the Clearing House which were made in the defendant's favour and those which the defendant had to pay against. They would then record those cheques, raise the relevant documents (i.e. vouchers and schedules) as evidence of the existence of such cheques and finally send the cheques and documents to the defendant's various branches around the city for action. However, before dispatch the plaintiff and her other workmate would record the cheques in the register book and sign the register.

On the 2nd December 1994, the plaintiff dealt with cheques and the relevant documents (i.e. vouchers and schedules) for the defendant's branches which included Bwaise. In the course of that day, Magombe's team discovered that there was an anomaly in their work which they could not fully understand. There was an apparent imbalance of shs.25.6m/=.

After cross-checking their work and communicating with various people they discovered that a cheque emanating from the Centenary bank was responsible for the anomaly. That cheque was ostensibly raised against a dormant account at the defendant's Bwaise branch. The relevant documents for the cheque had been raised in the defendant's clearing department and were in existence. However, the mystery surrounding the said cheque was how it had reached the defendant's Bwaise branch without leaving behind any record. The above was a serious matter because if the anomaly was not detected in time, the amount cited in the bogus cheque would have been paid to the greatest detriment of the defendant. In all this, the plaintiff was the first suspect. When Magombe, therefore, asked her to explain how the cheque in question had reached the defendant's Bwaise branch without leaving behind any record the plaintiff could not explain. Later on, the plaintiff appeared before the Disciplinary Committee. Magombe was present during those proceedings. The plaintiff once again failed to explain why she did not record the cheque in question in the register (Exh. "DI"). In the defendant's view it was justified in terminating the plaintiff's service without giving her any notice and benefits which she thought she was entitled to.

Court has had the opportunity of considering the evidence and submissions on record and it is now in a position to resolve the two issues referred to earlier on. It will do so in the order in which they occur.

With regard to the first issue, the law is that an employer has the right to terminate the service of his employee any time and for any reason or for none, provided that is done in accordance with the law. In essence, that means that no one ought to force an employer to keep an employee he does not want to retain in his service. The employer has, therefore, the right to discontinue such employee at any time for any reason or for none. However, in doing so the employer must follow what he agreed with the employee in the contract of service and in the rules and regulations governing the employment. For example, where

the contract of employment provides for termination on notice, either party may terminate it on giving the stipulated notice. (See John Okori Otto v UEB Civil Suit No. 472 of 1982 reported in the [1981] HCB at pg 52 and Nuwemugizi v National Water and Sewerage Corporation Civil Appeal No. 26 of 1993 as per Platt (J.S.C) (as he then was) at page 52. With the above in mind, the important questions to answer now are two. What was agreed upon by the parties in the contract of employment in the event of termination of service? What do the rules and regulations governing the plaintiff's employment with the defendant say about termination of service? In paragraph 4 of the plaintiff's letter of appointment P/C/S1224 dated 31st March, 1982 termination of service was provided for as below,

“... Should circumstances so require, during and after the probation, period appointment may be terminated by either party giving one month's notice in writing to the other or salary in lieu of notice. If however, you misconduct yourself in any way, the Bank reserves the right to dismiss you from service without notice”

Clearly, the parties agreed that normal termination would be by one month's notice or payment of one month's salary in lieu of such notice. However, in the event of misconduct the defendant had the right to dismiss the plaintiff without notice. In addition to that, the service regulations (i.e. Uganda Commercial Bank Personnel Policies Manual - Exh. P10) had this to say in paragraph 8.01 about summary dismissal,

“Summary dismissal can only be taken when a serious offence is committed. This means that the employee shall leave the service of the Bank immediately without notice...”

It is apparent from the defendant's letter PC/S/224 dated 6th December 1994 that when it suspended the plaintiff from work it did so only on the basis of suspicion of her involvement in the fraud in question. Indeed, if the defendant had better evidence, at that stage, it is most likely that it would have invoked the plaintiff's letter of appointment and the service regulations to discontinue her service immediately and without notice.

However, since it had no such evidence, at hand, it chose to suspend the plaintiff as an interim measure pending police investigations to confirm or to dispel the suspicion. This, of course, was a lawful course of action for the service regulations authorised such suspension for a specific period.

Be that as it may, in her evidence the plaintiff testified, among other things that the police investigations referred to above finally ended in her favour. For that reason she was not prosecuted for any offence. That evidence was neither challenged nor contradicted by the defendant Company therefore takes it that it represents the truth. That means that in the eyes of the law, the plaintiff was innocent of any wrong doing. Accordingly, at that stage, the defendant had only two legal options to exercise in respect of the plaintiff's employment.

(a) it had to reinstate her; or

(b) to discontinue her in the normal way by giving her notice in accordance with her letter of appointment or to pay her one month's salary in lieu of notice.

Indeed the option in (b) entitled her to all her other benefits there and then. Unfortunately, the defendant did not choose any of the two legal options above, In its letter EXIPC/S1427 dated 18th September 1995 it terminated the plaintiff's service with immediate effect; and subsequently refused to pay her entitlements. That course of action was, to say the least, illegal because it was outside the framework of what the parties had agreed upon and the rules and regulations which governed their working relationship. In the circumstances, Court has no choice but to find that the defendant did not terminate the plaintiff's employment lawfully. The first issue is therefore resolved in favour of the plaintiff.

With regard to the second issue, Court has this to say. Since it has resolved the first issue in favour of the plaintiff it means that her suit has succeeded; and she must obtain the remedies she prayed for. She will therefore obtain the payments which the parties agreed

upon during the hearing as some of the amounts that would be due to her in the event of success. That aside, Court will below determine the measure of general damages which the plaintiff is entitled to recover as a result of wrongful termination, defamation among her fellow employees and wrongful detention for 3 days in an over-crowded filthy police cell. In that respect Court is satisfied that the plaintiff suffered mental anguish and inconvenience as a result of the wrongful termination of her employment, defamation among her fellow employees and detention for 3 days in an over-crowded filthy police cell. Taking into account everything, Court is willing to award her a sum of shs. 8m as general damages.

In addition to the above, the plaintiff prayed for exemplary damages for wrongful detention. Her detention was wrongful not only because it had no valid basis, it was also quite highhanded in that it exceeded the legitimate 48 hours which the Constitution requires the police to detain a pr before taking that person to court: According to the plaintiff's uncontroverted evidence the police detained her at the Central Police Station (Kampala) for 3 days; and during that period they did not take her to court to answer any criminal charge. Obviously, that conduct breached Article 23(3) (b) of the Constitution. Consequently, since the defendant (as the complainant) was privy to the detention, it must pay shs. 1m/= as exemplary damages in respect thereof.

All in all, judgment is hereby entered in favour of the plaintiff in the following terms,

1. The defendant shall pay the plaintiff,
 - (a) shs. 3,274,413/= as accumulated leave;
 - (b) shs. 3,514,598/= as arrears of salary;
 - (c) shs. 1,045,150/= as honorarium;
 - (d) shs. 6,394,959/= as terminal benefits;
 - (e) shs.125,939/= in lieu of 1 month's notice of termination.
2. The defendant shall further pay the plaintiff her pension as soon as the Privatisation Unit has worked it out.
3. The defendant shall pay a sum of shs. 8m/= to the plaintiff as general damages.
4. The defendant shall also pay the plaintiff shs. 1m/= as exemplary damages for

wrongful detention.

Lastly, the defendant shall bear the costs of this suit.

Read before: At 9.46 am.

Plaintiff in Court

Mr. Bwanika for Plaintiff

Mr. Senabulya Court Clerk

JUDGE

23/1/2002