

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-OO-CV-CS-0706-1997
PEREZ KAKUMU:::::::::::::::::::::::::::::PLAINTIFF
VERSUS
ATTORNEY GENERAL:::::::::::::::::::::::::::::DEFENDANT
BEFORE: THE HONOURABLE MR. JUSTICE MOSES MUKIIBI
JUGDEMENT

The plaintiff sued the defendant in his representative capacity under section 11 of the Government Proceedings Act for unlawful interdiction, and he sought from court the following remedies: -

- a) A declaration, that the standing interdiction on him by the government is invalid and illegal;
- b) An order lifting the interdiction and resumption of duty;
- c) Payment of his salary arrears;
- d) General damages for wrongful interdiction;
- e) Punitive damages;
- f) Interest on damages awarded;
- g) Costs of suits.

In his written statement of defence the defendant denied the plaintiff's claim and averred that the plaintiff was lawfully interdicted under the Public Service Commission Regulations after disciplinary proceedings were initiated against him for misconduct justifying dismissal from the Public Service. In the alternative, the defendant averred that the plaintiff could not be cleared of the charges because investigations were incomplete.

The defendant prayed for the dismissal of the suit with costs.

During the hearing of the case, while the plaintiff was the sole witness for his side, the defendant called one witness in his defence namely, BULANDIMNA KALEBO(DW1).

In brief the plaintiff's case was as follows:

At all material times since January, 1991 the plaintiff was the District Forest officer, Bushenyi District. Early in 1994 he developed some misunderstanding with one F.W. Kigenyi, then the Deputy Commissioner for Forestry, based at the Forest Department Head quarters at Nakawa. The said F.W. Kigenyi was a Senior Natural Forests Management Officer- in-charge of EEC funded Forestry rehabilitation project at Nakawa. The commissioner for forestry was one D.E.Olet. F.W. Kigenyi instructed the plaintiff to under pay workers, employed in Bushenyi Forestry Department, who were working on EEC financed programmes. F.W.Kigenyi instructed the plaintiff to save some money and deposit it on his personal Bank Account at Green Land Bank. The plaintiff refused to comply with the said instructions. He had been given by F.W. Kigenyi only a part of the money. The plaintiff paid some of the workers at the official rate. Then he went back to F .W. Kigenyi for the balance of the workers' wages. He told F.W. Kigenyi that he had failed to carry out his private instructions. F.W. Kigenyi accused the plaintiff of insubordination and being un co-operative, inconsiderate and proud. F.W. Kigenyi refused to give to the plaintiff the balance of the money for the workers' wages. This was followed by a letter dated 2 May 1994 (Exhibit P.2) whereby the commissioner for Forestry transferred the plaintiff to Luwero District as a District Forest Officer, to take effect on 1/6/1994.

Relying on the Local Governments (Resistance Councils) statute, No.15 of 1993 the plaintiff advised the commissioner for forestry that the purported transfer could not be effected. The plaintiff remained in his office in Bushenyi District. In the meantime F.W.Kigenyi, then the Acting Commissioner for Forestry, released the money for the workers' wages to two subordinate officers of the plaintiff, namely:

Gideon Bitakaramire, a forest officer in charge of Kalinzu Forest Reserve, and Blasio Katukore, a forest officer, in charge of Kashoha-Kitomi forest Reserve. The two subordinate officers paid some workers less money than the official rates. The plaintiff reported the matter to Bushenyi Police Station. The Forestry Department Head office, Nakawa responded by sending a team of two people namely: Isaac Kapalaga and Mathias Kayondo to monitor and evaluate EEC- funded forestry programmes in Bushenyi District. This team made a report: Exhibit P .20, which

contained false and malicious allegations against the plaintiff.

Soon after that team had left the Permanent Secretary, Ministry of Natural Resources B.Z. Dramadri, sent a three man team comprising: P.B. Mukasa, Assistant Commissioner/Personnel, Katongole, Accountant, and Happy Edward, Auditor on inspection of Bushenyi Forests. This team prepared an audit report.

Thereafter, the plaintiff received a CID team sent by the Director of CID, around March, 1995. This team was detailed to investigate allegations raised in the report made by the Monitoring and Evaluating team and in the Audit report.

While police investigations were going on the plaintiff received a copy of a letter dated 4/4/1995 (Exhibit P.14) written by the permanent Secretary Ministry of Natural Resources addressed to the Permanent Secretary Ministry of local Government. The Permanent Secretary, Ministry of Natural Resources communicated a decision to transfer the plaintiff to the Forestry Department Head quarters, with effect from 15/4/1995. He sought the formal intervention of his counterpart in Local Government to ensure that the said decision was implemented by the DES Bushenyi. He threatened that in the event that the plaintiff did not want the transfer he had to be interdicted, made to face the law, and retired from the Civil Service. The plaintiff never received any instructions transferring him from Bushenyi District to the Forestry Department Headquarters. By letter dated 22/5/1995 (Exhibit P.1) signed by one F.A. Kabagambe- Kalisa on behalf of the Permanent Secretary, Natural Resources, the plaintiff was interdicted from duty.

By the letter dated 30/10/1995 (Exhibit P.5) written by the Permanent Secretary, Natural Resources, addressed to the plaintiff, charges were laid and disciplinary proceedings instituted against the plaintiff for misconduct justifying dismissal from the Public Service. The plaintiff was given 14 days within which to defend himself, or else the Permanent Secretary would recommend to the Public Service Commission to take appropriate disciplinary action against him. The plaintiff prepared and delivered a written defence dated 9/11/1995 (Exhibit P.6)

By letter dated 11u December, 1996 (Exhibit P3) addressed to the Director of CID the plaintiff requested to be informed of the position of the police investigations. By letter dated 13/12/1996 (Exhibit P.4) written by the Director of CID to the Permanent Secretary, Natural Resources, a detailed police report was forwarded.

By letter dated 27/2/1997 (Exhibit P.7) addressed to the Secretary, Public Service Commission, the plaintiff appealed against his interdiction. He requested that the interdiction be lifted, that he be reinstated and that his arrears of salary be paid. The Secretary, Public Service Commission, in turn, requested the Permanent Secretary, Natural Resources to decide on the plaintiff's fate as fast as possible. (Exhibit P.8).

The Permanent Secretary did not do so. The plaintiff has suffered redundancy, job insecurity, loss of Job and personal reputation, financial constraints, psychological break down, denial of Job benefits and indefinite movement restriction. Hence, the institution of this suit against the defendant.

The case for the defendant was as follows:

The plaintiff was posted to Bushenyi as a District Forestry officer. There was some effort to transfer him from Bushenyi in 1994, and the transfer was communicated to him, but he was not willing to move from the District. When the plaintiff refused the transfer investigation committees were set up. The matter was referred to the IGG. The latter recommended that the Permanent Secretary, Natural Resources should liaise with his counterpart in Local Government so that the plaintiff could be transferred. He further recommended that if the plaintiff did not want the transfer then he would be interdicted and retired (Exhibit D 2). The Permanent Secretary, Natural Resources wrote a letter to the plaintiff transferring him to Forestry Head quarters. The plaintiff refused to move and he was interdicted. A letter was written to the plaintiff specifying the charges against him and he was required to show cause why disciplinary action should not be taken against him. The plaintiff refused to hand over office and government property. The CII) carried out investigations and furnished a report, which acquitted the plaintiff

of the charges. The Permanent Secretary, Natural Resources wrote a letter challenging the CD Report, and he requested the CII) to revisit the plaintiffs case. He was waiting for a report from the CII), after revisiting the case, in order to handle the plaintiff's case. The CII) failed to avail a second Report to the Ministry of Natural Resources. The Permanent Secretary, Natural Resources communicated this position to the Secretary Public Service commission by later dated 23/4/1997. (Exhibit D3). In response to the plaintiffs appeal against interdiction the Permanent Secretary, Natural Resources, wrote a letter dated 9/4/1997 addressed to the Head of Civil Service/Permanent Secretary, Office of the President to update him on the plaintiff's case. (Exhibit D4). The defence tendered in evidence a photocopy of an inspection Report on Bushenyi Forests (the Audit Report) as Exhibit D5.

The agreed issues in this case were as follows:

- (i) Whether the plaintiff was lawfully interdicted.
- (ii) Whether the continued interdiction of the plaintiff is justified.
- (iii) Whether the plaintiff is entitled to the remedies claimed.

I will deal with the above issues in the order in which they were framed.

On the question whether the plaintiff was lawfully interdicted:

The plaintiff referred to the letter of interdiction (Exhibit P.1) and testified that the reason for his interdiction was alleged to be resisting a transfer from Bushenyi District Forest Office to Forestry Headquarters. The plaintiff testified that he never received any letter to that effect. He further testified that he learnt about the said transfer from a letter written by the Permanent Secretary, Natural Resources to his counterpart in Local Government (Exhibit P14), which had been copied to him. From the said letter (Exhibit P.14) I reproduce here below extracts of paragraphs 2 and 3.

Paragraph 2:

“Therefore, in line with the decisions of the Inspector General of Government, Mr. Kakumu should be transferred to the Forestry Department Headquarters, with effect from 15th April, 1995. His replacement will follow in due course. In the event that he does not want the transfer,

he should be interdicted, face the law and consequently be retired from the Civil Service”.

Paragraph 3:

“The purpose of this letter is to inform you of the above decisions and to seek for your formal intervention so that these decisions are implemented by the DES Bushenyi accordingly. The DES should ensure that Mr. Kakumu complies with the above decisions”.

The said letter was copied to the D.E.S. Bushenyi also.

The defence produced and relied upon the letter from IGG dated 28 March, 1995 (Exhibit D 2).

Paragraph 2 of the said letter reads:

“After studying the case, the Inspector General of Government has recommended that you liaise with the Permanent Secretary, Ministry of Local Government so that the District Forest officer, Bushenyi, is immediately transferred. If he does not want the transfer, then he should be interdicted and retired. His salary should not be sent to Bushenyi”.

The plaintiff testified that after he had received a copy of Exhibit P.14 the officers in Bushenyi District, namely the DES, the CGR and the RC5 Chairman called him to find out if his copy had an annexure of the IGG’s letter (Exhibit D.2). Exhibit P.14 had been copied to all of those officers. From this evidence it is my view that all the said officers were aware of the decision by the Permanent Secretary, Natural Resources to have the plaintiff transferred to Forestry Department Headquarters. From the plaintiffs own evidence it appears clear to me that the plaintiff had occasion to meet the D.E.S. Bushenyi over the same matter.

During cross examination defence counsel showed to the plaintiff a letter dated 5/4/1995 written by the Permanent Secretary, Local Government to the DES Bushenyi, which had been copied to him. The plaintiff testified that he received the said letter. The plaintiff said:

“The said letter was as a follow up by the P/S Local Government on the request contained in Exhibit P.14 from the P/S, Ministry of Natural Resources”.

The plaintiff testified that after receiving the letter from the P/S ministry of Local Government the DES Bushenyi never wrote to him.

Defence counsel then showed to the plaintiff a letter dated 27/9/1995 written to him by one Charles Kiberu Nsubuga on behalf of the DES. The plaintiff told court that the said letter referred to the interdiction letter and asked him to hand over the office and government property to J. Amwine, an incoming District Forest Officer. The plaintiff denied having received the said letter. He testified that the substantive DES Bushenyi at that time was Mr. Bitarabeho Johnson.

The plaintiff testified as follows:

“The DES had not asked me to hand over. Instead he encouraged me to work on”. Then the plaintiff said:

“Between 22/5/95 and 26/2/96 I continued working. I was lending a hand to CAO Bushenyi District”.

The DES (now CAO) Bushenyi District was not called by either side as a witness. However, it is clear from the plaintiff’s evidence that he (the DES) was aware of the instructions from the Permanent Secretary, Natural Resources in Exhibit P.14 to have the plaintiff transferred from Bushenyi District to the Forestry Department Headquarters. On 5/4/1995 the Permanent Secretary, Local Government wrote to the DES, Bushenyi to communicate the same instructions. I don’t believe the plaintiff when he says that the DES Bushenyi never acted on those instructions. I find that the plaintiff had actual notice of the instructions from the Permanent Secretary, Natural Resources, to be transferred from Bushenyi to the Forestry Department Headquarters.

The plaintiff testified as follows:

“If there was to be any transfer at all I would be transferred by the DES. The DES had no powers to transfer me to another District like Luwero. In May, 1994 nobody had powers to

transfer me from Bushenyi District”.

In cross-examination defence counsel asked the plaintiff if he was aware of statutory Instrument No. 52 of 1995:

The Local Government (Resistance Councils). (Amendment of second schedule) (NO.2) Instrument, 1995. The plaintiff told court that he was not aware of it. The said instrument was published on 7th April, 1995. Rules 2 and 3 of the said instrument provide as follows:

“2. This instrument shall be deemed to have come into force on the 31st day of December, 1993”.

“3. The second schedule to the Local Government (Resistance Councils) statute, 1993 is amended by substituting for item 7 appearing in that schedule the following item.

7. Forest reserves, land, mines, minerals and water resources”.

The second schedule to the said statute provided for functions and services Exclusively Reserved for the Central Government. The commencement date for the statute was 31 December, 1993. So by reason of SI No. 52 of 1995 forest reserves remained a function or service exclusively reserved for the central Government.

Prior to decentralization Central Government staff in the Districts were recruited, confirmed, promoted and disciplined by the Public Service Commission and deployed in the Districts by their line ministries. The plaintiff tendered in evidence Exhibit P.17.

“Guide lines to District and Urban Councils for the Management of a separate personnel system”.

In a fore word to that publication Martin Orech, Head of the Civil Service, wrote as follows:

“Under the new arrangement (decentralization), all staff executing functions reserved for Local Governments and those in recently decentralized Departments, belong to the District and are fully accountable to the Councils through the District Executive Secretary”.

The plaintiff also tendered in evidence Exhibit P.18 which is a circular letter dated July 18,1994 addressed to all District Executive Secretaries and all Town clerks on the implementation of the

Local Governments (Resistance Councils) Statute, 1993. This letter was written by the Permanent Secretary, Ministry of Local Government. Suffice it for me to quote some extract from Paragraph, 1 of the said letter:

“1. Pursuant to sections 29 (1) and 51(2) of the Local Governments statute read together with the circular standing instruction No. 2 of 1994, all staff of ministries which were recently decentralized are not transferable. The officers belong to the councils. Their promotion, discipline, etc fall within the purview of the District Service Committees except the District Executive Secretary and his/her Deputy.

Head quarters of various Ministries that were decentralized do not have any more mandate to transfer or post officers of decentralized Ministries. Any transfers/ postings in or out of the districts should be challenged. Appendix 1 carries the list of decentralized Ministries”.

The Ministry of Natural Resources was listed as item No. 9 in Appendix 1 showing decentralized Ministries.

The plaintiff testified as follows:

“I told court that when I received transfer instructions to go to Luwero I wrote advising the commissioner for Forestry that under statute No. 15 of 1993 which had frozen me in Bushenyi the transfer would not be possible”. The letter transferring the plaintiff to Luwero District was dated 2’ May, 1994. (Exhibit P.2).

Learned counsel for the plaintiff Mr. Muhwezi submitted that the forest Department was decentralized and powers of discipline were vested in the District Service Committees as per Legal Notice No. 1 of 1994, General Notice No.40 of 1994 and Sections 29(1) and 51 (2) of the Local Governments Statute, No. 15 of 1993.

By the provisions of legal Notice No.1 of 1994 the District Service (Delegation of the powers of the President under Article 104 of the Constitution), the President, in exercise of the powers conferred by clause (2) of Article 104 delegated the powers vested in him under clause (1) of the same Article, in respect of all officers and employees (other than the District Executive Secretary

and his Deputy) to the respective District Service committee.

Subsection (1) of section 29 of the Local Governments (Resistance Councils) statute, 1993 provided as follows:“29.

(1). The power to appoint persons to hold or act in any office in the service of a Local Government council, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in offices and to remove any person from office, shall be vested in the District Service committee”.

Subsection (2) of section 29 provided for an exception for the District Executive Secretary and his Deputy who were to be appointed and disciplined by the public Service Commission.

The question arises as follows:-

As at 2nd May, 1994, the date of the letter of transfer to Luwero District, to whom did the plaintiff, as staff, belong?

The Local Governments (Resistance Councils) statute, 1993, in the second schedule thereto, set out the functions and services exclusively reserved for the Central Government. However, forests were not listed under that schedule.

The sixth schedule to the same statute provided for the powers, functions and services to be performed and exercised by District and Urban Councils.

Item No.5 stated: “All field services and activities of every decentralized Ministry”.

I think the answer to the question is that as at 2nd May, 1994 the plaintiff was executing functions reserved for local governments, in the nature of field services and activities of a decentralized ministry. In that respect he belonged to Bushenyi District. So the power to exercise disciplinary control over him was vested in the District Service Committee. Another question now arises: -

As at the 22 day of May, 1995, the date of interdiction, to whom did the plaintiff, as staff, belong?

Statutory instrument No. 52 of 1995 had been published on 7th April, 1995. Its effective date had been backdated to 31st December, 1993. Forest reserves were mentioned as a function or service exclusively reserved for the Central Government. It is my view that by back dating the commencement of the instrument to 31st December, 1993 it was intended to clarify that there had been no, change with regard to staff executing functions and services relating to forest Reserves. At least the instrument made it clear that the plaintiff was not staff executing functions reserved for local governments. It is my view that the plaintiff had legally remained central Government staff.

The question which now arises is: -

Who had the power to discipline him?

In the public Service standing Orders, 1991 Edition, Chapter 1 the expression "Responsible Officer" is defined as follows:

"Responsible Officer" in relation to a Public Officer means:

(a) The Permanent Secretary of the Ministry or Department in or under which the officer is serving".

Chapter 1 —F — r concerns discipline.

Item No. 7 covers interdiction. It provides:

"7. A public officer may be interdicted in accordance with the law".

The relevant law is the public Service Commission Regulations (SI 277-3). Regulation 36 provides for interdiction.

"36. (i) where a responsible officer considers that the public interest requires that a Public Officer should cease to exercise the powers and functions of his office, he may interdict the officer from the exercise of those powers and functions, if proceedings for his dismissal are being taken or are about to be taken¹ or if criminal proceedings are being instituted against him".

In the instant case the letter of interdiction was signed by one F.A. Kabagambe-Kalisa for the permanent Secretary, Ministry of Natural Resources. Learned counsel for the plaintiff submitted that this action violated the Government standing Orders, public Service General, Chapter 1 F-r Paragraph 2. The matter raised by counsel is now covered by two paragraphs 4 and 6. Paragraph 4 provides in part as follows:

"Responsible officers must ensure that the submissions are full and factual, that events which 1

ed to disciplinary action are isolated as to place and time, and that supporting written material is properly annotated and cross-referenced so as to facilitate speedy handling by the Appointing Authority”.

Paragraph 6 provides as follows: -

“6 It is imperative that Responsible Officers become personally responsible for ensuring that proper documentation is available in all cases affected by Paragraph.3. above and that when a decision is required by the Appointing Authority which means having the papers submitted to the Public Service Commission, such papers are sent under the personal signature of the Responsible Officer and that they are correct, fair and objective”.

It appears to me that the requirement for personal signature of the Permanent Secretary relates to submissions to the Public Service Commission.

Learned Counsel for the plaintiff also attacked the interdiction letter for referring to the plaintiff as forest officer whereas he was a District Forest Officer. Counsel attacked the form of the interdiction letter.

In my view what was important were two points:

- (i) That the permanent Secretary considered that the public interest required that the plaintiff should cease to exercise the powers and functions of his office;
- (ii) That proceedings for the plaintiffs dismissal were about to be taken.

It is clear from the evidence that before the interdiction of the plaintiff the permanent Secretary, Ministry of Natural Resources had sent to Bushenyi District a team which prepared what came to be known as an Audit report (Exhibit D5). The plaintiff testified that when he received a team of three CID officers from Kampala they showed him two letters, which he read. One letter had been written by the Permanent Secretary of Natural Resources to the Director of CID requesting him to investigate the plaintiff. It was against this background that the plaintiff was interdicted. It is my view that the proper authority to

discipline the plaintiff as at 22/5/1995 was the Permanent Secretary, Ministry of Natural Resources, and later on, the Public Service Commission. I therefore answer the first issue in the affirmative, and hold that the plaintiff was lawfully interdicted. Next to be considered is the issue whether the continued interdiction of the plaintiff is justified.

The public Service standing Orders (1991 Edition) Chapter 1 F-r- Paragraph 4 provides in part as follows:

“4. It is essential that when disciplinary proceedings are instituted against an officer, they are brought to a speedy conclusion including when, where applicable, action by the police, the Director of Public Prosecutions and the courts is required”.

When a Permanent Secretary considers it necessary to institute disciplinary proceedings against an officer he is required to follow the provisions of Regulation 43 of the Public Service Commission Regulations. He is expected to do the following:

- (i) To make preliminary investigations which he considers necessary.
- (ii) To submit to the Solicitor General for his approval the terms of the charge or charges.
- (iii) To forward to the officer concerned a statement of the charges framed against him together with a brief statement of the allegations on which each charge is based.
- (iv) To call upon the officer to state in writing before a day to be specified any grounds on which he relies to exculpate himself.
- (v) If in the opinion of the Permanent Secretary the officer fails to exculpate himself, to forward to the Secretary, Public Service Commission, copies of his report, the statement of the charge or charges, the officer's reply, if any, and his (the PS') own comments on the said reply.

When it comes to the notice of the Permanent Secretary that a criminal offence likely to warrant disciplinary proceedings may have been committed by a public officer he is supposed to do the following:

- (i) To consult the DPP as to whether he intends to institute criminal proceedings against the officer.

- (ii) If the DPP does not institute criminal proceedings against the officer he (the PS) consults the Solicitor General as to whether disciplinary action should be taken against the officer.

- (iii) To refer the charges framed against the officer to the Solicitor General for his approval before the officer is required to answer them.

Where disciplinary proceedings have been taken against a public officer he is entitled to be informed of the decision, but not of the reasons therefor, on each charge which has been preferred against him, and of the Punishment to be imposed. (see Reg. 41).

The plaintiff testified that he received a letter dated 30/10/1995 (Exhibit P.5) written by the permanent Secretary, Natural Resources on the subject: "Misconduct justifying Dismissal". Which contained the charges which had been preferred against the plaintiff. By the said Letter he was given 14 days within which to submit his written reply. The plaintiff testified that he prepared a written defence dated 9/11/1995, which he submitted to the Permanent Secretary within the 14 days given. It was admitted in evidence as exhibit p.6. The plaintiff told court that he was not summoned by the Permanent Secretary to attend any hearing of the charges against him. So, by letter dated 11th December, 1996 (Exhibit p3) the plaintiff inquired from the Director of CD about the position of his case. Apparently this was the time the police remembered to send a report of their investigations to the Permanent Secretary, Natural Resources. The plaintiff testified that he wrote (Exhibit p.7) to the Secretary, Public Service Commission appealing against his interdiction. The latter wrote to the Permanent Secretary, Natural Resources (Exhibit P.8). The defence tendered a letter dated 9/14/1997 (Exhibit D4) written by the Permanent Secretary Natural Resources addressed to the Head of Civil Service. From reading the subject heading I can infer that it was a reaction to the plaintiff's appeal against interdiction. In

paragraph 1 of the said letter the Permanent Secretary wrote.

“I regret the delay in handling this case. Part of the delay was caused by CID who took their time to investigate and issue the report”.

I have noted that the police report was submitted to the Permanent Secretary immediately after the complaint/inquiry from the plaintiff. This court was not favoured with any explanation as to why the Permanent Secretary had not called for the report earlier.

In the same letter (Exh.D4) the Permanent Secretary wrote as follows:

“I could have handled this case administratively but the Solicitor General advised the legal processes to take their course first”. It is not clear under the law at what stage the Solicitor General was consulted about this case. The Permanent Secretary was required to submit to the Solicitor General, for his approval, the terms of the charges before the plaintiff was called upon to answer them. However, the letter containing the charges (Exhibit P5) was copied to the Solicitor General for legal advice. This implies that the Solicitor General had not been consulted before, and he had not given his approval to the charges. In my view the Permanent Secretary acted in contravention of the law.

In the letter dated 9/4/1997 (Exhibit D4) the permanent Secretary wrote in the last paragraph as follows:

“By copy of this letter, I wish to request the Director/CID to revisit the case. Attached is a copy of the CID’s report and relevant documents for your scrutiny and advice (sic)”.

It does not appear to me that this was a reminder to the Director of CID to revisit the plaintiff’s case. This paragraph has all the attributes of a first request, to the Director of CD, by the Permanent Secretary, to revisit the case. It is my opinion that the Permanent Secretary acted in reaction to the plaintiffs appeal against the interdiction. It is highly suspect that he had not acted on his own, to put such a request to the Director of CD, after studying the

police Report.

The defence also tendered a letter dated 231 April, 1997 (Exhibit D3) written by the Permanent Secretary, Natural Resources, addressed to the Secretary, Public Service Commission. The letter concerns the plaintiffs appeal against interdiction. The said Permanent Secretary wrote as follows:

“Please refer to a letter Ref: PSC/3/97 addressed to the Head of Civil Service and copied to me. Please be informed that this case has been protracted through no fault of mine other than the following reasons:

The delay in handling this case by CD who took very long to submit the report”.

“Bearing the above in mind, and because I was not satisfied with the CID report, I have to wait until a satisfactory report is made by CD to enable me conclude the case without any further delay”.

The sole defence witness testified that the Permanent Secretary was not happy with the police report acquitting the plaintiff of the charges. She further told court that she had not seen any correspondence from the CD addressed to the Permanent Secretary, Ministry of Natural Resources, stating that the CD had agreed to revisit the plaintiff’s case. She testified that the Permanent Secretary, Ministry of Water, Lands and Environment had written, in May or June, 2000, a remainder to the CD about revisiting the case. The witness told court that the issue of the plaintiff’s case had arisen in the select committee of Parliament investigating the forestry department, otherwise the current administration did not know about the case. She told court that the Forest Department was transferred to her Ministry with effect from 1 July, 1998. The defence witness told court that the staff of the Forestry Department working at the District are delegated staff of the central Government. She told court that such staff was not decentralized, and they are answerable to the Permanent Secretary of the line Ministry. The defence witness testified that she had not seen any recommendation by the Permanent Secretary of Natural Resources to the Secretary, Public Service Commission that the plaintiff

be dismissed.

Learned counsel for the plaintiff submitted that the Permanent Secretary, Natural Resources did not respond to the plaintiffs reply to the charges by either lifting the interdiction, or putting the plaintiff's case before the Public Service Commission for disciplinary proceedings to be conducted.

Counsel submitted that the plaintiff was not prosecuted in a court of law as a result of CID police investigations. Counsel referred to Exhibit P.9, a letter dated 24/2/1997 written by the Secretary, Public Service Commission addressed to the Permanent Secretary, Natural Resources. The secretary wrote in part: "His (the plaintiffs) defence is contained in his letter ref: B U 9/1 dated 9th November, 1995 addressed to you and copied to me among others. It is unfortunate that since the receipt of his defence in November, 1995 no communication has ever been made to him by you regarding his fate. I would like to call upon you to make a final decision of his case and let the commission know of the decision taken as soon as possible".

Counsel then referred to the plaintiff's evidence that the said Permanent Secretary did nothing in the matter. It is not true that the Permanent Secretary did nothing. The correct position is that the Permanent Secretary wrote to the Head of Civil Service on 9/4/1997 (Exhibit D4), and later to the Secretary, Public Service Commission on 23/4/1997 (Exhibit D.3).

Learned Counsel submitted that the plaintiff consequently filed this suit on 18/7/1997. The defence witness explained that no further steps were taken because the Ministry officials were waiting for the out come of this suit.

The defence witness testified that where the Ministry felt that there was some criminal aspect in the case against an officer it would be forwarded to the DPP. She told court that the plaintiff's case was referred to the DPP. However, there was no documentary evidence of such a reference. On the other hand, if what the witness told court was the truth then it should

not have been the business of the Permanent Secretary to wait for another satisfactory report from the CID. He should have known that the DPP could handle the CJD better. The witness did not inform this court what decision, if any, the DPP made in the matter.

In his letter dated 9/4/1997 (Exhibit D4) the Permanent Secretary, Natural Resources stated that the Solicitor General advised the legal processes to take their course first. I think what the Permanent Secretary meant by this was actually keeping the plaintiff's case in his office until he received a satisfactory report from the CID. There was no documentary evidence to prove that there was such advice from the Solicitor General. The Permanent Secretary gave this as the reason for his hesitation or failure to handle the plaintiff's case administratively. I think this was an unsuccessful attempt to push blame for the delay to some other office.

I do believe the plaintiff when he says that there was no communication from the Permanent Secretary to himself on whether or not, by his reply to the charges, he had managed to exculpate himself I find as a fact that the Permanent secretary never submitted the plaintiff's case to the Secretary, Public Service Commission for consideration.

I therefore find that the Permanent Secretary, Ministry of Natural Resources, contravened the Public Service standing orders when:

- (i) He failed to ensure that the disciplinary proceedings which were instituted against the plaintiff were brought to a speedy conclusion;
- (ii) He failed to practice impartiality when handling the plaintiff's case. He was first convinced of the guilt of the plaintiff and then waited for a CID report to confirm this.

I therefore, answer the second issue in the negative. I hold that the continued interdiction of the plaintiff is wrongful and unjustified.

The third issue is whether the plaintiff is entitled to the remedies claimed.

The plaintiff prayed for a declaration by this court that the interdiction was illegal and invalid.

In light of my holding on the first issue the plaintiff is not entitled to this remedy. The plaintiff prayed for an order lifting the interdiction and resumption of duty. If, as I have found, the continued interdiction of the plaintiff is wrongful and unjustified then he is entitled to a remedy. In my view it would constitute a denial of justice if the plaintiff was left to continue suffering under the interdiction. So, it is hereby ordered that the interdiction be lifted. This leaves the plaintiff a District Forest Officer, may be without a station.

The plaintiff prayed for an order that his arrears of salary and attendant benefits be paid. In this case disciplinary proceedings against the plaintiff were never completed. No criminal proceedings were instituted against him. His interdiction has been lifted. So I hereby order that the whole of any salary, including benefits, which was withheld because of the interdiction be restored and paid to him.

On the question of resumption of duty I must say that it is not the function of this court to allocate a station to the plaintiff. However, he is still a District Forest Officer, who must be paid as such. This court has not investigated any charges against the plaintiff. So the decision of this court does not constitute an acquittal of the plaintiff of charges levelled against him.

Should the responsible officer consider that it is necessary to institute fresh disciplinary proceedings against the plaintiff he should follow the law, institute a fresh process, and ensure that they are brought to a speedy conclusion. Also, he should be impartial and observe the rules of natural justice.

The plaintiff prayed for general damages for the interdiction. I hold that the plaintiff is not entitled to this remedy. In my view, anything which the plaintiff has suffered will be atoned for adequately by payment of arrears of his salary and benefits.

I also hold that the plaintiff is not entitled to punitive damages.

I award the costs of this suit to the plaintiff, to be calculated by the Registrar and reduced by one quarter thereof because of Partial success.

MOSES MUKIIBI

JUDGE

2/7/2003

2/7/2003 at 4.00pm.

Mr. Muhwezi - Counsel for plaintiff.

Plaintiff in court.

No counsel to represent the Attorney General.

Ngobi: Court clerk/Interpreter.

Court: Judgment is delivered in open court.

MOSES MIJKIIBI

JUDGE

2/7/2003.