

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 669 OF 2001

ABBAS SENDAGGALA ::: PLAINTIFF

- VERSUS -

UGANDA COMMERCIAL BANK LTD ::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff sued the defendant for among other claims, damages for wrongful termination of service, special damages by way of payment of terminal benefits, exemplary damages and interest on the damages and costs.

The brief facts giving rise to the cause of action are that the plaintiff was appointed in the employment of the defendant on the 15th July 1979. He served in various departments of the bank until 21st September 1999 when at the instance of the bank he was arrested and detained at Kawempe police station. He was arrested because of the loss of some US \$200.000 which had been collected from Kasese branch and handed to two officers of the bank. He was released on bond on 27th September 1999 but kept on reporting at a police post at the defendant's head office premises in Kampala. He appeared before the Staff Commendation and Disciplinary Committee between January and March 2000 on allegation of the loss of the said money. The committee exonerated him but was however terminated on the 12th June 2000. The other two suspects were however dismissed from service. The plaintiff appealed to the defendant against the termination but he was turned down. He later lodged a complaint with the office of the Inspector General of Government against unlawful termination. The said office strongly recommended that the plaintiff should be paid one-year's salary like he had been declared redundant. The defendant however decided to pay the plaintiff another two months out of which the defendant deducted what the plaintiff owed to the defendant before his termination. Hence this suit.

The defendant denied the plaintiff's claim by stating that the plaintiff was rightfully terminated in accordance with the terms and conditions of employment and further that the bank had an inalienable right to hire and fire. The defendant insisted that upon his termination, the plaintiff was paid in accordance with the law.

During scheduling conference, the following issues were agreed:-

- (1) whether the plaintiff's dismissal was lawful and/or justified.
- (2) whether the arrest and detention of the plaintiff at the instance of the defendant of the defendant was legal and/or justifiable.
- (3) whether the plaintiff is entitled to the claim for exemplary/punitive damages.
- (4) what remedies if any, are available to the plaintiff.

The plaintiff testified alone while the defendant called one witness one Alfred Oder Ogang (DW1).

The plaintiff Abbas Sendagala (PW1) gave a detailed account of his service history with the defendant bank from 15/7/1979 to 12/6/2000. He stated that he entered the plaintiff's employment on 15th July 1979 as a messenger (exhibit P1). Soon after that appointment, he went for a course which resulted in another appointment in April 1981 as a clerk/machine operator. He was then posted to Masaka Branch where he stayed up to 1989 when he was transferred to Kyotera after being promoted to Supervisor. From Kyotera he was transferred to Lukaya where he was promoted to the rank of banking officer in 1991. That same year he was made the Branch manager Kalangala up-to 1995.

In 1995 he was transferred to Namasuba, still as Branch Manager where he stayed for four months and was transferred to a bigger branch at Kawempe where he was made second in-charge. In 1996 he was transferred to the Headquarters International Division where he was put in-charge of reconciliation and investments. His duties were to reconcile International Division and other branches of the bank. He was further responsible for foreign cash movements of

foreign currencies imported into the country and that collected by the Bank's local branches. He testified that he was the only officer holding a Civil Aviation Card which authorized him alone to receive foreign currency at Entebbe Airport when brought into the country, and to transport it to International Division. He related that the biggest single cash importation he handled in line with his duties was US \$ 800.000 which he safely deposited at International Division. He worked in the above Division from August 1996 up-to December 1999 when he was transferred to the Real Estate Department of the same bank. The transfer to Real Estates followed the loss of US \$200.000.

About the loss of US \$200.000 the plaintiff testified that on 15th September 1999 he left the Head office to collect cash dollars from Kasese and Mbarara Branch. He came back with over 250.000 US \$. He reported back on 16th September 1999 and handed over the cash to the officers in-charge foreign cash called Vincent Kalika and Tumutegyereize. After counting and verifying the cash the above two signed on the delivery book.

After that the general manager in-charge of the Division Nicholas Okello also signed on a receipt in acknowledgement of the same. After handing over the money he left for his home. The next day which was Friday was a normal working day. He reported for duties as usual. The Monday following was not a working day. So he reported on duty on Tuesday where he learnt from the key holders that the money he had given them had got stolen from the safe. The two officers were thereafter arrested.

The plaintiff testified that after the arrest of the two officers he was also arrested and his home was searched but nothing was recovered. He was later taken to Kawempe Police Station where he spent seven days. During the time he was in police custody at Kawempe he was not mistreated but he suffered a lot of trauma and his family spent a lot of money visiting him in the cells. He also suffered embarrassment at the hand of his neighbours who were present during the house search because he was believed to be a honest person. He was later on released on police bond while the other two officers were taken to court. He kept on reporting every week to CID Police Post located at the defendant's building for three months. Two days after his final release from police bond he was summoned by Nicholas Okello to resume work at his old desk and with the same duties. After three months he was transferred to Real Estates Department. He insisted

that after handing over the cash to the two senior officers above him, he had no control over it as his role ended after collecting and handing over the same.

The plaintiff testified that in April 2000 he was called by the staff commendation and Disciplinary Committee to explain his involvement in the lost dollars. The Committee wrote a report (exhibit P2) which exonerated him. After that he continued working in Real Estates until 12th June 2000 when he received a letter terminating his services (exhibit P10). After his termination he appealed to the Managing Director (MD) to complain about his termination (exhibit P3). The Managing Director wrote back turning down the appeal (exhibit P4). After that the plaintiff resorted to the office of the Inspector General of Government. The Inspector General of Government took up the same and made his recommendation (exhibit P5) that he should be paid one year salary as compensation for the reason that he was not involved in the loss of the dollars and that the plaintiff was not given opportunity to defend himself. He stated that his dismissal was contrary to the Policy Manual (exhibit P6). The plaintiff stated that according to the nature of his termination he should have been entitled to redundancy payment which was fifteen months' salary and allowances since there was no reason for his termination. He concluded that he was terminated as a result of malice and rumours.

Alfred Max Ogang Oder (DW1) who was the only witness for the defendant testified that the plaintiff used to work for the defendant before he was terminated in accordance with his terms of service. He stated that the terms of service authorized termination of any of the defendant's employees after giving three months notice or cash in lieu thereof. Those terms were found in the Staff Policies Manual. He stated that before the plaintiff's termination something had taken place in that the bank lost cash dollars and other currencies at the International Division where the plaintiff was working. That money which got lost had been transported by the plaintiff from other branches. After handing that money to the key holders – Tumutegyereize and Sekanyike, the same got lost. The defendant then suspected the plaintiff and the two key holders in the loss of the said money. The two key holders were dismissed while the plaintiff was terminated. He stated that he was involved in the termination exercise since he was the Chairman Staff Commendation and Disciplinary Committee.

The committee recommended that the plaintiff be terminated. The report of the committee was marked exhibit D1. After termination the plaintiff was paid in lieu of notice. He stated that the plaintiff was not terminated under Clause 8 (3) (a) of the Manual and that notwithstanding anything in the manual, the defendant could terminate under any circumstances such as if the bank felt uncomfortable to continue with one's services because of any suspicion and also when the bank does not want one's service any more. He testified that the defendant relied on Clause 8 (3) (b) to terminate the plaintiff after considering that he was lending money to staff although this was not established as a fact by the committee and that there was a strong suspicion that the plaintiff was involved in the loss of the dollars. He concluded that the plaintiff's case could not lead to summary dismissal.

Resolution of issues:-

(1) whether the plaintiff's dismissal was lawful and/or justified.

The position of the law in regard to termination of any employee from employment with or without notice is now beyond any doubt. The law is that an employer has the right to terminate the service of his employee at any time and for any reason or for none, provided that it is done in accordance with the law. However before an employer can terminate he must follow what he agreed with the employee in the contract of service and in the rules and regulations governing the employment: See **Robinah Sajjabi Vs UCB C.S. No. 560/96** (unreported).

In the instant case the plaintiff's services were terminated under Clause 8 (3) (b) because he was strongly suspected along two others for causing the disappearance of dollars. But this was a matter which was subject of a disciplinary proceedings where it was established that the plaintiff was not connected with the loss of the said dollars.

The plaintiff has emphatic that after handing over the said dollars to the two key holders, he had nothing to do with its loss. The defendant also established that the plaintiff was not guilty in causing the loss of the dollars. Was it just and fair for the staff Commendation and Disciplinary Committee to turn around and recommend the plaintiff's termination in the above manner? In all fairness I do not agree. I find this kind of termination unnatural, unjust and contrary to the rules and regulations governing employment in this country. It was done without considering the number of good years the plaintiff had put in the defendant's service. Surely a person who has served an organization for about 20 years in various capacities should not have deserved the kind of termination after he was investigated and found to be innocent. Why for example was his colleague who was also found innocent merely cautioned? For the above reasons I find that the plaintiff's termination was not justified. His termination was not done with a human face. It was very oppressive and unreasonable.

Issue No. 2:-

Whether the arrest and detention of the plaintiff at the instance of the defendant was legal and/or justified.

In the instant case the arrest and detention of the plaintiff at the instance of the defendant was justified because the plaintiff was suspected in causing loss of the defendant's dollars. The plaintiff was one of the suspects because he was the one who had brought the money which eventually got stolen. The defendant in my view was right to suspect the plaintiff for the loss of public money. In such a situation the defendant was right to let the law take its course. The arrest and detention was in vindication of the law and was therefore legal and justified. It was connected to loss of public money: see **Abraham Waligo Vs Attorney General HCCS 533/94** (unreported).

Issue No. 3:-

Whether the plaintiff is entitled to the claim of exemplary/punitive damages.

The plaintiff contended that his arrest, detention and dismissal were arbitrary, outrageous and high handed. The defendant denied the same. The arrest of the plaintiff was occasioned because there was suspicion that he was involved in the loss of a lot of money. After the arrest the

plaintiff was taken to his home where a search was conducted. Thereafter the plaintiff was handed over to Kawempe Police Station. The plaintiff stated in his own words that he was not beaten although he was humiliated because the search was carried out in the presence of his neighbours who had known him as a honest person. There was therefore no evidence to show that the plaintiff was treated in oppressive, arbitrary or unconstitutional manner. The arrest, search and detention were done in an effort to recover public money which had in fact got lost. The conduct of the defendant's agent does not therefore qualify the plaintiff for the claim of exemplary/punitive damages: See **Katende Vs Attorney General [1971] EA 260**.

Issue No. 4:-

What remedies are available to the plaintiff?

It is my finding that the plaintiff's termination was unjustified and contrary to employment regulations. Having found that the plaintiff was not guilty of any wrongdoing in the loss of the dollars it was unfair to terminate him without proper terminal benefits considering the fact that he had invested well about 20 years in the defendant's service. As I stated earlier, the plaintiff's termination was harsh oppressive and very unkind. When someone takes an employment, he expects something to take home at the end of it all. The circumstances and the nature of the plaintiff's termination go to the root of injustice. In the wisdom of the Inspector General of Government, the plaintiff should have been entitled to payment of salary for one year, and allowances basing on clause 8.05 and 8.06 (exhibit P6).

I think that would be an appropriate redress which would be under redundancy arrangement in the circumstances i.e. $989,465 \times 12 = 11,873,580/=$. The amount the plaintiff has received shall be deducted from the above sum i.e. $11,873,580/=$ less the amount he received.

The plaintiff is entitled to costs of this suit plus interest on the above at court rate from the date of termination until payment in full.

RUBBY AWERI OPIO

JUDGE

2/11/2004.

3/11/2004:-

Kiyimba Mutate for plaintiff.

Gertrude Wamala a friend of Court with Stanbic Bank representing defendant.

Judgment read in chambers.

Mutale to inform Mwene Kahima.

RUBBY AWERI OPIO

JUDGE

3/11/2004.