

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CASE NO: HCT-00-CV-CS-0556 OF 2002**

**ROBERT BYARUHANGA :::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**NATIONAL MEDICAL STORES :::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. MR JUSTICE RUBBY AWERI OPIO**

**JUDGMENT:-**

The plaintiff brought this action against the defendant for special and general damages for breach and wrongful termination of his contract of employment and defamation of the plaintiff by the defendant. The plaintiff was employed by the defendant on 9<sup>th</sup> September 1996 as a Procurement Assistant and was later promoted to the position of Procurement Officer in 1997 in the Procurement Department. He was second in command in the said Department under a one Mr Ijala.

Sometime towards the end of 1998 the defendant imported drugs called Fluconazole Tablets of 50 mg and 200 mg respectively. The supplier of the drugs was a company called Karnag International. After the supply and payment was made the defendant alleged that the plaintiff was involved in the mismanagement of the procurement process. On the above allegation the defendant proceeded to interdict the plaintiff on 7<sup>th</sup> April 2000. This was followed by his termination on 30<sup>th</sup> April 2001.

The plaintiff contended that both the interdiction and termination were wrongful.

The defendant denied that the interdiction and termination were wrongful. The defendant further denied the allegations of defamation and contended that the plaintiff was fired because he falsified bid documents and prepared a report on falsified documents which led to the procurement of Fluconazole tablets which resulted into financial loss to the defendant. He the plaintiff was fired because he acted fraudulently and dishonestly.

The following issues were agreed upon during the scheduling conference:-

- (1) Whether the interdiction and termination of the plaintiff's employment was wrongful and in breach of his contract of employment with the defendant.
- (2) Whether the plaintiff was defamed as per annexures "E" and "F" that is in publication of New Vision of 4<sup>th</sup> April 2000 and 10<sup>th</sup> March 2002.
- (3) Whether the plaintiff is entitled to the remedies claimed.

In an attempt to prove his case on the balance of probabilities as required by law, the plaintiff adduced the evidence of two witnesses: Robert Byaruhanda (PW1) and Ezekeil Patrick Olupol (PW2). The defendant also called two witnesses: Chrysotom Patrick Kisity (DW1) and Frank Mutagubya (DW2).

## **RESOLUTION OF ISSUES:-**

### **Issue No.1 - Wrongful interdiction.**

The plaintiff testified that he was wrongly interdicted and kept on interdiction contrary to the National Medical Stores Manual. The basis for the plaintiff's interdiction was that he had been privy to the mismanagement of the procurement process of Fluconazole tablets. According to his letter

of interdiction, the plaintiff was required to keep off National Medical Stores premises and abide by instructions and orders given to him by the police without fail and to frequently indicate his whereabouts and any change thereof. He was also to receive and did receive half pay per month. Authority to interdict and duration for interdiction provided under the staff manual clause 13.7.6 (c) in particular states that:-

- (i) ***No member of staff shall be interdicted/suspended for longer than six (6) months, unless the Board or other delegated authority specifically extends this period;***
- (ii) ***The total interdiction/suspension period shall not exceed twelve (12) months, after which such staff may finally be liable to reinstatement or termination of service”.***

The plaintiff testified that he was interdicted on 7<sup>th</sup> April 2000 (exhibit P3) and his interdiction continued until he complained vide his letter dated 9<sup>th</sup> November (exhibit P9). His interdiction continued until 30<sup>th</sup> April 2001 (exhibit P4) when National Medical Stores decided to terminate his services. In effect his interdiction lasted for about 13 months. Patrick Kisitu DW1 and Frank Mutagubya DW2 did confirm that the plaintiff's

interdiction was not extended after the 6 months as required by the Personnel manual. The importance of the personnel manual is seen from clause 1.1.2 which establishes the purpose of the manual –

***“The manual defines and explains the relationship between the Corporation, and contains the current personnel approval authorities, policies, procedures, terms and conditions of service, which govern these relationships”.***

In the instant case two breaches were committed by the defendant. The first one was that interdiction of the plaintiff was for a period longer than six months without any extension by the Board or other delegated authority. Secondly the total interdiction period exceeded the maximum period of 12 months.

For the above reasons I find the plaintiff’s interdiction wrongful in that it was done in contravention of the Personnel manual which was the law regulating the activities and relationships of the parties.

The plaintiff further alleged that his termination was wrongful. The main reason was that the reasons given for termination were false and unproven.

The plaintiff's evidence which was supported by Ijala Olupot (PW2) was that procurement process was handled properly. The work of their department was to prepare tender documents by incorporating the technical quantities and estimated prices of drugs from stores, logistics, marketing and Research Departments. Technical specifications were prepared by the Pharmaceuticals Department. The plaintiff testified that he prepared draft tender documents which he submitted to his head of procurement; Mr Ijala Olupot (PW2) for scrutiny. Thereafter the process went to the Management Procurement Committee, which was made of all the Heads of Departments. It was that committee which approved the tender documents and minutes to that effect were written. When the documents were approved, the plaintiff invited bids and several people bided and on the opening of the bids the General Manager chaired the process in the presence of the Heads of Departments.

Thereafter technical and commercial evaluations were made by the Pharmaceuticals and Procurement Departments respectively. The lowest bidder was Karnag International. After the above process the plaintiff submitted the evaluation report to the head of Procurement for review who forwarded it to the Management Procurement Committee for approval which was done. Thereafter the winning bidder which was Karnag was awarded the contract to supply the drugs. The drugs were supplied in November 1998 and were duly paid for. The plaintiff denied ever tampering with any document and contended that the approval of the tender was done by the Management Procurement Committee which he was not a member.

Patrick Kisitu (DW1) testified inter alia that he was the Department General Manager between 1998 and 2002 when he was retrenched and that during that time the plaintiff was one of their workers in the Procurement Department. He testified that they got into problems because he tampered with procurement process when he inflated prices of products which were ordered. It was discovered that Fluconazole which the plaintiff had participated in its procurement were not selling because of its high prices compared to the prices in other shops selling the same products. The matter was reported to the Management Committee and the Board

Chairman. The Board Chairman instructed the Internal Auditor to carry out investigations in the procurement process. The investigations revealed anomalies in the procurement process in that there were alterations of the price of the product. The bid document had different price from what had been quoted. So there was difference between the price in the bid document and that, which was placed before the Procurement Committee. Since the plaintiff was the one in-charge that transaction action was taken against him and his head of department.

Mutagubya (DW3) on his part testified that the plaintiff left the services of the department because of procurement process of certain drugs. As a result of that problem the plaintiff was interdicted by management and later investigated. After that the plaintiff appeared before a disciplinary committee where a decision was taken to terminate his services. After termination the plaintiff was given his due benefits which included gratuity payment in lieu of outstanding leave.

The law on termination of service is now well settled. An employer has a right to terminate the services of her or his employee at any time for any reason or for none. But if he does so in a manner not warranted by the



contract he may pay damages for breach of contract. It is also trite law that an employee cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence of explanation: See **RIDGE Vs BALDWIN [1964] AC 40.**

In other words an employee can be terminated in accordance with the terms of the contract and upon applying the principles of natural justice of fair hearing. Those conditions were considered by Ssekida J (as he then was) in the celebrated case of **Jabi Vs Mbale Municipal Council [1975] HCB 191.** In that case it was held inter alia that an employer has unfettered right to terminate the services of an employee and that the notice period required to be given would be determined from the contract of service itself or custom or any written regulations governing the employment. The court further held that an employee on permanent and pensionable terms cannot be lawfully dismissed summarily for an alleged breach without following the rules of natural justice and in particular, being informed of the charges against him and being afforded an opportunity to exculpate himself and that once reasons for termination were given the plaintiff ought to be given a chance to explain his position.

In the instant case the plaintiff was terminated under clause 14 of the Personnel manual on disciplinary grounds. The plaintiff was accorded a fair hearing before Disciplinary Committee which decided to terminate his services on allegation of causing financial loss as a result of tampering with procurement process of Fluconazole drugs. His termination was therefore done in accordance with the terms of contract and in compliance with the principles of natural justice since he was afforded a fair hearing. The testimony of DW2 that the investigations were inconclusive about the participation of the plaintiff in the loss does not stand. That was a mere conjecture because he himself admitted that he did not attend the full proceedings. he attended only once. So he had no basis of denying the considered conclusions of the Disciplinary Committee.

Lastly, I find that the plaintiff's termination was done with a human face because he went with his benefits which included one month pay in lieu of notice, payment in lieu of outstanding leave and accrued leave allowance and National Medical Store gratuity up to 24<sup>th</sup> April 2001. Those benefits were awarded to the plaintiff notwithstanding the loss the defendant was subjected to.

To conclude this issue, I find that much as the plaintiff's interdiction was unlawful, his eventual termination was lawful.

**Issue No.2: Whether the plaintiff was defamed by the defendant.**

As far as the above issue is concerned, there was no evidence to prove that the publications were products of the defendant. The two publications were not shown to have been published by the defendant or its employees or its agent. The stories were authored by one Yunusu Abbey who was not shown to be an employee of the defendant. Furthermore even the defamatory words were not set out in the plaint as is required by law. To say the least, this was not a proper case against the defendant for defaming.

**Issue No.3. – Whether the plaintiff is entitled to remedies sought.**

The plaintiff claimed the following reliefs:-

- (a) Half pay during interdiction in tune of shs.6,175,000/=.
- (b) Payment in lieu of notice (one month) in the tune of shs.950,000/=.

(c) General damages for wrongful and unlawful termination in the tune of shs.10,000,000/=.

(d) General damages for defamation.

I have stated above that the plaintiff's interdiction was unlawful for being done contrary to the personnel manual. His interdiction was extended beyond six months without authority. Furthermore his interdiction was beyond the mandatory period of 12 months. That breach would entitle the plaintiff to unpaid half pay while on illegal interdiction for seven months and not 13 months as claimed. That would entitle the plaintiff to  $\text{shs.}398,843 \times 7 = 2,891,901/\text{=}$ .

I also find that the plaintiff was highly offended by the unlawful interdiction. That has shown by the fact that he challenged his continued interdiction and pointed out that it was a violation of his rights (exhibit P9). My view is that such a blatant violation of an employee's right should entitle him to general damages and I think an award of shs.5 million would be sufficient.

Lastly, having said that the plaintiff's termination was lawful, his claim for general damages would fail. The same would go for his claim for defamation.

All in all judgment is entered for plaintiff for shs.2,891,901/= and shs.5,000,000/= by way of special and general damages respectively. The plaintiff is entitled to interest at 20% on special damages since this was a crucial entitlement from 7<sup>th</sup> April 2000 until payment in full and interest on general damages at court rate from the date of this judgment until payment in full. The plaintiff is also entitled to costs of this suit.

**RUBBY AWERI OPIO**

**JUDGE**

**9/11/2005.**

**9/11/2005:-**

Plaintiff present.

Dr Barya present for plaintiff.

Mr Kabugo Charles for defendant.

Judgment read in chambers as in open court.

**RUBBY AWERI OPIO**

**JUDGE**

**9/11/2005.**