

Prior to his termination, the plaintiff was paid for the nine years he had served the company and was later paid two additional years. The defendant contended further that the plaintiff was not entitled to settling allowance as that was only entitled to employees who retire from service.

Finally the defendant contended that the plaintiff was not entitled to the long service award though the company had erroneously paid him in advance before the termination.

ISSUES:-

- (1) Whether the plaintiff was wrongfully and or unlawfully terminated.
- (2) Whether the plaintiff is entitled to the reliefs claimed.

With regard to the first issue the plaintiff testified that his termination was wrongful and or unlawful because it was based on a false allegation that he had fraudulently preset the meter while receiving milk from Luwero Investments Ltd. He testified that during the disciplinary procedures which ensued, he was not given a fair hearing. Dick Lubinga (PW2) who was Field Supervisor with Luwero Investments Ltd testified that on 22nd November 2000 he delivered milk to the defendant on a delivery note indicating that there were 2200 litres. However when it was measured in the meter it was found that there were only 1155 litres. Upon that shortage the defendant suspended him from delivering milk. In his reply letter (exhibit P8) Lubinga testified that the shortage was caused by mistake in recording from their centres, which came about because part of the milk had been sold. He concluded that the mistake was not intended to compromise the defendant's staff.

Stella Maris Ngonzi (DW1) who was the defendant's company Secretary testified inter alia that the plaintiff's services were terminated on 29th October 2000, and his termination letter (exhibit P3) was copied to the chairperson appointment and disciplinary committee, the General Secretary Uganda Beverage, Tobacco and Allied Workers Union and the Union among others. She testified that the letter was copied to the Union because they attended the meeting in which the plaintiff defended himself on allegations that he used to pre-set milk recording meters. She testified that when the plaintiff insisted that he did not pre-set the meter, the Board invited

someone who had witnessed the presetting. Upon confirmation, the Board decided to terminate the plaintiff's services and he was paid accordingly.

Solomon Murket (DW2), the defendant's Quality Controller, testified inter alia that the plaintiff was terminated under disciplinary circumstances because he was implicated in occasioning milk shortage. At the material time the company used to receive milk from farmers. There was suspicion that some farmers had compromised the integrity of the defendant's employees. One of those farmers was Luwero Investments Ltd. He testified that on 22nd November 2000 Luwero Investments Ltd took milk. Since the company was suspecting them of foul play, he went down to the plant to witness the off-loading. As he was there he saw the plaintiff put in a figure of 1000 in the meter instead of starting from zero. When the plaintiff realized that he (witness) was around, he reverted the meter to zero and then off-loaded the milk. At the end of the exercise, the total volume of milk was 1,155 litres. He went and compared that amount of milk with the delivery note and found that it indicated that 2200 litres had been delivered. That meant that there was a shortage of about 1000 litres. From there he charged the plaintiff with foul play and reported the matter to the company. He proceeded to notify Luwero Investments Ltd about the foul play requesting them to show cause why their integrity should not be put in contempt. Thereafter the plaintiff was subjected to disciplinary procedures, which was followed by his termination.

From the above evidence it is true to say that termination of the plaintiff was essentially based on the allegation that he had pre-set the meter of the milk plant. The law on dismissal or termination from employment is now well settled. The leading authority is **Ridge Vs Baldwin [1964] AC 40** where LORD REID once said:-

"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the

master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract”.

Another ground breaking authority on this subject is the case of **Jabi Vs Mbale Municipal Council [1975] HCB 191** where it was held inter alia that an employer has unfettered right to terminate the service of an employee after giving notice and following the rules of natural justice and in particular, by giving the employee an opportunity to exculpate himself.

In the instant case, the plaintiff was terminated on suspicion that he was involved in creating “ghost supply” of milk by conniving with dubious farmers and pre-setting the milk reading meters. At one point he was caught red-handed presetting the same. The matter was reported to the management. The farmer which was involved in the scam did not give satisfactory explanation. After subjecting the plaintiff to disciplinary measures, the defendant decided to terminate his services. On the said outstanding suspicion, the defendant was right to terminate the services of the plaintiff, even without giving reasons. The termination was lawful in view of the suspicion and by the fact that the plaintiff was given chance to exculpate himself before the Disciplinary Committee which decided to terminate him in accordance with Regulation 8 (b) of the Standing Orders. Lastly the plaintiff was given three months payment in lieu of notice as per the Standing Orders and the employment Act.

For the above reasons, I find that the plaintiff was lawfully terminated after proper deliberations according to his terms of contract and the principles of natural justice: See **Jabi Vs Mbale Municipal Council** (supra).

As for the second issue whether the plaintiff is entitled to reliefs claimed, the items claimed were:-

- (1) Long service award.
- (2) Service award.
- (3) Settlement allowance.
- (4) Pay in lieu of leave not taken.

- (5) General damages for wrongful/unlawful termination and lost opportunity or receiving his retrenchment packages.

The basis for the above claims were that had it not because of the unlawful termination, the plaintiff would have retired or retrenched under order 54. That order states:-

“an employee who retires from the services of the Corporation pursuant to Standing Order No. 10 (retirement at age of 60) or any employee who shall cease to be employed as a result by the Corporation by reason of the repeal of the Dairy Industry Act, 1967, shall, in addition to the benefits of the scheme Standing Order No. 53 or any other Retirement Benefit Scheme, be paid benefits as follows:-

- a) ***Settling in allowance – one million.***
- b) ***Cash in lieu of notice (basic salary) Scale – one month G-D.***
- c) ***Cash in lieu of leave.***
- d) ***Service award. Beyond and 10 years- 15 years of service – 12 months allowance***
- e) ***.....***
- f) ***Transport”***

My understanding of the above regulation is that it was intended to cover the age of 60 or those who cease to be employed by the defendant by reason of the repeal of the Dairy Industry Act. In the instant case, the plaintiff ceased to be an employee of the defendant as a result of termination of his service but not by way of retirement after attaining 60 years of age. On the other hand, by the time the Dairy Industry Act was repealed, the plaintiff had not ceased being employed. In fact the plaintiff was taken on by the defendant whereupon he served for one year and three months before he was terminated on 15th October 2001.

Therefore the plaintiff does not qualify for benefits under Standing Order No. 54 above mentioned. All he was entitled to were under Standing Order No. 8 which were three months notice or cash in lieu and other benefits which were duly paid.

Furthermore, as a serving officer, the plaintiff was not entitled to claim for retrenchment package from the defendant. As long as the plaintiff was lawfully terminated, his claim for general

damages could not be sustained. In the end, I find that the plaintiff has failed to prove his case on the balance of probabilities. His claim is accordingly dismissed with costs.

In case the plaintiff's case had succeeded, I would have awarded him terminal benefits in the tune so claimed at 7,254,496/= and general damages of shs.10,000,000/= (ten million only). All in all, the plaintiff's claim is dismissed with costs.

RUBBY AWERI OPIO

JUDGE

8/12/2005.

9/12/2005:-

Barya present for plaintiff.

Kiiza Fred present for defendant.

Judgment read in chambers as in open court.

RUBBY AWERI OPIO

JUDGE

8/12/2005.