

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT No. 646 OF 2001**

GERALD MUKASA ::: PLAINTIFF

- VERSUS -

UGANDA RAILWAYS CORPORATION ::::::::::::::::::::::::::::::::::::::: DEFENDANT

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

**JUDGMENT:-**

The plaintiff, Gerald Mukasa, sued the defendant, for payment of pension, terminal benefits, unpaid wages and leave pay, general damages for malicious prosecution, breach of contract, unlawful dismissal and costs of the suit.

The background fact surrounding the plaintiff's case are that:

The plaintiff was from 1979 employed by the defendant corporation. On 22<sup>nd</sup> April 1999 a railway accident occurred at Mukwano railway junction while the plaintiff was on duty. The plaintiff was implicated in the accident whereupon he was prosecuted vide Cr. Case No. 904/99 in Buganda Road Court. Subsequently the plaintiff was interdicted and placed on half pay. On 6<sup>th</sup> July 1999 the plaintiff was dismissed with disgrace as a result of the said accident. The plaintiff contended that he was not given any opportunity to defend himself against the allegation before he was interdicted and dismissed. On 21<sup>st</sup> July 2000 the plaintiff was acquitted of the charge of neglect of duty/gross negligence. Hence this suit.

The defendant claimed that the plaintiff's employment was lawfully terminated and that he was not entitled to the reliefs. The defendant also counterclaimed for US \$192000, which the defendant paid to Mukwano Industries as a result of the said accident.

At the scheduling conference four issues were raised for determination:-

- (1) whether the plaintiff was unlawfully dismissed by the defendant;
- (2) whether the plaintiff is entitled to the reliefs;

- (3) whether the plaintiff was negligent and breached his duty;
- (4) whether the plaintiff is liable for the damage of US \$192000 suffered by the defendant.

**Issue No. 1:-**

In regard to the first issue the plaintiff testified that he was not given an opportunity to defend himself against the allegations of gross negligence before he was interdicted and dismissed. The defendant on the other hand adduced evidence that the plaintiff was lawfully dismissed in accordance with his contract of employment and the staff Rules and Regulations. The defendant contended that the dismissal was lawful because the plaintiff had been given authority to defend himself before the accident investigation Committee (exhibit D1).

What amounts to unlawful dismissal was defined in the case of **Jabi Vs Mbale Municipal Council [1975 HCB] 191** as follows:-

*“It was generally accepted that dismissal was wrongful if it was made without justifiable cause and without reasonable notice ..... It was also a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving a breach of disciplinary regulations or misconduct. It was perhaps a different case if the employee was on temporary terms but an employee on permanent terms was entitled to know the charges against him and to be given an opportunity to give and grounds on which he relied to exculpate himself where that was not done it would properly be said that the dismissal was wrongful”*

Wrongful dismissal would therefore occur under two circumstances:-

- (a) when made without justifiable case or without reasonable notice; or
- (b) when done in breach of a fundamental requirement of natural justice.

It is true that after the train accident, the defendant set up an independent committee of three experts to investigate the cause of the accident among other terms of reference.

The team was also to indicate the extent of the damages and determine the responsibility for the accident and recommend corrective measures. Acting on the report of the said investigators the defendant decided to dismiss the plaintiff with disgrace according to exhibit P2:-

*“Arising out of investigations into the train accident which occurred at Mukwano siding on 22<sup>nd</sup> April 1999, it was established that the accident occurred through your gross negligence. Consequently the Board of Director of Uganda Railways Corporation at their special meeting held on 17<sup>th</sup> June 1999 in the corporation Board room resolved that you be dismissed with disgrace ... as you grossly misconducted yourself....”*

It is clear from above passage that the Board of Directors after receiving the report acted quickly and dismissed the plaintiff without putting the findings of the report to the plaintiff for him to respond accordingly. That lapse of procedure clearly offended the rule of natural justice especially in view of the gravity of the charge and the long period the plaintiff had put in the defendant’s service. The above principle was alluded to by S. Angeret in Principles and Cases on the Termination of the contract of Employment as follows:-

“It cannot be doubted that the abrupt deprivation of a person’s only means of livelihood is a very drastic nature to which the rules of natural justice should be applicable”.

In the instant case the plaintiff had worked for the defendant for twenty (20) years. He could have been guilty of misconduct and merited dismissal but that should have come after leveling a specific charge on him before the Board of Directors, the plaintiff’s dismissal was done in a rash and without a human face thereby offending the rule of natural justice. For that matter I find the dismissal wrongful.

**Issue No. 2:-**

In regard to the second issue the plaintiff sought the following reliefs:-

(a) Special damages

- (i) Half salary from May – June shs.34,106/=;
- (ii) Salary from July 1999 to July 2000 at shs.181,956 per month shs.2,365,281/=;
- (iii) Long service award shs.2,547,384/=;
- (iv) Appreciation award shs. 2,547,384/=;
- (v) Terminal leave shs. 443,378/=
- (vi) Pension shs.2,365,126/=

(b) General damages for wrongful dismissal and breach of contract;

(c) General damages for malicious prosecution;

(d) Interest on (a) from 6<sup>th</sup> July 1999 to date of judgment at 20%;

(e) Costs of the suit.

In the course of the trial, the plaintiff abandoned his claim on half pay under special damages and his claim on general damages on malicious prosecution. As for half pay since the defendant was legally entitled to interdict the plaintiff and put him on half pay, the plaintiff was not entitled to claim the same while under interdiction. On the other hand the claim for malicious prosecution I could not be maintained for lack of proof that the prosecution was activated by either spite or illwill towards the plaintiff: See **Attorney General Vs Hajji Adam Fajara [1977] HCB 29**. The plaintiff was prosecuted properly as result of a train accident where he was implicated.

In an attempt to prove the remaining claim for special damages the plaintiff testified that he was entitled to long service award, appreciation award, leave settlement, and pension all totaling to shs.7,903,272/=. The defendant did not challenge the plaintiff's evidence in cross-examination. It is trite law that where a piece of evidence is not challenged by way of cross-examination court should rely on it: See **Prince Rukidi Vs Prince Solomon Iguru Civil Appeal No. `8/1994** (unreported). In the premises I hold that the plaintiff's claim for special damages have been proved.

The plaintiff further claimed general damages for wrongful dismissal and breach of contract. The purpose of that claim is to place the innocent victim in the position he would have been in if the breach had not been committed. The position of the law on this point was set beyond doubt in the case of **Kirya Vs East African Railways Corporation [1975] HCB 229**. The facts of that case are similar to the instant matter. The plaintiff was a guard foreman when he was dismissed. The cause of his dismissal arose on January 31<sup>st</sup> 1971 when a wagon containing rolls of cloth belonging to Nyanza Textiles was moved from the yard to unused siding some two miles from the Railway Station. There the wagon was emptied of its cargo and the corporation had to pay a lot of money to compensate its owners. The plaintiff was prosecuted but acquitted. The defendant later initiated disciplinary proceedings against the plaintiff, which led to his dismissal with loss of all privileges and without notice. The plaintiff contended that the dismissal was wrongful. The defendant contended that the dismissal was lawful and proper as it followed an incident in which the corporation lost a considerable sum of money; that the incident was a result of neglect of duty on the part of the plaintiff as yard foreman on duty at the time of the theft. The court held inter alia that:

***“The plaintiff having been acquitted of the charges, the corporation could not institute disciplinary proceedings against him arising from the same issues as the criminal proceedings. The proper procedure was under the Staff Regulations.***

On the evidence it was not proved that the plaintiff was directly responsible for the shunting of the wagons to sidings.

The quantum of damages would depend on what may be considered a reasonable notice to the defendant upon his dismissal and in the instant case it was reasonable that a person who had rendered such long service to the corporation should have had at least six months' notice to give him chance to look for alternative employment. Therefore the plaintiff would be awarded the equivalent of his salary for six months i.e. as general damages in lieu of notice.

In the instant case the plaintiff's dismissal was wrongful. The said dismissal denied the plaintiff source of livelihood. He underwent untold hardships such as depriving his children of education. In view of the twenty (2) years of service the plaintiff had rendered he shall be compensated with six months' salary in lieu of notice i.e.  $181,956 \times 6 = 1,100,000/=$ .

**Issue No. 3:-**

**Whether the plaintiff was negligent and breached his duty:**

The plaintiff testified that he was a yard supervisor at the time of the accident and his duties were movement of goods to and from siding, monitoring the yard and supervision of the points man and driver. The plaintiff was blamed for the accident on the ground that he went without his points man and

Although the plaintiff did not go with his points man, he did perform that duty when he changed the points to enable the Gapco train reach the station. Thereafter the plaintiff was instructed to remain in Mukwano. It is also clear from the evidence on record that the cause of the accident could be traced in the failure of the defendant to properly secure the points against interference by third parties. The defendant had failed to provide padlocks to secure point from manipulation by idlers as was apparent in the instant case. That position is even apparent in the criminal judgment where the plaintiff was acquitted.

**Issue No. 4:-**

**Whether the plaintiff is liable for the damage of US \$ 192000 suffered by the defendant.**

From what I have discussed above, the plaintiff cannot be held liable for the damage of US \$ 192000 suffered by the defendant, as he was not negligent. Moreover the damage was occasioned as a result of several dynamics, which were not wholly to blame on the plaintiff. There involved the disappearance of the relevant points man, possible acts of a third party and failure by the defendant to provided padlocks to secure points. This last issue is accordingly answered in the negative.

**Conclusion:-**

In conclusion, judgment is entered for the plaintiff in the following terms:-

(a) Special damages

(i) Long service award	shs.2,547,384/=
(ii) Appreciation award	shs. 2,547,384/=
(iii) Leave Settlement	shs. 443,378/=
(v) Pension	<u>shs.2,365,126/=</u>
Total	<u><b>shs.7,903,272/=</b></u>

(b) General damages for wrongful dismissal;

(c) Interest at court rate on special damages from 6<sup>th</sup> July 1999  
until date of judgment;

(d) Costs of the suit

(e) Interest on the above at court rate from date of judgment  
until payment in full

**RUBBY AWERI OPIO**

**J U D G E**

**11/7/2005.**

12/7/2005:-

Mr Musisi Stephen present for plaintiff.

Defendant absent.

Judgment read in chambers as in open court.

**RUBBY AWERI OPIO**

**J U D G E**

**11/7/2005.**