

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
CENTRAL CIRCUIT
CIVIL SUIT NO. 13 OF 2005

ENG. PASCAL R. GAKYARO ::::::::::::::::::::PLAINTIFF

VERSUS

CIVIL AVIATION AUTHORITY:::::::::::::::::: DEFENDANT

BEFORE HON. JUSTICE GIDEON TINYINONDI:

JUDGMENT:

In his plaint the Plaintiff sought special and general damages for wrongful termination of his services in the employment of the Defendant and a return of his personal properties or their values wrongfully retained by the Defendant. He alleged, inter alia,

- “1.

2.

3.

4. The Plaintiff's claim against the Defendant is for special and general damages for wrongful termination of his services in the employment of the defendant and for return of his personal properties or their value wrongfully retained by the Defendant.

5. **The facts constituting the Plaintiff's cause of action arose as hereunder: -**

i). That on or about the 29th July, 1992 the Plaintiff was employed by the Defendant and appointed as a Manager, Engineering Special Duties (Up-country Aerodromes). A copy of the letter of appointment dated **29th July, 1992** is attached hereto and marked annexure **"P1"**. The Plaintiff's appointment was also subject to the Civil Aviation Authority - General terms and Conditions of Service Regulations 1992 - a copy of which is herewith attached as **"P2"**.

(ii). That the Plaintiff was on **31st March, 1993** confirmed as a Manager Up-country Aerodromes a job he held till his services were unlawfully

and wrongfully terminated. A copy of the confirmation letter is hereto attached and marked "**P3**".

(iii). That on the **12th January, 2003** Security Operatives raided the Plaintiff's residence at **Lweza at 2.39 p.m.** and abducted him and kept him in an unknown place but was subsequently produced in court on an order of *Habeus Corpus ad sub jiciendum* and later granted bail.

(iv). That without being given an opportunity to be heard in accordance with the principles of natural justice "***audi alteram partem***", the Plaintiff was on the **22nd January, 2003** suspended from duty with immediate effect pending police investigations into the alleged charge of treason against him. A copy of the letter suspending the Plaintiff from duty is hereto attached and marked annexure "**P4**".

(v). That on the **7th August, 2003** the Plaintiff wrote to the Defendant seeking permission to resume work as he was innocent until proved otherwise and as the charges against him were independent of his employer. A copy of the said letter is attached hereto and marked annexure **“P5”**.

(vi). On **26th September, 2003** the Defendant replied the Plaintiff's letter on **7th August, 2003** upholding his suspension as he was still required to report to court and in that letter he was prohibited/refused to access Civil Aviation Authority Offices except on request by the Civil Aviation Authority and was asked to hand over his Airport Entry Pass to the Security Officer. A copy of the said letter is attached hereto and marked annexure **“P6”**.

(vii). That on the **7th August, 2003** after being released on bail the Plaintiff had reported for duty to his employer the Defendant herein but was told to stay away from his duty station.

(viii). That on **7th August, 2003** when the Plaintiff reported for duty he was not allowed to enter his office to take out his personal property namely a Laptop computer, Modem, Printer, and Cannon electric camera, text books and scholastic materials as well as accessing accountability documents for purposes of handing over his office to his employer.

(ix). That without according the Plaintiff an opportunity to be heard, the Defendant's agents/servants the Board of Directors unlawfully and wrongfully terminated the Plaintiff's services on the **27th May, 2004** without giving any reason justifying their decision to terminate his services. A copy of

this letter terminating the Plaintiff's services is hereto and marked annexure "**P7**".

(x). That on the **1st July, 2004** the Plaintiff gave statutory notice to the Defendant of his intention to sue claiming damages for wrongful dismissal/unlawful termination of services and payment of terminal benefits. A copy of the said statutory notice to the Defendant is attached hereto and marked annexure "**P8**".

(xi). On the **29th July, 2004** the Defendant wrote to the Plaintiff giving him a condition that before payment of his terminal benefits could be effected, he would be required to sign an undertaking that he does not have any other claims against the Defendant Civil Aviation Authority. A copy of the said letter is attached hereto and marked annexure "**P9**".

(xii). The Plaintiff on numerous occasions demanded payment of his terminal benefits from the Defendant who had unreasonably failed to pay the Plaintiff his benefits and on the **24th November, 2004** the Plaintiff herein wrote to the Managing Director of the Defendant making his last appeal to have his terminal benefits paid. A copy of the said letter dated **24th November, 2004** is attached hereto and marked annexure "**P10**".

(xiii). On the **8th December, 2004** the Defendant's Director Human Resources and Administration wrote to the Plaintiff informing him that the process of effecting payment of his terminal benefits had been completed and the Plaintiff was further informed by Defendant that their records in the Directorate of Finance show that he had not accounted for **Shs. 11,966,626/=**. A copy of the said letter is attached hereto and marked annexure "**P11**".

(xiv). That in the same letter of **8th December, 2004** the Defendant's Director Human Resource and Administration informed the Plaintiff that his net terminal benefits stood at **Shs. 62,469,919/=** and that payment was ready and would be handed over to him in exchange for an indemnity by him (the Plaintiff).

(xv). That on the **8th December, 2004** the Plaintiff was paid **Shs. 62,469,919/= (Shillings sixty two million four hundred sixty nine thousand, nine hundred nineteen only)** by cheque Nos. 010048 dated **3rd December, 2004** after involuntarily signing an acknowledgement for payment of terminal benefits which had an undertaking in clause 6 thereof that he acknowledges and confirms that the terminal benefits have been paid in full by the Defendant and that he has no other claim whatsoever against the Defendant in respect of

his employment or the termination thereof or at all. A copy of the said acknowledgement for payment of terminal benefits between the Plaintiff and the Defendant is herewith attached and marked annexure **“P12”**.

(xvi). That the Defendant withheld **Shs. 11,966,628/= (Uganda Shillings eleven million, mine hundred sixty six thousand, six hundred twenty eight only)** allegedly pending submission by the Plaintiff of accountability for the same to the Defendant.

6. The Plaintiff contends that he was made to sign the said undertaking of indemnity because of pressure and undue influence on the part of the Defendant's agents when they imposed that condition knowing that the Plaintiff was penniless and unemployed and badly wanted his money to maintain himself and his family.

7. The Plaintiff shall further contend that unless he signed the undertaking he would not get payment of his terminal benefits but since the Defendant had without justifiable cause and without giving the Plaintiff an opportunity to be heard terminated his services the Plaintiff lost his employment, lost income and as a head of a family he was desperate to get his terminal benefits by all means even under such illegal and unreasonable terms - which terms cannot be binding on him (the Plaintiff).

8. The Plaintiff further contend that because of the Defendant's wrongful action of terminating his services without according him an opportunity to be heard the Defendant coerced him/unduly influenced him to sign an illegal undertaking that he would not have any other claim against the Defendant in respect of his employment or the termination thereof or at all which was an illegal contract with the purpose of obstructing the Plaintiff from seeking redress from competent courts of law thereby attempting to outst the jurisdiction of the court.

9. The Plaintiff shall contend that the Defendant is unreasonably and without justifiable cause withholding **Ug. Shs.**

11,966,626/= due to the Plaintiff as part of his terminal benefits as the Defendant prevented the Plaintiff from entering his office at all material times to prepare the accountability and hand over the office as the normal practice is despite his request to do so.

Furthermore, by letter dated **10th November, 2004** the Defendant's agent and Director Human Resource and Administration had indicated that the Plaintiff was to account for **Shs. 2,674,981/=** only and was deducted as per Staff Claim Form dated **21/07/2004** and this was duly reflected in the Statement of Accountable Advances dated **27th July, 2004** supplied to the Plaintiff by the Defendant's Accounts Department: and thereafter a sum of **Shs. 3,760,000/=** which included **Shs. 2,627,981/=** was paid to the Plaintiff by cheque No. 009800 dated **27/10/2004** after final and satisfactory accountability for the same by the Plaintiff as at that date.

- A letter of **10th November, 2004** is attached as "**P13**".

- A copy of the Staff Claim Form of **21/07/2004** is attached as **“P14”**.
- A copy of the Statement of Accountable Advances dated **27/07/2004** is attached as **“P15”**.
- And a copy of cheque payment voucher No. 71097 dated **22nd October, 2004** is attached as **“P16”**.

10. The Plaintiff contends that the Defendant’s agents/servants unlawfully terminated his services without giving any reason for the termination of his services and without giving him a fair hearing to defend himself if he had committed any wrong and he Plaintiff holds Defendant vicariously liable to him in damages.

11. The Plaintiff further claims from the Defendant the return of his personal property left in the Plaintiff’s office at the Airport namely; a Laptop computer, Modem, personal text books and scholastic materials all valued at **Shs. 29,350,000/= (Shillings twenty nine million three hundred fifty thousand only)**.

Particulars

(i). Laptop computer IBM - valued at 8,250,000/=

(ii). Laptop printer and Cannon electric valued at Camera	1,800,000/=
(iii). Modem valued at	1,800,000/=
(iv). Professional text books (set of Encyclopedia) and education Certificates valued at	8,500,000/=
(v). Scholastic materials from the University of Singapore (including Cost for their transportation valued at	7,500,000/=
(vi). 3 Land Titles valued at	<u>1,500,000/=</u>
	Total Shs. <u>29,350,000/=</u>

12. The Plaintiff shall contend that he has suffered a lot of psychological torture, set back and lost hope for future gainful employment on permanent and pensionable terms as he was

maliciously dismissed and his services terminated without any reason.

13. The Plaintiff avers that the State has withdrawn the treason charges and discontinued proceedings against him. A copy of the withdrawal of charges by the Director of Public Prosecutions is herewith attached and marked annexure **"P17"**.
14. Statutory notice of intention to sue was duly served on the Defendant who refused to settle the matter amicably out of court.
15. The cause of action arose at Entebbe international Airport, Wakiso District, within the jurisdiction of this Honourable Court."

In its written statement of defence, the Defendant stated, inter alia,

"1.

2.

3. The Defendant denies the contents of Paragraph 3 of the Plaint and shall put the Plaintiff to strict proof thereof.

4. The Defendant denies the contents of Paragraph 4 of the Plaintiff and shall put the Plaintiff to strict proof thereof and in particular;

(a). Contrary to what is contained in Paragraph 4(ii) of the Plaintiff; the Defendant shall aver that the Plaintiff's services were lawfully terminated in accordance with the Defendant's General Terms and Conditions of Service, Regulations - Annexure "A" hereto.

(b). The Defendant denies the contents of Paragraph 4(iii), (iv), (v) and (vi) of the Plaintiff and shall aver that it was informed by the State security agencies that the Plaintiff was arrested and charged with the offence of treason and consequently the Defendant suspended the Plaintiff from work as per Annexure "P4".

(c). The Defendant denies the contents of Paragraph 4(iv), (vii) and (viii) and paragraph 10

of the Plaintiff, but admits Annexure "P6". The Defendant denies any knowledge of the alleged Plaintiff's property purportedly lost from the Defendant's premises viz Laptop, Modem, Printer, Camera, Land Titles, Text books and Scholastic materials. The Defendant shall aver that the office previously occupied by the Plaintiff was not the Plaintiff's personal property but for discharge of official duties and was not supposed to be a store for the Plaintiff's personal and private property. The Defendant shall further state that the Plaintiff as a Manager was provided with a Computer and a Printer by the Defendant and the Defendant was not a Custodian of the Plaintiff's private possessions.

(d). The Defendant denies the contents of Paragraph 4(ix) but admits terminating the Plaintiff's services and Annexure "P7", in accordance with Annexure "A", hereto.

- (e). The Defendant denies the contents of Paragraph 4(x), (xi) and (cii) of the Plaint but admits Annexure "P9".
- (f). The Defendant admits the contents of Paragraph 4(xiii) and 4(xiv) of the Plaint (in so far as the payment to the Plaintiff of Ug. Shs. 62,469,919/= is concerned) and shall further aver that contrary to the Plaintiff's allegations in Paragraph 4(xiv) and (xv) and Paragraphs 5, 6 and 7 of the Plaint, the Plaintiff on his own volition, freely signed Annexure "P12" and received the sum of Ug. Shs. 111,273,822/= as full and final settlement of his Terminal Benefits and that "he had no other claim whatsoever against the Defendant."
- (g). Contrary to what is contained in Paragraph 8 of the Plaint, the Defendant shall state that the sum of Ug. Shs. 11,966,628/= was withheld by

the Defendant against the amounts advanced to the Plaintiff but the Plaintiff has failed to account for the said funds up to now and did not require to access his office as he is the one who requisitioned and spent the money and should be the one to account for it and not his office.

(h). The Defendant denies the contents of Paragraph 9, 11 and 13 or the Plaint and shall put the Plaintiff to strict proof thereof.

5. The Defendant shall state the Plaintiff's services were properly and legally terminated in accordance with Regulation 31.1 (c) of the Defendant's General Terms and Conditions of Service, Regulations because "his continuance in employment, in the opinion of the Board, constituted a grave security risk making his continuance in the service detrimental to the interest of "the Defendant, when the Defendant, when the Plaintiff was arrested and charged by the State for

the very serious and grave crime of Treason. The Defendant shall further state that the Plaintiff's work and workplace are very security sensitive to and at the heart of the nation's security and require the highest standards of commitment to the nation's security concerns and as such the Plaintiff who was charged with treason could not continue to serve with the Defendant.

6. The Defendant shall further state that the Plaintiff was paid in lieu of notice, which payment he received and acknowledged and was also paid all his terminal benefits.

7. The Defendant denies liability as alleged by the Plaintiff or at all and the Plaintiff has no cause of action.

8. The Defendant submits to the Jurisdiction of this Honourable Court.

At the hearing, the following were the agreed facts:

- “1. Plaintiff was employee of Defendant as upcountry manager of aerodromes from 29/07/1992 to 27/05/2004.
2. On 18/12/2004 Plaintiff was paid Shs. 62,469,919/= as terminal benefits.
3. Shs. 11,966,628/= being put of the Plaintiff’s terminal benefits was withheld by Defendant.
4. The suspension of the Plaintiff followed his arrest and being charged with the offence of treason.”

The issues agreed were: -

- “1. Whether Plaintiff’s employment was lawfully terminated.
2. Whether the Plaintiff was paid his full terminal benefits.
3. Whether or not the Plaintiff is entitled to the value of the property allegedly left in the Defendant’s offices.

4. Reliefs to the parties.”

PW1, Pascal Gakyaro testified, inter alia, that he was 54 years old at the time of this hearing. He had worked at the Entebbe airport since 1981. On 29th March 1991 the Defendant appointed him the Manager, Engineering (Upcountry Airports). His duties required him to have specialised tools and equipment i.e. a digital camera, laptop, a computer modem, authored books on Entebbe airport and other airports, land titles (and scholastic materials from the University of Singapore).

During his tenure with the Defendant, the Defendant did not give the Plaintiff a digital camera, laptop, and modem. His immediate boss, the Director of Airports, was aware of these deficiencies. But the Defendant had budget limitations for tools. But because they were vital for his work the Plaintiff used his personal tools. He complained about these deficiencies in writing. Copies of his letters were on the files in the office which he was not allowed to enter.

At the time of this hearing, the Plaintiff was a part-time Lecturer in power systems engineering at the Makerere University Kampala, Department of Electrical Engineering. On 12/01/2003 he was at his home having earlier on sent his staff to Ntungamo and Rukungiri to construct new airfields. Before he could follow them some non-uniformed men who did not identify themselves came to his home, blind-folded him and took him to a place he had never known to the time of the hearing of this case.

On 20/01/2003 he was again blind-folded at his place of confinement and taken away. When they arrived at the Parliamentary Building, the blind-fold was removed and they took him to the High Court where he discovered that he was a subject of a habeus corpus application. The judge ruled that since the witness had been found the matter was over and he should go home.

Outside the court house, PW1 was taken to Buganda Road Chief Magistrate's court, charged with treason and thereafter taken to Kigo Prison where he spent six months and eventually got released on court bail by the High Court.

While he was in prison his wife brought to him two letters. One was praising him for the work he was doing and increasing his wages. The other one was suspending him on half pay.

After the release on bail he wrote exhibit "P5" seeking to be reinstated. The Defendant replied (exhibit "P6") refusing the request and stopping the Plaintiff from approaching the airport and his office. Thus he never handed over the office. The only matter he was asked to hand over was in exhibit "P6" i.e. the Airport Entry Pass. On 27/05/2004 he received a letter terminating his services (exhibit "P7"). It contained no reasons. It told that his terminal benefits would be communicated to him later. Thus he was never given an opportunity to be heard.

The Plaintiff further testified that he was never paid all his benefits. Referring to page 98 of his plaint document he testified that all the items mentioned thereon could be assumed to have been paid. That however, the Defendant came up with fabricated claims on page 93 that reduced his take-away. That the total benefits would have been Shs. 134 m/= (Shillings One hundred and thirty four million only) multiplied by two which represented severance allowance which was not contained in the terms and conditions of service but was a practice of the Defendant. This would have given a total of Shs. 268m/=

(Shillings Two hundred and sixty eight million only). That after taxes he was given Shs. 98m/= (Ninety eight million only) (exhibits "P12" and "P13"). That accordingly the Defendant owed him Shs. 13m/= (Shillings Thirteen million only) as against the Defendant's claim that they owed him Shs. 11m/= (Shillings Eleven million only). Referring to page 93 of the plaint document the Plaintiff testified that the Defendant wrongfully deducted Shs. 1,197,200/= (Shillings One million One hundred and ninety seven thousand two hundred only) as "excess expenditure on voucher No. 0500343739", yet this was his own money which he used to fund the Defendant's project, a practice that was normal.

Finally in his evidence-in-chief the Plaintiff testified that he was employed on permanent and pensionable terms. He had planned to retire at 60 years of age. He maintained and educated dependants. He now prayed for damages for lost earnings up to 60 years.

In cross-examination the Plaintiff testified as follows. According to exhibit "P1" it was true he was appointed Manager, Engineering Special Duties (Upcountry Aerodromes) on 26/03/1992 and accepted the terms in the exhibit by signing a certificate of acceptance and returned it to the Defendant on 30/07/1992.

When referred to item (i) of the exhibit he testified that he neither received the one month's notice nor one month's salary in lieu of notice as stipulated.

When referred to page 98 of the Plaintiff document, he admitted he received the benefits mentioned therein.

He was referred to exhibit "P4". He agreed that Defendant informed him of the reasons for his suspension.

He was referred to page 39 of exhibit "P1" paragraph 31, 31 (1) and 31 (1) (b) reads:

"31. Termination:

31.1 The services of a permanent employee may be terminated with one month's notice or pay in lieu thereof on the following grounds not amounting to Misconduct under Regulation No. 39 namely: -

(b). if his continuance in employment constitutes in the opinion of the Board, a grave security risk making his

continuance in service detrimental to the interest of
the Authority; or”

He stated treason was not a security risk until he was proved guilty.
That when his services were terminated he was still reporting to court
to answer the charge.

He testified that when he received exhibit “P7” he did not protest to
the Defendant because the document was very clear. That on
27/07/2004 he met Gidongo which culminated in (exhibit “P9”).

[That exhibit reads:

Exhibit “P9”

CIVIL AVIATION AUTHORITY

2nd Floor Passenger Terminal Building.

Entebbe International Airport

P. O. Box 5536, Kampala, Uganda.

“Our Ref: **P/G/102**

Your Ref:

29th July, 2004.

Mr P. R. Gakyaro

C/o Alpha Gama Engineering

Enterprise Ltd.

P. O. Box 29605

KAMPALA.

Dear Mr. Gakyaro

RE: TERMINAL BENEFITS

This is to acknowledge receipt of your letter of 1st June, 2004 in which you raised several issues including your terminal benefits.

In our letter of 27th May, 2004 you were informed that your benefits were being computed and were being computed and would be communicated to you under separate cover. Further to the Gidongo/Gakyaro discussion held on 27th July, 2004 in my office, this is to confirm that the process of computing your terminal benefits was concluded. You will be paid the following benefits less appropriate taxation and indebtedness to CAA if any:

AMOUNT

1. Accumulated Annual Leave **Shs. 4,366,200/=**

Payment in lieu of twenty four
(24) days accumulated annual leave for
The periods 26th September 2003 to

27th May 2003

(i.e. eight (8) months x 3 days = 24 days)

24 days x Shs. 4,002,350/= (one month's gross pay

22 (working days in a month)

2. **Notice: -** **Shs. 4,002,350/=**

One month's gross pay in lieu of notice

3. **Long Service Award: -** **Shs. 12,912,408/=**

Two club class tickets @ US \$ 3,350

(Exchange rate 1US \$: Shs. 1926.6

4. **Half Pay Withheld beyond**

Six (6) months suspension: - **Shs. 17,888,945/=**

Period from 23rd July, 2003 to 27th May 2004

i.e. Ten (10) months and Five (5) days: -

One months gross Pay Shs. 4,003,350/=

Less part withheld Shs. 2,253,675/=

Shs. 1,746,675/=

i.e. Shs. 1,748,675/= x 10.23 months =

Shs. 17,888,945/=

5. **Service Gratuity:** **Shs. 72,042,300/=**

Grand Total: **Shs. 111,212,203/=**

Regarding transportation, CAA will provide you with actual transport to return you to your place of origin.

As you recall, while still in the employment of CAA, you were recommended for a loan facility at Standard Chartered Bank. One of the conditions was that if your employment was terminated, the Bank would be informed and your benefits paid through the Bank to clear any outstanding amount of the loan and interest:

Therefore as discussed and agreed with you on 27th July 2004, your benefits stipulated above will be paid to you through the Bank. Before this payment is released to you through the Bank, you will be required to sign an undertaking that you do not have any other claims against CAA.

Yours Sincerely

CIVIL AVIATION AUTHORITY

R. E. N Gidongo (Mrs)

DIRECTOR HUMAN RESOURCE & ADMINISTRATION

c.c. M/D

c.c. D/MD

c.c. C/S

c.c. D/F

When referred to exhibit "P12" the Plaintiff testified that it did not constitute all his terminal benefits. This exhibit is entitled:

"ACKNOWLEDGEMENT FOR PAYMENT OF TERMINAL BENEFITS

BETWEEN

THE CIVIL AVIATION AUTHORITY

AND

MR PASCAL R. GAKYARO

DECEMBER 2004

Page 97 of this exhibit reads:

Page 97

IN WITNESS WHEREOF the parties hereto have hereto set their respective hands on the day of the month and year first above written.

SIGNED for and on behalf of

NAME: R. E. N. GIDONGO

THE CIVIL AVIATION AUTHORITY

TITLE: DIRECTOR HUMAN
RESOURCE & ADMINISTRATION

SIGNATURE:

IN THE PRESENCE OF:

NAME: MOSES B. MWASE

TITLE: LEGAL OFFICER

SIGNATURE:

SIGNED by the said **MR. PASCAL GAKYARO**

IN THE PRESENCE OF: NAME: MOSES B. MWASE

TITLE: LEGAL OFFICER

SIGNATURE:

The said exhibit has a schedule which reads:

P. R. Gakyaro's Terminal Benefits:

	PARTICULARS OF BENEFIT	AMOUNT (Ug. Shs.)	AMOUNT PAID ON CHEQUE NO. 009454/CHEQUE NO 000701 (Ug. Shs.)	BALANCE PAID ON CHEQUE No. 010048 (Ug. Shs.)

1.	Accumulated Leave Payment in lieu of 24 days accumulated annual leave for the period September 26/2003 to May 27/2004	4,366,200/=	4,366,200/=	---
2.	Notice 1 month's gross pay in lieu of Notice	4,002,350/=	4,002,350/=	---
3.	Long Service Award 2 Club class tickets at US \$ 3,350 (Exchange Rate - US \$ 1: Ug. Shs. 1926.6)	12,912,408/=	12,912,408/=	---
4.	Half Pay withheld beyond 6 month suspension Period from July 23, 2003 until May 27, 2004.	28,016,450/=	17,888,945/=	10,127,505/=
5.	Payment in lieu of transportation (one month's gross pay)	4,002,350/=	---	4,002,350/=

6.	2 complimentary air tickets for Financial Year 2002/2003 at US \$ 2,500 (paid on Cheque No. 000701 at Exchange Rate of 1927)	9,635,000/=	9,635,000/=	---
7.	2 complimentary air tickets for Financial Year 2003/2004 (Exchange Rate 1735)	8,675,000/=	---	8,675,000/=
8.	Service Gratuity	72,042,300/=	---	72,042,300/=
	GRAND TOTAL	143,652,058/=	48,804,903/=	94,847,155/=

He maintained that he claimed Shs. 13m/= (Shillings Thirteen million only) as outstanding.

When referred to page 93 he agreed he had received the funds and accounted for them and had never received any complaint to the contrary. He stated that he accounted by means of reports and receipts which were in the office to which he was denied access. He saw the document in December 2004 when he signed for a cheque of Shs. 62m/= (Shillings Sixty two million only). He had protested the item on the deductions on account of “unaccounted for funds”, though not in writing. That he had even made accountability after his release

on bail (pages 102 and 103 of the plaint document) whereby he owed a balance to the Defendant.

When referred to page 98 of the plaint document the Plaintiff testified he received all his terminal benefits save for Shs. 11m/= on page 93 (the “unaccounted for funds”).

When referred to paragraph 5 of exhibit “P12” and page 98 of the same exhibit, the Plaintiff testified that he signed it under duress/unbearable circumstances because his services had been terminated on 27/05/2004 and he had been left without any income. The Defendants took seven months to prepare the document. Meantime he was making appeals to the Defendant. The Defendant prepared a cheque for Shs. 62m/= (Shillings Sixty two million only) and required him to sign first. If he did not sign, his children would not have gone to school. So he signed in order to get the money.

When referred to items dated 25/02/2002 and 28/05/2002 the Plaintiff stated that they were bills of the Defendant’s telephones given to him by the Defendant to carry out his duties. There was a limit to the amount to spend on calls. If there was to be excess to the limit he

would have to seek permission with justifiable reasons to commit the excess. On account of lapsed time he did not recall the ceiling.

When referred to the MTN invoices of 01/01/2001 the Plaintiff told that starting with the 2002 invoices the ceiling existed but applied only to senior officers of the Defendant. He did not agree with the suggestion that the ceiling was Shs. 50,000/= (Shillings Fifty thousand only) per month. He stated that it actually started with about Shs. 25,000/= (Shillings Twenty five thousand only) and even went to Shs. 100,000/= (Shillings One hundred thousand only). These bills existed when he signed exhibit "P12". There was no endorsement of his protest on these bills. He had written to the Managing Director for waiver but the Managing Director did not reply. Since there was no waiver the Defendant was entitled to deduct them from his benefits.

The Plaintiff further testified that the Defendant availed him a laptop and printer. It was being used by his Secretary and other staff. Therefore instead of scrambling with them he brought his personal one which was coloured. He also brought in his personal printer and canon electric camera. He did not have any evidence that these items were received in the office. He brought the laptop computer IBM from

Singapore in 1996 at around US \$ 4,000. He stated Shs. 8,250,000/= in the plaint on the assumption that this was the current equivalent of US \$ 4,000. He had sold it to the Defendant. As regards the modem the Plaintiff bought it in Kampala. The receipt for it was in the office. This answer went for all the items in paragraph 10 of the plaint. The pieces of land in paragraph 10 (vi) were two in Kajansi and one in Rukungiri. He was not aware there had been a search of his office by security agents.

In further cross-examination the Plaintiff testified that he started part-time lectures in the Makerere University Kampala Department of Engineering since 1992 at Shs. 15,000/= (Shillings Fifteen thousand only) per lecture hour. He was doing fifteen lectures per month. He lectured as a hobby for his own satisfaction. He was the Managing Director of Alpha Gama which dealt in Construction. He started it with his wife on 23/08/2001 after he received his benefits from the Defendant. It was a going concern. With this evidence the Plaintiff rested his case.

DW1, Rose Estell Nadunga testified as follows. She was a Director of Human Resources and Administration with the Defendant since 1999.

Her schedule of work included recruitment, training, discipline and general administration of employees. The Plaintiff was employed by the Defendant with effect from March 1992 as a manager in charge of upcountry aerodromes, responsible for engineering and maintenance of these aerodromes. The Plaintiff was arrested on 12/03/2003 by state agents and therefore could not be available for his duties. On 15/01/2003 the Plaintiff's arrest was discussed by the Defendant's Board of Directors. They resolved to suspend him, while he was still in prison, on account of the security of the aerodromes. The terms of his suspension were stipulated in annexure "P4" to the plaint.

Exhibit "P4"

CIVIL AVIATION AUTHORITY

2nd Floor Passenger Terminal Building.

Entebbe International Airport

P. O. Box 5536, Kampala, Uganda.

"Our Ref: **P/G/102**

Your Ref:

CONFIDENTIAL

22nd January 2003.

Mr. Pascal R. Gakyaro

Manager Upcountry Aerodromes

Directorate of Airports

CAA, ENTEBBE

Thru: Director Airports

Dear Mr. Gakyaro

RE: SUSPENSION

This is to inform you that following the on-going Police investigations into serious allegations labeled against you, the CAA Board of Directors has suspended you from duty with immediate effect.

During the period of your suspension, your remuneration will be paid in accordance with Regulation 43.2 of the CAA General Terms and Conditions of Service.

Yours sincerely,

CIVIL AVIATION AUTHORITY

R. E. N. Gidongo (Mrs)

DIRECTOR HUMAN RESOURCE & ADMINISTRATION

- c.c. Chairman, CAA Board of Directors
- c.c. Chairman, CAA Board HR & Admin. Committee
- c.c. MD
- c.c. DMD
- c.c. CS
- c.c. DF”

Regulation 43.2 reads:

“Suspension shall be in writing, specifying the cause and during such suspension the employee shall be paid half of

all his salary and allowances except housing allowance which will be paid in full.”

The witness further testified that the Plaintiff was on suspension between 22/01/2003 till 27/05/2004 when the said Board decided to finally terminate his services under Regulation 31.1 (b) (ante) because the case against the Plaintiff was not getting resolved and yet the Defendant’s work was suffering.

Upon termination of the Plaintiff’s services the Defendant paid him one month’s salary in lieu of notice and all his other benefits, as contained in exhibit “P12” to which the Plaintiff was a signatory.

During his tenure with the Defendant, the Plaintiff was provided with tools and equipment to facilitate his work. Before the termination of the Plaintiff’s services, the Plaintiff gained access to his office but DW1 did not have the specific dates. She was not aware that the Plaintiff left personal property in his office. She was not responsible for visiting the Plaintiff’s office to take an inventory of what the Plaintiff had in his office. The witness referred to exhibit “P5” written on 7/08/2003 by the Plaintiff in which he was asking “to be allowed to resume work while

his case was being investigated.” She said since the letter was on the letterheads of the Defendant the Plaintiff must have had access to his office while on suspension.

In cross-examination DW1 testified as follows. When she received exhibit “P5” she replied in exhibit “P6” on 26/09/2003 to say:

Exhibit “P6”

CIVIL AVIATION AUTHORITY

2nd Floor Passenger Terminal Building.

Entebbe International Airport

P. O. Box 5536, Kampala, Uganda.

Our Ref: **P/G/102**

Your Ref:

Friday, September 26, 2003.

Engineer Pascal Rushwiga Gakyaro,
Manager Upcountry Aerodromes,
Directorate of Airports,

CAA - EBB.

Thru: Director Airports

Dear Eng. Gakyaro,

RE: SUSPENSION

Reference is made to your letter MUA/P/F001 of 7th August, 2003 in which you updated us on your case and requested to be re-instated. Because of reasons beyond control, it was not possible for us to respond to your letter earlier than now. We are however, now ready to respond to you.

As discussed in my office, while it is true that you were released on bond, you have not been set free. You are still required to report to court. It is therefore not possible to re-instate you on duty. Your suspension is therefore upheld.

As is normal practice in Civil Aviation Authority, during the period of your suspension, you will not be allowed access to Civil Aviation Authority offices except on request by Civil Aviation Authority. You should therefore hand over your Airport Entry Pass to the Chief Security Officer.

Yours Sincerely,

CIVIL AVIATION AUTHORITY

R. E. N. Gidongo (Mrs)

DIRECTOR HUMAN RESOURCE & ADMINISTRATION

c.c. MD,
DMD
CS
MHR
CSO

DW2, Samali Kiseka (Mrs) testified as follows. She was Manager, Accounting, with the Defendant. She knew the Plaintiff between 1993 to 2003 as a colleague in the Defendant's employment. The Plaintiff used to visit upcountry aerodromes because he was the in-charge supervising their operations. Whenever he did, he would requisition for funds by a detailed memo or using a staff claims form. After the trip he would account. In the case of fuel and contingencies he filed a formal document and attach receipts. One had to account within one month of one's return. There were amounts that were unaccounted for when the Plaintiff's services were terminated. These amounts were reflected in exhibit "D1". The 30 days' period in which to account had expired.

DW2 further testified that with regard to telephone bills the Defendant's policy was that the Plaintiff's category of employees enjoyed up to Shs. 50,000/= free service. Over expenditure would be recovered from the employee's salary. At the time his services were terminated he was indebted to the tune of Shs. 671,167/= (Shillings Six hundred and seventy one, one hundred sixty seven only), in exhibit "D1" page 1. DW2 further testified that she computed the aforementioned figures in exhibit "D1" but not the Plaintiff's terminal benefits which area was under the Directorate of Human Resources.

In cross-examination DW2 testified that the Plaintiff did not submit accountability on the regravelling of Arua Airfield. This evidence closed defence case.

Counsel offered to make written submissions. They are on court file.

I will straightaway start with the first issue as framed. The Plaintiff pleaded it in paragraph 9 of the plaint while the Defendant replied to it in paragraph 5 of the written statement of defence. The Plaintiff deemed the Defendant's act of terminating his services unlawful on two accounts, to wit:-

i). no reason was given by the Defendants for the termination, and;

ii). He was not afforded fair hearing to defend himself.

For their part the Defendant's contention is that the termination was legal because "after waiting for the case against the Plaintiff to be resolved and yet the Defendant's work was suffering" they decided to act as they did.

a). they acted in accordance with Regulation 31.1 (c) of the Defendant's Terms and Conditions of Service.

b). the Plaintiff's workplace and duties were security sensitive and required the highest standard of commitment to the nation's security concerns and as such the Plaintiff who was charged with treason could not continue to serve with the Defendant.

In summary, in support of his pleading the Plaintiff testified, inter alia, that he was arrested by non-uniformed men on 12/01/2003. On 20/01/2003 he was arraigned in the Buganda Road Magistrate's court for treason. On 22/01/2003 the Defendant's suspended him (by exhibit "P4"). On 27/05/2004 his services were terminated (by exhibit "P7").

On 08/12/2004 the Director of Public Prosecution discontinued the proceedings against the Plaintiff (by exhibit "P17").

Though when referred to exhibit "P4" in cross-examination the Plaintiff testified that the Defendant informed him of the reasons for his suspension the Plaintiff categorically testified in his evidence - in - chief that in the termination letter of 27/05/2004 no reasons were given and that he was never given an opportunity to defend himself against whatever case was against him. And in re-examination he testified that the "serious allegations" the Defendant raised in "P4" were not disclosed.

It is not necessary for me here to reproduce all the defence evidence, especially of DW1, on this issue because I have already summarised it hereinabove. All I need to emphasize are first that at no time in her evidence did DW1 allude to any notice to the Plaintiff of the charges he faced and any invitation to him to come and defend the charges either before his suspension or before his services were terminated. Secondly, DW1 clearly stated, in her evidence-in-chief that while the Plaintiff was still in prison the Defendant's Board of Directors met, discussed the Plaintiff's arrest, and, on account of the security of the aerodromes resolved to suspend him. This court was not given the

minutes of the Board meeting. Exhibit "P4" merely refers to "the on-going police investigations into serious allegations against you..." Thus DW1's evidence and exhibit "P4" are two shots in the Defendant's foot regarding the absence of reasons for the suspension of the Plaintiff. The third and final shot in the Defendant's foot is exhibit "P7". No reasonable tribunal can glean any reasons, from this document, for the termination of the Plaintiff's services.

I regard RIDGE vs. BALDWIN & OTHERS: [1964] AC 40 as a landmark case on the issue I am dealing with. Many cases decided in our jurisdiction have referred to and relied on it. I propose to do so also.

After Lord Reid classified the three classes of dismissal at page 65 (ante) he stated:

"So I come to the third class which includes the present case (dismissal from an office where there must be something against a man to warrant his dismissal)."

I hasten to cite here Regulation 31.1 (b) of exhibit "P2"

"31. Termination

31.1 The services of a permanent employee may be terminated....

(b). if his continuance in employment constitutes in the opinion of the Board a grave security risk making his continuance in service detrimental to the interests of the Authority.”

Back to Lord Reid. On Page 66 he stated: -

“There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation REG. vs SMITH Lord Denman C J held that even personal knowledge of the offence was no substitute for hearing the officer: his explanation might disprove criminal motive or intent and bring forward other facts in mitigation, and in any event delaying to hear him would prevent yielding too hastily to first impressions

[Emphasis is mine]

DW1’s evidence-in-chief that:

“.....on 27/05/2004 the Board decided to terminate his (Plaintiff’s) services after waiting for the case against the Plaintiff to be resolved and yet the Civil Aviation Authority work was suffering.”

shows total lack of knowledge of the law regarding the Plaintiff’s rights or alternatively, callous disregard of these rights. There is exhibit “P5” which was not disputed by the Defendant. It reads:

Exhibit 5

CIVIL AVIATION AUTHORITY

2nd Floor Passenger Terminal Building.

Entebbe International Airport
P. O. Box 5536, Kampala, Uganda.

Our Ref: **MUA/P/F/001**

Your Ref:

Manager Upcountry Airports
Directorate of Airports
P. O. Box 23
ENTEBBE

7th August, 2003

The Director
Human Resource & Administration
Civil Aviation Authority
P. O. Box 23
ENTEBBE

RE: SUSPENSION

Following my arrest and detention, I was suspended by your letter of 22nd January 2003 Ref. P/G/102 in accordance with our General Terms and conditions of Service.

However I would like to update you of the following Developments:

- (i). I have been set free on bail and I shall be reporting to Court once a month for mention (a copy of the release letter is attached).
- (ii). The Treason case I am charged with follows a constitutional time schedule and there is no definite time for commitment and trial.
- (iii). The Investigations being carried out by the state are independent of Civil Aviation Authority (my employer) and I have no case with my employer.
- (iv). I am also entitled to enjoy my constitutional right of being innocent until I am proved guilty.

In view of the above conditions and the fact that the treason cases normally take a long time to Investigate, I am requesting to be allowed to resume work while justice takes its own course.

I remain,

Yours faithfully,

Eng. P. R. GAKYARO

MANAGER UPCOUNTRY AIRPORTS

- c.c. Managing Director
- c.c. Deputy Managing Director
- c.c. Corporation Secretary
- c.c. Director Airports

In (iii) and (iv) the Plaintiff, in my considered view beat the Defendant on the knowledge of the rights of officers. Comparative reading of paragraph 15 (c) reading of paragraph 15.119 of "DIX, CRUMP & PUGSLEY on CONTRACTS OF EMPLOYMENT" (7th Edition) reveals this statement:

"Criminal offences by the employee away from work

15.119. The basic principle is illustrated in paragraph 15 (c) of the ACAS Code of Practice on Disciplinary Practice and Procedures in Employment:

'Criminal offences outside employment. These should not be treated as automatic reasons for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offense is one that makes the individual unsuitable for his or her type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody.

I am not citing this statement as directly applicable to the case before me. This is because it is a text book on a Statute not in our jurisdiction. (even if Defendant Counsel also quoted from it). I am citing the passage because I am persuaded by the reasoning in this statement.

A lot of time, brainstorming, ink and paperwork were spent in the preparation of the REID'S case (ante). It was not all in vain. It for this

reason that I also refer to the opinion of Lord Morris of Borth-y-Gest on page 121. He stated:

“In view of the opinions which I have expressed as to the applicability of the regulations and as to the consequences of disregarding them, I propose only to deal briefly with the question whether, had there been no regulations, the police authority would have been bound to have regard to the principles of natural justice. In my view, the regulations incorporate those principles, but had there not been any and had the police authority in the exercise of powers given them by section 191 (4) contemplated dismissing the appellant on the ground of neglect of duty, they would in my view have been under obligation to give him an opportunity to be heard and would have had to consider anything that he might say. I cannot think that the dismissal of the appellant should be regarded as an executive or administrative act if based upon a suggestion of neglect of duty: before it could be decided that there had been neglect of duty it would be a prerequisite that the question should be considered in a judicial spirit. In order to give the appellant an opportunity to defend

himself against a charge of neglect of duty he would have to be told what the alleged neglect of duty was.”

Applying this persuasive opinion of the law Lord to the case before me with or without the Regulations in exhibit “P2” in this case before terminating the Plaintiff’s services the Board “was under obligation to give an opportunity to the Plaintiff to be heard and would have had to consider anything that he might say.”

On Page 132 Lord Hodson stated: -

“No one I think, disputes that three features of natural justice stand out:

- i). The right to be heard by an unbiased tribunal;
- ii). The right to have notice of the charges of misconduct;
- iii). The right to be heard in answer to these charges.”

Finally what are the consequences of violating these principles by the Board. In MUMIRA vs. NATIONAL INSURANCE CORPORATION: [1985]

HCB Karokora, J held that a decision reached in violation of these principles is void and unlawful. The same conclusion was arrived at in the RIDGE page 80 case (ante) by the majority of 4 to 1. I have come to the conclusion that in the case before me the decision of the Board to terminate the Plaintiff's services was null and void. The answer to the first issue is therefore in the negative.

The second issue was whether the Plaintiff was paid his full terminal benefits. The Plaintiff pleaded this item as special damages of Shs. 11,966,626/= in paragraph 8. In its written statement of defence the Defendant replied to this in paragraph 4 (g). In his evidence the Plaintiff claimed that on 26/09/2003 (exhibit "P6") the Defendant informed the Plaintiff: "...you will not be allowed access to Civil Aviation Authority offices except on request by the Civil Aviation Authority" That although his terminal benefits were computed at Shs. 94,847,155/= (Shillings Ninety four million eight hundred and fourty seven thousand one hundred and fifteen only) exhibit "P12" the Defendant fabricated a list of "unaccounted for funds" totaling Shs. 11,966,626/= (Shillings Eleven million nine hundred and sixty six thousand six hundred and twenty six only) exhibit "P11". That for him

the Defendant owed him Shs. 13m/=. In cross-examination he admitted having received one month's salary in lieu of notice.

When he was referred to the list of the "unaccounted for funds", page 1 of exhibit "D1", the Plaintiff stated that he could only account by submitting reports and receipts but that these documents were in the office to which the Defendant had denied him accessibility.

In further cross-examination the Plaintiff testified that other than the Shs. 11m/= he received the rest of his terminal benefits.

My finding on this issue is this. Exhibit "P6" was categorical in denying the Plaintiff access to his office. At no time was the Defendant's stand reversed. Nor did the Defendant even offer to allow the Plaintiff into the office under an escort. It is unfair and unjust to tie a man "Kandoya" and ask him to engage in a fist fight. I hold that the Defendant unfairly withheld Shs. 11,966,626/= (shillings Nine hundred sixty six thousand, six hundred twenty six only). He is entitled to it.

On the third issue I commend the Plaintiff's over dutifulness and dedication to his work. I, however, find it dangerous in the

circumstances of this poverty stricken and corrupt country to give free license to any employee to ferry into a public office tool and equipment which that office can ill-afford to adequately afford to the employee without the notice or permission of the employer. I hold that, notwithstanding the Plaintiff's failure to strictly prove the value of the property, he is not entitled to claim it except on the condition I have underlined above.

Finally the Plaintiff claimed general damages for wrongful termination of his services [see paragraph 11 of the plaint]. He testified that he was employed on permanent and pensionable terms and planned to reach retirement age at 60 years.

Clause (i) of exhibit "P1" provided:

"Termination of appointment:

This appointment may be terminated by giving one month's notice, or by payment of one month's salary in lieu, on either side during and after your probation."

I subscribe to the holding in GITHINJI vs MUMIAS SUGAR CO. LTD [1995 - 98] E. A 81 and the cases cited therein to the effect that where the

dismissal is declared wrongful but one of his terms of employment included a period of termination of that employment the damages suffered are the wages for the period during which his normal notice would have been correct. In his evidence-in-cross-examination the Plaintiff admitted that he received one month's salary in lieu of notice. I hold that he is thus not entitled to general damages.

To cap, I enter judgment for the Plaintiff in the following terms:

1. I declare the termination of the Plaintiff's services by the Defendant to have been unlawful and void.
2. The Plaintiff is entitled to Shs. 11,966,626/= (Shillings Eleven million nine hundred and sixty six thousand six hundred twenty six only) wrongfully withheld by the Defendant.
3. The amount in paragraph 2 hereof shall attract interest at court rate from 08/12/2004 when the parties executed exhibit "P12".
4. The Defendant shall pay costs of this suit.

Sgd: Gideon Tinyinondi

JUDGE

12/05/2006.