

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**  
**HCT-02-CV-CS-0115-2001**

**JAMES ANYWAR:.....PLAINTIFF**

**VERSUS**

**KINYARA SUGA WORKS LTD:.....DEFENDANT**

**BEFORE HON. JUSTICE AUGUSTUS KANIA**

**JUDGE**

**JUDGEMENT**

The plaintiff, James Anywar brought this suit against Kinyara Sugar works Limited for wrongful dismissal. By it he is seeking the following remedies:-

- a. Special damages in the sun of shs 3,000,000/=
- b. General damages for wrongful dismissal
- c. Exemplary damages
- d. Interest on (a) from the date of filing the suit till payment in full and on (b) and (c) from the date of judgment till payment in full at court rate.
- e. The costs of the suit

The plaintiff was employed by the defendant company from 1/9/1995 to 24/4/2001 when he was dismissed. The facts leading to his dismissal are briefly that when he was acting as the Factory Superintendent in the absence of DWI Albert Camurunges who had fallen sick, the plaintiff endorsed requisitions to the stores for materials purportedly for repairs. The requisitions were countersigned by the Engineering manager DW2 Mark Williams and the Materials were accordingly released from the stores. When DWI Albert Camurunges recovered and resumed work, he set out to establish if the materials requisitioned and drawn from the stores in his absence had indeed been used because he doubted that the said materials had been used he sought explanation from and asked the plaintiff to show him where the materials had been used. On the plaintiff failing to satisfy PWI Albert Camururanges and upon the latter becoming suspicious that there had been some malpractices he referred the matter to PW2 Mark Williams who made his own investigations and questioned the plaintiff but the latter's responses were contradictory and

evasive. He concluded that the plaintiff had acted dishonestly and therefore suspended him. Subsequently the plaintiff was dismissed. The plaintiff claims that his dismissal was effected without giving him a chance to explain himself and that therefore it was unlawful and unconstitutional hence this suit.

At the commencement of the hearing of this suit, the following issues were framed for determination namely;-

1. whether the dismissal of the plaintiff was wrongful.
2. whether the plaintiff was upon his dismissal paid his accrued dues.
3. whether the plaintiff is entitled to the relief sought.
4. the quantum of damages.

In an endeavour to prove that his dismissal was wrongful, the plaintiff PWI James Anywar testified that at the time of the incident, he had assumed the duties of his immediate boss DWI Albert Cammurunges, the factory Superintendent who had fallen sick. These duties included endorsing requisitions to the stores for spares and materials. He testified that one day he endorsed a requisition for 10 gate valves that had been made by a welder called Charles Serwambala and these items were issued to the said Charles Serwambala after the order had been counter signed by DW2 Mark Williams. The plaintiff also gave evidence that because the water tank outside of the factory premises had a problem, he asked the same Charles Serwambala to survey it and to make a requisition for spares and materials for its repair. This requisition was made and the plaintiff signed it together with the permission authorizing the said Charles Serwambala to go and work outside. The latter went out with gas spanners, cast iron and welding rods. He complained that though he accounted for the materials he issued, he was suspended and even dismissed on the 24/5/2002 without having been given a hearing. The letter dismissing the plaintiff was tendered and marked Exhibit P.2.

DWI Albert Cammururanges, the Superintendent of the defendant's factory testified that when he was sick the plaintiff acted in his place as the foreman. On his return to duty he discovered that in his absence materials had been drawn from the stores but there were no entries in the log book. The materials drawn were against requisitions No. 2/2014 of 20/4/2001 for cast iron electrodes size 3 - 2 min 1 packet, No. 188454 dated 22/4/2001 for 3.2 min cast iron Electrodes one packet No. 315034 of 19/4/2001 for ¾" gate valves 6 pieces, No. 315034 dated 19/4/2001 for 1 1/4" 5 pieces which were collectively tendered

and marked D2.

Issue vouchers No. 188454 of 22/4/2001 for 3.2 min cast iron electrodes one packet stores vouchers No. 188455 of 23/4/2001 for ½ as D2 while the gate pass No. 108634 for a gas set adjustable spanners, gate valve ½” welding equipment, welding cable, welding rods and 2” piece were tendered as D4.

DWI Albert Cammururanges gave evidence that he then set out to see if comparable work had been done with these materials but found work that had been done on the pump and the injection pump could not have taken more than 10 electrodes and nothing showed the gate valves had been replaced because the valves he found on were old ones and also because replacing the gate valves would have required shutting down the factory which was not done.

This witness gave evidence that he reported his finding to DW2 Mark Williams the Engineering Manager who summoned the plaintiff and the latter took him and DW2 Mark Williams round the factory to show where the materials had been used. On not being satisfied, the witness and DW2 Mark Williams went to the office of the plaintiff together with the plaintiff where two valves the plaintiff claimed were the balance of the valves he had drawn were recovered.

DW2 Mark Williams testified that when he saw Exhibits D2, D3 and D4 he made investigations and after questioning the plaintiff he concluded the plaintiff had acted dishonestly because his answers were evasive and contradictory. He failed to show where the materials that had been drawn had been used. He took the witness and DWI Albert Cammururanges to a stream pump where he claimed he had used one of the 6 ½” gate valves but this was found to be false because the said gate valve was not new and secondly because replacing that gate valve would have required shutting down the factory which was not done. He did not take them to another site where he claimed he had fixed another gate valve. 21/2 gate valves were found and recovered. They were spoilt but he never explained where the other 8 had gone. DW2 Mark Williams gave evidence that of the about 100 welding rods that had been drawn compared to the work done only 4 or 5 pieces could have been used. Before the two valves were recovered from the plaintiff's desk he had even denied knowledge of the ¾ gate valves. This witness tendered a letter written by the plaintiff dated 30.5.2001 in which he admitted that of the materials drawn he was keeping

one box of welding rods and this is marked Exhibit D5 on the Court record. He testified that under Kinyara Sugar Factory Limited regulations an employee can be dismissed summarily for fraudulent behaviour which in his view was the case here because though the plaintiff had denied knowledge of the electrodes and valves these were later found in his locker and it was only then that the plaintiff admitted them. He denied his signature on the requisition for electrodes and relented when it was shown to him. He was also fraudulent because the permit for workmen to go outside the factory which he signed was for a welding job on the water treatment plant which did not require valves; in any case the gate valve required there would have been 6" gate valves. He lastly testified that because of all the above, he suspended the plaintiff and then made a report to the Factory Manager Norman Foreman.

DW3 Anyaku Mathew, the Industrial Relations Officer of the defendant company testified that the plaintiff was dismissed by a letter dated 24/05/2001 exhibit P.2 on the Court record. He appealed against the dismissal order to the head of department and a panel of Appeal was constituted of which the witness was the secretary. As Secretary of the Panel of Appeal, he compiled the record of appeal which was signed by the Chairman Normal Foreman and himself. The appeal was dismissed on grounds that the plaintiff had failed to perform his duties as a Supervisor in that the welding rods and valves he requisitioned for were not used in the places he had claimed he had used them because using them would have entailed shutting down the whole factory which was not done. The record of appeal was tendered and marked Exhibit D2.

An employer has a common law right to dismiss an employee without notice and therefore summarily on grounds of the employee's misconduct. A dismissal in these circumstances is not unlawful **See Halsbury's Laws of England 4<sup>th</sup> Edition at Paragraph 298 at page 306.**

The grounds that justify summary dismissal of an employee include wilful disobedience of lawful order, gross negligence and dishonesty. The justification of summary dismissal of an employee on the above grounds is that he is presumed by such conduct to have repudiated the contract of employment See Halsbury's Laws of England 4<sup>th</sup> Edition at Paragraph 299 page 306.

That the law recognizes the employer's right to dismiss an employee in certain situations was stated in the case of **Kigundu VS. Barclays Bank of Uganda 11973] EA at 57** where it was stated;-

“The Rules of Law is that where a person has entered into a position of servant, if he does anything incompatible with the due or faithful discharge of his duties to the master the latter has a right to dismiss him”.

**In Jupiter General Insurance Co. vs. Shroff [1937]3 ALL ER,** The P.C. restated the employers right to dismiss an employee summarily but cautioned that summary dismissal is as a general rule a wrong measure and is justifiable in the most exceptional circumstances which it proceeds to list as being misconduct wilful refusal to obey a lawful order gross neglect and dishonesty among others.

In the instant case the plaintiff claims that his dismissal was not only wrongful but also unconstitutional in that he was not accorded an opportunity to be heard and to defend himself. He also insisted that he is innocent of the allegations of dishonesty against him.

In its dismissal letter dated 24/05/2001 dismissing the plaintiff the defendant alleges that the plaintiff removed a number of its items and materials from its stores purportedly to be used to effect repairs on company property whereas not. The defendant gave the reason of the dismissal of the plaintiff as being deliberately defrauding the company of its property in the course of his duties.

Both DW21 Albert Cammururanges and DW2 Mark Williams testified that having established that the plaintiff had endorsed the issue of the items in Exhibits D2, D3 and D4 only between 5 and 10 of the electrodes were ever used on the water pup. The bulk of the materials were unaccounted for. According to the two witnesses as the plaintiff led them around in a vain attempt to show where the gate valves had been used on the stream pump the plaintiff showed old valves as having been fitted with the valves that had been drawn from the stores. His story was also found to be a lie because to fit the new valves would have required shutting down the factory for a number of hours which was not done. The engineering manager DW2 Mark Williams dismissed the very fact of the plaintiff having

requisitioned  $\frac{3}{4}$  and  $\frac{1}{2}$  gate valves for the water treatment pump when the pipes which would have required valves were 6" and therefore would have required 6" valves and not what the plaintiff had requisitioned. Another aspect of the plaintiff's conduct which DW2 Mark Williams found dishonest was that when he was questioned about the valves he feigned ignorance but on checking his locker 2 % valves were recovered. DW2 Mark Williams gave evidence that the plaintiff belatedly admitted in his letter dated 30/05/2001 six days after his dismissal that he was in possession of 1 box of cast iron welding rods when he had earlier denied this. The plaintiff's letter was tendered and marked P. 5

The plaintiff did not seriously challenge or deny the substance of the evidence of DW1 Albert Cammuranges and DW2 Mark Williams that the requisitions were signed by him and that the materials requisitioned were actually issued. Nor did he dispute that when he took the two witnesses only about 10 welding rods had been used but no other materials, that the gate valves he showed were old ones. The plaintiff did not challenge the technical evidence of DW2 Mark Williams that to fix the gate valves the whole factory needed to have been shut down and that the factory was not shut down therefore the gate valves he drew had not been fitted as claimed. He did not dispute that two of the valves were found in his locker and that after all the gate valves could not have been drawn to fix on the water treatment pump which would have needed 6" gate valves instead of the  $\frac{1}{2}$ " the  $\frac{1}{2}$ " and  $\frac{3}{4}$ " drawn from the stores. To crown it all by exhibit P.5 the plaintiff was admitting that he was in possession of a packet of cast iron welding rods six days after he had been dismissed from the defendant's employment.

From the above evidence the irresistible conclusion that one can come to is that the plaintiff endorsed the requisition for the said materials for purposes other than the work of the defendant since save for about 10 electrodes the rest of the materials were found not to have been used on the property of the defendant. Coupled with the alarming lies peddled by the plaintiff to DW1 Albert Cammuranges and DW2 Mark Williams I find that the plaintiff exhibited very dishonest conduct for which the defendant was entitled to dismiss him summarily.

Mr. Alenyo learned counsel for the plaintiff contended that the dismissal was wrongful because it was effected before giving the plaintiff a hearing c/artic1e 44 of the Constitution

which guarantees the right of being heard, Whereas those constitutional provisions may refer to due process of Courts and tribunals the employer's right to dismiss an employee on the understanding that the by such act of dishonesty and the likes is premised on the understanding that by such act of dishonesty the employee has repudiated the contract of employment. The employer is not bound to give such an employer any hearing.

The above position at law notwithstanding the defendant appears to have been extremely gracious to the plaintiff. According to the evidence of DW2 Mark William soon after receiving a report from DWI Cammuranges Albert he conducted his own investigation and suspended the plaintiff. He then required the plaintiff to appear with an explanation and when he did not appear he was dismissed.

Apart from this there is the evidence of PW3 Anyaku Mathew that before the dismissal of the plaintiff became final the appellate tribunal was set up and the plaintiff made a presentation before the said tribunal but his appeal was dismissed. From the record I find that the defendant took every step to ensure that the case of the plaintiff was fairly handled. I find that considering all the circumstances of the case the summary dismissal of the plaintiff was lawful. The first issue is accordingly answered in the negative.

With regard to whether the plaintiff was paid his accrued dues upon his dismissal, in his plaint in paragraph 6 he claimed by way of special damages

- (a) 3 months salary in lieu of notice of shs 1,800,000=
- (b) Salary for 2 accumulated annual leave.

It is the law that though an employee is entitled to his arrears of salary on being summarily dismissed this is applicable to only completed periods of service. **See Koniga vs Kanjee Naranjee Properties Ltd [19681 E.A 233.**

In the instant case the plaintiff was dismissed on 24/05/2001 and there he could only be paid up to the date of his dismissal together with his accumulated leave. In cross examination the plaintiff admitted receiving from the defendant the sum of shs 68,100 as the net balance due to him against the defendant's personnel annual leave form which he admitted having signed. He gave testimony that he confirmed he had no other claim against

the defendant after receiving that sum. The said personnel manual leave form duly signed by the plaintiff was tendered as an exhibit for the exhibit the defendant and marked

D1. On that last day the plaintiff was on the defendant's payroll was 31.05.2001 meaning he was paid up to 31.05.2001. The balance of his accrued annual leave was 8 days amounting to shs 14,181. When this is subtracted by shs 78,125 in what he owed the defendant he is left with shs 68,100 as his due at the time of his dismissal which he acknowledged receipt of by signing exhibit D 1. There is no basis of the claim of the plaintiff in paragraph 6 of his plaint. The second issue is answered in the affirmative.

As I have already found that the plaintiff was dismissed summarily but lawfully and as such he was only entitled to money he had already earned or to the rights that had already accrued to him by the time of the dismissal which I found to have been paid against Exhibit D 1 the third issue of relief s available does not arise nor does the quantum of damages.

In the result the plaintiff's suit is dismissed with costs

**AUGUSTUS KANIA JUDGE**

**1/6/2006**