

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**  
**HCT-02-CV-CS-0022-2004**

**CHRISTOPHER YIKI AGATRE:.....:PLAINTIFF**

**VERSUS**

**YUMBE DISTRICT LOC GOVT:.....:DEFENDANT**

**BEFORE:**

**HON JUSTICE AUGUSTUS KANIA**

**JUDGE**

The plaintiff Christopher Agatre Yiki brought this suit against Yumbe District Local Government for unlawful and unconstitutional acts of the defendant's employees, workers and agents. By this suit the plaintiff is seeking the following remedies;-

- a) A declaration that his interdiction was unlawful
- b) Special damages
- c) General damages
- d) Exemplary damages
- e) (Interest on (a) (b) and (c) at 45 % per annum from the date of Judgment till settlement in full.
- f) Costs of the suit.

The brief back ground to this suit is as follows;- Between 2001 and 2003 the plaintiff was employed as the C A 0 (Chief Administrative Officer) of the defendant Local Government. Following a report by the I.G.G'S OFFICE alleging malpractices on the part of the plaintiff and the LG.G'S recommendation Ref:

ARU/CF/34/2002 Yumbe District Service Commission interdicted the plaintiff without the District council having required action to be taken against the plaintiff. The plaintiff wrote to the chairman District Service Commission complaining of this omission arguing that it was illegal. He followed this up by writing another letter of complaint to the chairman Public Service Commission. Upon realizing that it should not have interdicted the plaintiff without a request from the District council the chairman District Service Commission withdrew his letter of interdiction. After this the District council was convened and the plaintiff was invited to this meeting where his case was again to be considered. The Plaintiff was prevented from giving his defence and councilors who had wanted the LG.G's report discussed were prevented from doing so. The council went ahead to adopt the IGG's report and recommendations and these were forwarded to the chairman District Service Commission requesting him to interdict the

plaintiff and the latter was again interdicted on 25/9/2003.

In the meantime the IGG realized that his report and recommendations should have been sent to the council and not the chairman District service Commission. A council meeting was called in November 2003. At this meeting the plaintiff presented his defence, the IGG'S report was debated and the council absolved the plaintiff. However the plaintiff has up to now not resumed his duties as the CAO of the defendant allegedly because he was blocked from doing so by the acts of the Chairman L.C.V of the defendant. He considers the interdiction by the District Service Commission which has not up to now been rescinded unlawful and the acts of the chairman L.C.V oppressive and unconstitutional hence this suit.

Before the commencement of the suit the parties thereto admitted the following facts;-

1. That the defendant was employed as the CAO of the defendant.
2. That he was interdicted on the recommendation of the IGG on the 25/09/2003.
3. The District Council cleared him of allegations and reinstated him.
4. The plaintiff resigned.

The following documents were admitted as exhibits for the plaintiff;-

1. IGG's report and Recommendations Ref, ARU/CF/34/02 marked exhibit P.I
2. Letters of interdiction from the Chairman D.S.C dated 4/9/2003 and 2219/2003 collectively marked P.2.
3. Letter of L.C.V Chairman of 4/9/2002 stating he has no objection to interdiction marked P.3. Letter from D.S.C dated 4.9.2003 barring the plaintiff from being signatory to District accounts. Exh. PA.
4. Council Resolution of 7<sup>th</sup> 11112003 absolving plaintiff P.5.
5. Letters of appeal to D.S.C and Public Service Commission of 5/9/2003 - both P.6.
6. Letters of Appeal to JGG, Presidential Advisor Political Affairs, Letters to D.S.C of 29<sup>th</sup>/9/2003 to L.C.V Chairman of 26<sup>th</sup>/9/2003 collectively marked P.7.
7. Letter from D.S.C withdrawing interdiction marked P.8.
8. Resignation letter of 20<sup>th</sup> 11112003 Exh.P.9

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

1. Whether the plaintiff was unlawfully interdicted.
2. Whether the plaintiff after being absolved and reinstated was blocked from assuming office by the defendant
3. Whether the plaintiff resigned because he was blocked from assuming office

What remedies are available to the plaintiff To prove his case the plaintiff called a total of three witnesses namely PW1 Christopher Yiki Agatre, PW2 Amia Butele Kazimiro and PW3 Keniga Abdu while the Defendant called two witnesses, DW1 Jerome Dralega and DW2 Rashid Guvule.

With regard to the first issue whether the plaintiff was unlawfully interdicted the plaintiff PW1

Christopher Yiki Agatre testified that some time in 2003 the IGG forwarded to the Chairman District Service Commission a report alleging that the plaintiff had embezzled funds with a recommendation that he be dismissed from the office of CAO. The Chairman District Service Commission interdicted him on 4/9/2003. The witness wrote back to the Chairman District Service Commission pointing out that his interdiction was unlawful because the minutes of the District Council meeting were not attached. The plaintiff also wrote a complaint in similar terms to the Chairman Public Service Commission. Possibly because the chairman District Service Commission realized his mistake on 24/09/2003 he withdrew his interdiction letter.

Before that on the 15/9/2003 the chairman LCV had convened a council meeting to which the plaintiff was invited. He wanted to give his defence to the IGG's report but he was prevented from doing so just like the councilors who wanted the IGG's report debated were blocked from doing so. All the same the council resolved to adopt the said report and on 16/09/2005 the clerk to the council wrote to the Chairman District Service Commission to interdict the plaintiff. The Chairman District Service Commission accordingly interdicted the plaintiff again on the 25/09/2003.

PW1 Christopher Yiki Agatre further testified that he wrote to the Clerk to council complaining that the decision to forward the IGG's report to the District Service Commission without giving him an opportunity to defend himself was erroneous. The IGG on realizing his report was wrongly addressed to the Chairman District Service Commission wrote to the Chairman LCV on 22/09/2003 forwarding the same report to him. Another council meeting was convened for 6 - 7 November 2003 and the plaintiff was invited to it to defend himself against the report. The council debated the report and the plaintiff's defence and decided to absolve and reinstate the plaintiff. However, the plaintiff failed to return to his office because of the hostility of the LCV Chairman and the public to him.

PW2 Amia Butele Kazimiro gave evidence that following the IGG's report and recommendation that the plaintiff should be dismissed, a council meeting was called to discuss the report. One

councilor moved that the IGG's report should be debated but this was rejected. The majority of the councilors expressed their dissatisfaction with these proceedings by writing and complaining to the Ministry of Local Government.

The said Ministry wrote on 23/10/2003 advising that the plaintiff be given an opportunity to defend himself. Another council meeting was accordingly called for 6 - 7 November 2003 to allow the plaintiff defend himself. After the plaintiff had defended himself, the IGG's report was discussed and the council absolved the plaintiff of the allegations in the report and resolved to reinstate him.

For the defence DWI Jerome Dralega, the chairman District Service Commission for Yumbe District testified that he received a report from the IGG recommending the dismissal of the plaintiff for embezzlement of funds. He convened a meeting of the Commission on 4/9/2003 and interdicted the plaintiff. On 5/9/2003, the plaintiff wrote to him stating that the District Service Commission did not have authority to interdict him and insisted it was the council which had the power to interdict him.

Since he was not acting as the District Service Commission wanted him to behave he wrote back to the plaintiff withdrawing the interdiction. The witness considered the interdiction of the plaintiff had no effect.

DW2 RASHID GULE testified that he received a copy of a report from the IGG recommending the dismissal of the plaintiff on 15/08/2003 which was addressed to the District Service Commission. When the latter commission sought his advice, he advised the Chairman to take an appropriate action. It was his evidence that the District Service Commission then interdicted the plaintiff who rejected the said interdiction on the ground that it was wrongful. As a result of the objection of the plaintiff, the Chairman of the District Service Commission withdrew the interdiction.

A District Council meeting was then convened on 15/9/2003 to discuss the IGG's report but it ended in chaos. All the same a resolution was passed to send the case to the District Service Commission to have the plaintiff dismissed. Because the previous meeting had ended in chaos, DW2 Rashid Guvule gave evidence that he had consultations with the Ministry of Local Government who advised him to convene another meeting. In the mean time he had also received a letter from the IGG forwarding the said report to him so he caused the speaker to call another meeting to discuss it. A meeting was called 6/7 November 2003 at which the plaintiff defended himself against, the allegations in report and the council absolved him of the allegations. DW2 Rashid Guvule finally stated that he ensured that the decisions of the council to absolve and reinstate the plaintiff were implemented.

Mr. Odongo, learned counsel for the plaintiff after reciting the evidence on record submitted that because the interdiction of the plaintiff was done contrary to the provision of the law it was unlawful and he urged me to so hold.

Ms Susan Odongo, learned counsel for the defendant, on her part submitted that though the District Service Commission had erred in interdicting the plaintiff on 4/9/2003, that interdiction was retracted and the matter was referred to council which on 15/09/2003 resolved to implement the IGG's report and recommendations and on the basis of that resolution the chairman District Service Commission rightly interdicted the plaintiff on 25/09.2003.

She submitted that under Section 56(1) of the Local Governments Act, the District Service Commission has powers to appoint persons to office, to exercise disciplinary control over and remove them from office. Counsel contended that the District Service Commission in interdicting the plaintiff was exercising its powers under section 56(1) of the Local Governments Act and therefore acted lawfully.

The two interdictions of the plaintiff by the District Service Commission on the 4<sup>th</sup> and on the 25<sup>th</sup> September 2003 were both Steps in the process of removing the plaintiff from office. The law governing the removal of a Chief Administrative Officer from office is to be found in Section 69 of the Local Governments Act as amended by the Local Governments (Amendment) Act 2001 which states as follows;-

" 69( 1) The District or Urban council may recommend the removal of a Chief Administrative Officer or Town Clerk as the case may be by a resolution supported by two thirds of the council members on any of the following grounds;-

- a) abuse of office
- b) Incompetence
- c) Misconduct or misbehaviour
- d) Such physical or mental incapacity as would render the Chief Administrative officer or Town Clerk incapable of performing the duties of the Chief Administrative officer or Town clerk as the council may recommend the removal of a Chief Administrative Officer or Town clerk as the case may be by a resolution supported by two thirds of the council members on any of the following grounds.

( a) abuse of office

(b) incompetence

( c) misconduct or misbehaviour or

(d) Such physical or mental incapacity as would render the Chief Administrative

Officer incapable of performing the duties of Chief Administrative Officer.

(2) The provisions of section 15 except subsection (18) shall apply to the removal of the Chief administrative Officer or the Town Clerk case may be,

(3) Except for subsections (3)(4)(5), 6 and 18 section 15 shall apply to the removal of the Chief Administrative Officer or Town Clerk with such Modification as may be necessary and in particular.

- a) Before passing a resolution under subsection (1), the council shall in writing put its allegations to the Chief Administrative officer or Town Clerk who shall have the right to defend himself or herself before the council;
- b) Following the resolution of the council, to remove the CAO----- the clerk to the council shall forward the council's decision together with the necessary supporting documents to the Chairperson of the District Service Commission who shall immediately interdict the Chief Administrative officer ----- and require the officer to submit his or her written defence to the District Service Commission within fourteen days of receipt of the letter of interdiction.
- c) The District Service Commission shall conduct an investigation into the allegations against the Chief Administrative Officer ----- and take further appropriate action.

Though the District Service Commission has the functions of appointing, removing and exercising disciplinary control over the person in the service of the Local Government It can only exercise these functions upon the request or submission of the relevant council under section 56(4) of the Local Government Act.

In the instant case the interdiction of the plaintiff by the commission on the 4<sup>th</sup> September 2003 was contrary to the provision of the Local Governments Act in section 69 and section 15(3)(4)(5) (6) and (18) of the Local Governments Act in that the District Council neither put its allegations against the plaintiff with a view of giving him an opportunity to defend himself nor passed a resolution to remove the plaintiff supported by a two thirds of the council members nor requested the District Service Commission to take appropriate action against the plaintiff. The chairman District Service Commission in this case acted contrary to the provisions of the Local Governments Act in interdicting the plaintiff by relying solely on the report and recommendations

of the IGG. The chairman District Service Commission appears to have realized his folly because he withdrew the interdiction, which was contrary to the Law and therefore unlawful.

With regard to the second interdiction of the plaintiff on the 25<sup>th</sup> September 2003, the evidence on record is that after the IGG had belatedly forwarded his report and recommendations to the chairman of the District council, the latter caused the speaker to convene a council meeting, Though the meeting was inconclusive and ended in Chaos, the Chairman District Service Commission interdicted the plaintiff as a result thereof. In connection with this District Council meeting, the plaintiff adduced undisputed evidence that he was not given an opportunity to defend himself against the allegations leveled against him by the IGG.

From the evidence there is nothing on record that in considering dismissing the plaintiff in this meeting the council had furnished him with the allegation against him with a view to defend himself nor was the decision by the District to recommend the plaintiff's removal supported by a two thirds resolution of the members of the council. According to the evidence of PW2 Amia Butele Kazimiro which was not at all contradicted, the majority of the members of the council 13 by 2 rejected the removal of the plaintiff and wrote to the Ministry of Local Government, Protesting any move to remove the plaintiff. In the circumstances in the instant case a charge alleging misconduct by the plaintiff was not only not framed but the District Council never passed a resolution to the District Service Commission recommending the removal of the plaintiff supported by two thirds of the members of the council. In this the District Council was acting unlawfully contrary to section 69(1) and (2) of the Local Government Act. The Chairman District Service Commission also acted contrary to S 56(4) of the Act in interdicting the plaintiff when no resolution of the council supported by two thirds of the members of the council requesting him to take appropriate action against the plaintiff existed. For the above reasons the two interdictions of the plaintiff by the District Service Commission were both unlawful. The first issue is accordingly answered in the affirmative. The second issue to determine is whether the plaintiff after having been absolved and reinstated was blocked from assuming office by the defendant. The plaintiff PWI ChristopherYiki Agatre testified that after the interdiction clamped on him he wrote protesting to the clerk to council and the chairman LCV that he had not been given an opportunity to defend himself and another council meeting to which he was invited was called for the 6<sup>th</sup> and 7<sup>th</sup> November 2003. At this meeting he gave his defence and the council debated both his defence

and the IGG's report after which he was absolved and a decision was made to reinstate him. He was due to resume his duties on 10/11/2003 but he started receiving death threats. The plaintiff testified that he reported these threats to the District Internal Security Officer Yumbe who after investigations informed him that the threats were from people being instigated by the Yumbe LCV Chairman. He further gave evidence that the said LCV Chairman called a public rally which he did not attend but he learned that the purpose was to incite the public against the plaintiffs resumption of duty. He was informed of this plan by one Ayub Adiga and PW3 Keniga Abdu. The minutes taken at this rally were tendered as P10.

PW3 Keniga Abdu confirmed the public rally organized by the LCV chairman DW2 Rashid Yiga Guvule on 20<sup>th</sup> November 2003. At the meeting the LCV Chairman told the Public that the plaintiff had embezzled money. A resolution was passed at the rally that the plaintiff should not occupy the CAO'S office if he had embezzled funds. This witness gave evidence that the public resolved that if the plaintiff occupied his office they would take it over and lie on the tables. PW3 Keniga Abdu also testified that in contributing to the meeting he suggested that if the plaintiff had embezzled money the law should be allowed to take its course and that this was not a problem that could be solved by the public.

DW2 Rashid Govule Iyiga did not dispute calling the rally on 20/11/2003 at which he invited the L.C.III Chairman, LCV councilors members of commission, elders, religious leaders, youth and women leaders, the public, the DISO, DPC, heads of departments and major General Ali Bamuze. The aim of the meeting was to ensure insecurity did not engulf Yumbe District. He testified that he explained that because the council was supreme its decision would stand and prevail.

I believe that the plaintiff was subjected to all types of threats including death threats. This is supported by the evidence of PW3 Keniga Abdu and the contents of the minutes of what transpired at the rally called by DW2 Rashid Govule Iyiga, the L.C.V Chairman, which is exhibit P10 on the Court record. I also believe that it is these threats which led to the plaintiff's failure to resume his duties as the CAO of Yumbe and to his writing a resignation letter.



What remains to be determined is who was behind these threats and responsible for blocking the plaintiff from resuming his office. The plaintiff testified that upon being absolved of the allegations in the IGG's report he started receiving threatening messages on his phone. These were to the effect that he risked losing his life if he went back to his former office. He reported the receipt of these threats to the DISO, who after conducting his own investigations informed him that it was the LCV Chairman instigating the people of Yumbe District against the plaintiff. Though the Chairman LCV denied any complicity in the efforts to block the plaintiff from resuming his duties, his conduct proves the contrary. Though the District Council which is the highest decision making body of the District had absolved the plaintiff of the allegations in the IGG's report and reinstated him, the L.C.V Chairman called a public rally to discuss a matter which had otherwise been closed. According to PW3 Keniga Abdu who attended the said rally, the Chairman accused the plaintiff of having embezzled public funds though he had earlier been absolved by the District Council of this allegation. The LCV Chairman claimed that the rally was an innocent meeting to sensitize the public and a way of being accountable and it had nothing to do with blocking the plaintiff from resuming his duties. This is not at all borne out by the minutes of the said meeting and by what PW3 Keniga Abdu testified to having heard at the rally. From the minutes of what took place at the rally, the Chairman reopened the matter of the IGG's report and informed the rally that according to the IGG's officials, if the plaintiff was retained as the CAO of Yumbe, funding for the District would be cut. In my view a public rally was not the proper forum to decide whether to remove or retain the plaintiff as CAO. The right forum was the District Council which had finally made a decision on the matter. The chairman LCV deliberately set himself to slant the facts of the case to poison the minds of the public against the plaintiff on the pretext that he was sensitizing the public and being accountable to the Electorate. He was being malicious pure and simple.

Because of the picture painted by the LCV Chairman, the Public which legally has no jurisdiction over the office of the CAO purported to pass resolutions-

- (a) Rejecting the plaintiff as the CAO of Yumbe.
- (b) Calling the District Council to meet and revise the IGG's report.
- (c) Calling upon the council to reverse its decisions to reinstate the plaintiff.
- (d) Ordering funds allegedly lost or stolen to be recovered.

(e) To demonstrate against the plaintiff if he dared come back to his office.

The conduct of the LCV Chairman and the resolutions made by the Public at the rally made it impossible for the plaintiff to resume his office and virtually locking him out from carrying out these duties as the CAO of Yumbe District.

This now takes me to whether the conduct of and the instigation by the LCV Chairman of the public to block the plaintiff from resuming his duties as the CAO Yumbe can be ascribed to the defendant Yumbe District Local Government. The law on vicariously liability arising from a master servant relationship is now well settled.

In a nut shell it is that the master will be held vicariously liable for the acts of his servant done in the course of or within the scope of his employment **See Muwonge vs. Attorney General [1967]EA 17.** The latter will still be held vicariously liable even if the acts of the servant are negligent deliberate, Wanton, Criminal or for the benefit of the servant. The acid test of deciding vicarious liability is whether the acts were done or committed within the scope of the servant's employment It is irrelevant if the acts was done contrary to the instructions of the matter.

In the instant case the LCV Chairman is the Chief Executive officer of Yumbe District with a political mandate to lead them. In playing his leadership role he educates and sensitizes the public on Government policy and developmental issues. This main education is done by calling meeting. In the instant case he called such a meeting on 20/11/2003. This meeting was one of the activities he is employed to execute. Though it was from the minutes, ostensibly called to discuss security in the District, its main emphasis was to instigate the public against the plaintiff as indeed the LCV succeeded in doing. Though the LCV Chairman was by intrigue trying to instigate the public against the plaintiff contrary to the provisions of removing the plaintiff, I find that he did this in the course and within the scope of his employment as the political head of Yumbe District Local Government, thus making the defendant liable. This issue must be answered in the affirmative.

The next issue is whether the plaintiff resigned because he was blocked from assuming office. The evidence of PW1 Christopher Yiki Agatre on this issue is that around 10/11/2003 after the council had made a decision to reinstate him, he started receiving threats including death threats. These were followed by a rally called by the LCV Chairman at which plans were hatched to block him if he had gone back to his office. He testified that though he did not attend the rally, he was informed of the plan by Ayub Adiga and PW3 Keniga Abdu who testified that he attended the said rally. Though Ms Susan Odongo submitted that the plaintiff wrote his resignation freely, willingly and on his own accord and that he was not at all prompted by the alleged threats, I find that the

said threats were indeed issued as can be gathered from the evidence of PW 3 Keniga Abdu and from the resolutions by the Public in the rally as contained in minutes of the same. I also considered these threats to be very serious and that indeed this forced the plaintiff to write the letter of resignation to the LCV Chairman. This issue is answered in the affirmative.

Though not directly connected with the above issue, Ms. Susan Odongo submitted that the plaintiff's so called resignation did not take effect because it was directed to the LVC Chairman instead of being addressed to Chairman District Service Commission. She argued that this makes the plaintiff still effectively in service as he was merely interdicted and not removed. Counsel also argued that the fact that his salary was still being sent was evidence that he is regarded to still be in the employment of the defendant. Mr. Odongo submitted that the position of the plaintiff is as stated by Ms. Odongo Susan that he is serving a period of interdiction.

Under section 56(4) of the Local Governments Act it is the District Service Commission which has the power to appoint persons in office in the service of the District, to exercise disciplinary control over such persons and to remove them from office. As an appointing authority for an employee to resign effectively from his post he should resign to the District Service Commission. In the instant case the plaintiff wrote his resignation letter to the LCV Chairman who is not the appointing authority with power to remove him from office. I agree that for this reason the purported resignation of the plaintiff did not take effect and that he is still on interdiction though the council purported to reinstate him, a power the council did not have, The plaintiff's employer must be aware that he still its employee and that is why his salary is still being paid on the payroll though the plaintiff appears not to be receiving it.

That is not a matter I am being asked to rule about, the parties will sort it between them- selves.

The purported resignation of the plaintiff appears not to have taken effect for another additional reason. According to the Government Standing Orders, to which both parties are subject, it stipulates that no resignation takes effect until Government signifies approval of such resignation. Paragraph 1 Chapter 1 of the Government standing Orders 1991 Vol 1 stipulates as follows;-

"1. Officers hold office by virtue of ----- and the power to remove an officer from Public Service is vested in the President subject to specific constitutional exceptions, it follows that an officer can not remove himself/herself from the service. He or she may apply to resign his /her office but may not leave it until Government has signified approval in writing to his or her going and the date on which he or she may go."

From the above illustration, since the District Service Commission has not signified its consent to the purported resignation of the plaintiff, the said resignation of the plaintiff, has not taken effect. As a result the plaintiff is still the substantive CAO of Yumbe District though on interdiction.

In paragraph 10 of the plaint the plaintiff prayed for the following remedies:-

- a) A declaration that the said interdiction was unlawful.
- b) Special damages as per paragraph 8 of the plaint.
- c) General damages.
- d) Exemplary damages.
- e) Interest on (a) (b) and (c) at 45% per annum from the date of Judgment till payment in full.
- f) Costs of the suit.

In determining the first issue, I found as a fact that the interdiction of the plaintiff on both occasions 4<sup>th</sup> September and 35<sup>th</sup> September 2003 respectively was contrary to the provisions of the Local Governments Act and therefore unlawful. In the Light of that finding a declaration hereby issues that the said interdiction was unlawful.

The plaintiff in Paragraph 8 of his plaint pleaded special damages amounting to shs 7,093,600. Mr., Odongo conceded that these special damages had not been proved and abandoned the claim in the circumstances the prayer for special damages in disallowed.

General damages which are at the discretion of the Court are compensatory and intended to put the plaintiff in as good a position as he would have been in monetary terms if the wrong complained of had not occurred See Phillips Vs Ward [19561 IAU ER 874. Mr. Odongo submitted that the plaintiff was greatly inconvenienced by the acts of the defendant and proposed the sum of 80,000,000/= in general damages. Ms Susan Odongo did not address me on the issue of general damages.

The plaintiff was first unlawfully interdicted on 4/9/2003 and again on 25/9/2003. Though in his letter of interdiction dated 25/9/2003 the Chairman District Service Commission under took to invite the plaintiff to defend himself it is now getting to three years since the plaintiff vacated his office in the wake of death threats. He has not been receiving his salary for all the above period though the defendant admitted his salary is being paid. This must have put a lot of strain on his life and subjected him to distress and anxiety. Being denied his salary for nearly two years and half must no doubt have greatly embarrassed him and injured him financially.

Though Mr. Odongo proposed a figure of shs 80,000,000/= under this head, he did not back it with any recent similar award. However the closest case I could lay my hands on was that of Isodo Abdul vs. Arua District Local Government Misc Application No. -2-.CV-MA-0058 - 2004. In that case the applicant who was the CAD of the respondent was wrongly interdicted on the report of a Select Committee without the District Council following the laid down procedure in the Local

Government Act. By the time of the ruling the applicant had been on interdiction for roughly two years. This Court found that the interdiction was unlawful and awarded the plaintiff shs 50,000,000/= (fifty million only) in general damages. In the instant case the interdiction was equally unlawful and by the date of this Judgment the plaintiff had been on interdiction for two and half years. Having taken all the circumstances of this case I consider an award of shs 55,000,000/= will meet the justice of this case.

The plaintiff also claims exemplary damages. Mr. Odongo submitted that this is a case for an award of exemplary damages because the conduct of the employees of the defendant was arbitrary wanton, oppressive and unconstitutional. He proposed a figure of shs 20,000,000/= (twenty million).

When the IGG sent his report to the District Service Commission it at once interdicted the applicant in complete disregard of the provisions of the Local Government Act which I find arbitrary. After having received the letter of the plaintiff pointing out that it had acted irregularly and withdrew the first interdiction, the District Service Commission again interdicted the plaintiff upon receiving instructions from the council though such an instruction was not accompanied by a charge of the offence against the plaintiff nor with evidence that the council had resolved to remove the plaintiff with a % votes of the council members, This again was contrary to the Local Government Act and therefore an arbitrary act on the part of both the council and the District Service Commission.

After another council meeting at which the plaintiff was absolved of the allegations against him the LCV Chairman instigated members of the public to threaten the life of the plaintiff and to harass him through telephone messages. He carried out this to another level when he called a meeting or rally and poisoned the minds of the public to reject and actively oppose the plaintiff if he resumed his office. The conduct of the Chairman LCV in this respect was inexcusable and in total breach of the plaintiffs constitutional rights. This conduct was un- constitutional. All in all I make an award of shs 5,000,000/= to the plaintiff by way of exemplary damages.

The plaintiff prayed for interest on (a) (b) and (c) at 45% per annum. Mr., Odongo and Ms. Susan Odongo did not address me on the matter of interest and therefore I was not given the basis for this rather excessive rate of interest. A general rule on the award of interest is that a commercial rate will be awarded if the subject matter of the suit was commercial but in all other cases interest is at court rate. As there is no evidence that the claim involved a commercial transaction, I disallow the rate of interest claimed which is even above the bank commercial rates and award interest on the general and exemplary damages at Court rate from the date of Judgment until payment in full.

In the result Judgment is entered for the plaintiff in the following terms;-

- (a) A declaration issues that the interdiction of the plaintiff was unlawful
- (b) That the defendants pays to the plaintiff the sum of shs 55,000,000/= by way of general damages.
- (c) That the defendant pays 0 the plaintiff shs 5,000.000/= m exemplary damages.
- (d) The defendant pays interest on (b) and (c) above at Court rate from the date of Judgment till payment in full.
- (e) The defendant pays the costs of the suit.

Signed

**HON, AUGUSTUS KANIA**

**JUDGE**

**5/4/2006**

the presence of

Mr. Odongo - for the plaintiff

Mr. Christopher Yiki Agatre - the plaintiff Mr.

Ojok Bran ACAO Yumbe District

Ms. Andezu - Court clerk