



As to the first issue, plaintiff testified that the termination of her contract of employment was unlawful because it was done contrary to the provisions of the Human Resource Manual: exhibit P8. It is this manual that governed the employment relationship between the plaintiff as employee, and the defendant, as employer.

Plaintiff contended in her testimony and her counsel also so submitted, that her contract, pursuant to the Human Resource Manual could only be rightfully terminated only in respect of stated instances. These were, each or a combination of: termination pursuant to the disciplinary procedures under section 6 of the Manual, a certification by a medical practitioner that plaintiff was permanently unable to work, being imprisoned or convicted of an offence and the expiry of employment contract. Plaintiff's contract had not been terminated pursuant to any or a combination of the above grounds.

Plaintiff had, instead, had her employment contract terminated on the ground that there was a shortfall in the defendant's income in the Country programme which necessitated reduction of staff. Plaintiff was the staff reduced.

As to the Human Resources policy, November, 2001, exhibit D1, which according to witnesses, who testified, was the basis upon which the plaintiff's employment contract was restructured and thus terminated, plaintiff denied ever having been served with a copy of the same.

According to plaintiff therefore, the termination of her contract of employment was unlawful because it was based on the wrong reasons.

The termination of her contract of employment was also wrong because, immediately before the termination, the defendant had placed an advertisement on 08.02.2002 for a vacancy of the plaintiff's job, subsequent of which the defendant recruited another person for the same job with similar assignments, remuneration and on employment terms and conditions of service similar to those employed by the plaintiff.

The defendant adduced evidence through DW1 Zaituna Fumbia, the communications officer, and DW2 Andrew Hyeroba, a human resource consultant, who was part of the consulting team that recommended organizational changes in the structures of the defendant contained in the defendant's Human Resources policy November 2001: exhibit D1.

The evidence of defendant's two witnesses is that defendant acted within the terms of the employment contract to terminate the employment of the plaintiff. The reason for

termination was because of a shortfall in income of the defendant that resulted in reduction of staff. Plaintiff happened to be the staff reduced.

The position of the law is that where any contract of employment stipulates that a party may terminate it by giving notice of a specified period, such a contract can be terminated by giving the stipulated notice for the period. The right of the employer to terminate the contract of service whether by giving notice or incurring the penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the courts: see: **Supreme Court of Uganda Civil Appeal No. 1 of 1998: Barclays Bank of Uganda vs Godfrey Mubiru;**

and also

**LEE V ARTHUR GREAVES (1974) 1 C.R. 501, and REX STEWART JEFFRIES PARKER GINSBERG LTD V PARKER 1. R. L.R. 483.**

The evidence adduced and also borne out by exhibits P1, P3 P4, and P8 clearly establish that, according to the scale of employment the plaintiff held, her employment was terminable on being given two months notice or two months salary and allowances equivalent in lieu of notice. See paragraph 1.1.2 of the AA U HR Manual: exhibit P8: paragraph 5 of exhibit P1, paragraph 2 of exhibit P3 and paragraph 3 of exhibit P4. Exhibit D1, which the plaintiff denied ever receiving, but which defendant contended plaintiff received; and/or ought to have been aware of the same, does not provide to the contrary with regard to the fact that plaintiff's contract was terminable on issuance of a two months notice or payment in lieu of notice.

The plaintiff in her evidence admitted that her employment contract was terminated after two (2) months notice had been given to her. She received the defendant's notice of termination on 19.02.2002. Her termination was effective from 20.04.2002. She also admitted she was paid for the two (2) months of the notice period that she worked.

The contention of the plaintiff that her employment contract could only be rightfully terminated in respect of instances of first being subjected to a disciplinary procedure set out in section 6 of the Manual: exhibit P8, a certification of the plaintiff being unable to work by a medical practitioner, her being imprisoned or convicted of an offence and/or at the expiry of the employment contract, is not right, given the wording of the terms of the contract in exhibits P1, P3, P4 and P8.

Exhibit P1 in paragraph 5 provides:-

***“ .....either party may give a two (2) month’s notice of termination(or two (2) month’s salary and allowance equivalent in lieu of notice) as set out in the standard policies and procedures”***

Exhibit P3 states in paragraph 3:

***“ I would like to emphasize that during this contract, either party may give a two month notice of termination or two month’s salary and allowance equivalent as set out in the Human Resource Manual”***

Exhibit P4 reiterates that the plaintiff’s relocation by reason of transfer to Regional office, Apac, will be

***“ under the same terms and conditions as in your present job.....”***

Paragraph 1.1.2 of the AAU HR Manual, exhibit P8, is to the effect that:-

***“ Within each contract, there will be a notice of termination of contract for each side.***

**Grade E – F posts: Two months notice or two months salary and allowances equivalent in lieu of notice.....**

.....

**Action Aid reserves the right to revoke these conditions on the basis of:**

- **Provisions within disciplinary procedures,**
- **The staff members has been certified permanently unable to work by a medical practitioner (see 5.2 and appendix 96)**
- **Imprisonment or conviction of an offence,**
- **Expiry of contract”**

This court finds nothing in the above quotations that provided for the terms of notice to terminate in the contract of employment between the plaintiff and defendant, to the effect that notice to terminate shall only be resorted to by the employer only in respect of certain instances happening.

This court holds that on the evidence adduced, the defendant, as employer, had unrestricted powers under the terms of the contract to terminate the same by giving a written two months notice, or payment of salary and allowances, in lieu thereof.

Plaintiff and her counsel invited court to find that the termination of her contract of employment was unlawful because the defendant advertised her post even before her contract of employment had been terminated and while she was still at work.

The defendant's evidence on the point is that the plaintiff's post was at the Regional level, while the advertisement was for a post at the local level in Apac. The two posts were, according to the defendant, different.

Plaintiff gave no reason, and provided no evidence, as to why the defendant should have been barred from carrying out the advertisement at the time, the defendant, chose to carry out the advertisement, as part of the defendant's internal management of its affairs. This court is unable to hold that by reason of carrying out the advertisement, the termination of the plaintiff's contract of employment became unlawful.

This court notes that the defendant had the alternative option of rendering the plaintiff redundant pursuant to Paragraph 4.6 of the Human Resources Policy, Manual, November, 2001, exhibit D1. In the considered view of this court, the existence of this option did not in any way fetter the powers of the defendant to terminate the plaintiff's contract of employment by giving the requisite two (2) months written notice: a clear term in the employment contract agreed upon by both plaintiff and defendant.

At any rate, as at the time of hearing of the case, the plaintiff had already compromised her right to make any claim by reason of being rendered redundant in her employment, since according to her testimony as well as exhibit P9, she, in August, 2002, agreed and did receive from the defendant a redundancy package in accordance with paragraph 4.6 of the Human Resources Policy Manual, November, 2001; exhibit D1.

Therefore this court holds as the answer to the first issue that the termination of the plaintiff's employment contract was not wrongful and or unlawful. The termination was lawfully done by the defendant in accordance with the terms of the employment contract executed between the plaintiff and the defendant.

As to what remedies are available to the parties, the plaintiff, having not been successful on the first issue, is not entitled to the declaration and the damages she prays for in the plaint, since, on failing to prove breach of the contract of employment on the part of the employer, there is no entitlement to the declaration and there is also no duty on the employer to pay any damages to the employee:

See: **Barclays Bank of Uganda vs Mubiru (1998- 2001) HCB 16.**

The plaintiff in her plaint and testimony to court, sought to be paid the whole contractual sum for the residual term. With respect, such a claim is not supported by the evidence as to the terms of the contract of employment the plaintiff had with the defendant. The plaintiff's contract had a provision enabling either party to terminate the employment. She would therefore, if she had succeeded on proving unlawful termination of the contract on the part of the defendant, be entitled to recover damages, the equivalent of remuneration for the period stipulated in the contract notice. Damages equivalent to the remuneration for the balance of the contract period, are only recoverable in respect of an employment contract which makes no provision for termination prior to expiry of the fixed terms of employment. This is not what the plaintiff's contract of employment was: **see: Supreme Court of Uganda SSCA 6/98 Gula Balli Ushillani v Kampala Phamaceuticals Ltd.**

The plaintiff's claim for special damages therefore fails.

It also follows that since the finding of court is that the termination of the plaintiff's contract of employment was lawful and that plaintiff has already been paid what she is entitled to pursuant to the termination, there is no basis for any award of general damages. This part of the plaintiff's claim is also disallowed.

The plaintiff's suit therefore stands dismissed against the defendant.

The defendant is awarded the costs of the dismissed suit.

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Remmy Kasule

Judge

5<sup>th</sup> September, 2008.