THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-OO-CV-CS-0349-2007

DR. ARINAITWE RAPHAEL & 37 OTHERS::::::::::::::::::::::::::PLAINTIFFS

VERSUS

INSPECTORATE GENERAL OF GOVERNMENT ::::::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING:

The plaintiff's claim against the defendant is for (a) special damages amounting to Shs.686,972,828.08/= being alleged emoluments due and owing to the plaintiffs and arising out of an alleged breach of the plaintiffs' contracts of employment with the Inspectorate of Government, (b) general damages for breach of contract and defamation, (c) compensation for the loss of employment for which the defendant is allegedly liable. The defendant denied liability and maintained that the suit is incompetent, frivolous and vexatious and that it does not disclose a cause of action in as far as the suit is originated on expired contracts and the mandate to renew the contracts lay with the discretion of the Appointment Board of the defendant as per law provided.

When the case came up for conferencing on 6/11/2008, Mr. Kasujja for the defendant intimated to court that the flaws in the plaintiff's case are so fundamental that they go to the root of their case. Accordingly, two issues were framed for determination:

1. Whether the plaint is incompetent and defective.

2. Whether the plaint discloses a cause of action against the defendant.

It was agreed that, both Counsel file written submissions and they did. This ruling is in respect to the two issues.

Issue No. 1: Whether the plaint is incompetent and defective.

Learned Counsel for the plaintiffs has invited me to hold that for a plaint to be incompetent and defective, it must be or must have been filed in contravention of some rules of procedure or some other statutory provision. I think this is the correct position of the law.

Learned Counsel for the defendant raised a number of issues in his written submissions. He was certainly not economical with words. I will go over the points he raised, one after another. He contends for instance that the Plaint in this suit contravenes 0.1 r.8 (1) and 0.1 r.12 (2) of the Civil Procedure Rules, among others. His argument here is that the suit was filed in contravention of 0.1 r.8 (1) when it purported to present Mr. Magumba Fredrick and Mr. Justus Peter Otim (reflected as plaintiffs Nos. 31 and 32 respectively, without a court order to that effect. He argues that a representative suit without a court order is incompetent and defective as the provisions of 0.1 r.8 (1) are mandatory and he cites authorities to that effect. This argument is in my view misplaced. From my reading of the plaint, this is not a representative suit and there is no party representing the other. The 38 plaintiffs are suing jointly and severally and as learned Counsel for the plaintiffs has correctly put it, each of them has a singular claim in the suit and each plaintiff appears on his/her own. In my view the question of a representative suit does not arise at all. It is not pleaded and my reading of the plaint does not give me that impression.

Rules of procedure (particularly 0.1 r.1) permit them to do what they did. This rule reads:

> ***"All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if these persons brought separate suits, any common question of law or fact would***

arise."

As for Magumba (No. 31) and Otim (No. 32), each is suing in his own right as a plaintiff. The plaint does not give any impression of another plaintiff purporting to represent them. For this reason, the question of a written authority under 0.1 r.12 appears to be far fetched and so is the necessity to seek a representative order under 0.1 r.8 of the Civil Procedure Rules.

Learned Counsel for the plaintiffs has submitted that the suit was filed on behalf of the plaintiffs, including Nos. 31 and 32, by their Counsel. That there is no procedural requirement to furnish to court the letter of instructions to the Advocates to institute the suit in court. This point is also well made on the part of the plaintiffs. It is only the two persons who can challenge the absence of instructions to institute the suit in court. None has so far complained to court and learned Counsel for the defendant has not adduced to court evidence of any such complaint.

The law is that whoever alleges must prove. The two plaintiffs have alleged that they were employees of the defendant and therefore entitled to the relief sought herein. The burden is on them to prove so. I sincerely have not appreciated learned Counsel's objection on this point.

Learned Counsel for the defendant has also taken issue with the plaintiffs' reference to their NSSF contributions which the defendant allegedly failed/omitted to remit to NSSF. His argument appears to be that they have no right to question that. This is contained in paragraph 7 of their plaint. They state:

> ***"The plaintiffs shall also aver that during the period in issue, the defendant neglected or failed to remit to the NSSF its part contributions as employer in favour of the plaintiffs although it did deduct the plaintiffs contributions from their salaries."***

Learned Counsel for the defendant has submitted that the plaint contravenes the provisions of the NSSF Act, Cap. 222 in as far as it makes allegations pertaining to NSSF contributions. I have read the plaint. From it, I am able to say that they do not seek to enforce the provisions of the Act and they have made no claims for recovery of the unpaid benefits. It is not one of the prayers in the suit and even if they had done so, I doubt that any one would have the right to question their wisdom to do so except the court that would determine the issue one way or the other. I am saying so because the plaintiffs, in proof of their case, are entitled to plead on the defendant's failure to remit their NSSF contributions, if any, as a breach of their contracts of employment. This does not in any way amount to their usurpation of the powers of NSSF under the NSSF Act.

I have addressed learned Counsel's observations as regards framing of plaints in relation to 0.4 r.1 (2) 0.6 and 0.7 of the Civil Procedure Rules. He argues for instance:

(i). That the description of the plaintiffs under paragraph 3 of the plaint leaves a lot to be desired and it is inconsistent with the attached evidence.

(ii). That paragraph 6 (a) of the plaint indicate (sic) that the suit is for 38 plaintiffs excluding NSSF and is supported by 36 expired contract documents as contracts of employment.

(iii). That these expired contracts have different commencement and expiry dates, so it is not correct for the plaintiffs to allege or assert legally in paragraph 6 (a) of the plaint that their contracts were effective 1st January 2004 to 31st December, 2005.

I can go on and on. The submissions are in writing so it is not necessary for me to reproduce them here.

Suffice it to say that the arguments as presented to court by learned Counsel for the defendant are an attempt to submit on the merits of the suit without the benefit of the evidence on it at all. What Counsel has presented is a critique of the case. It is not a point of law in terms of 0.6 r.28. The plaintiffs are described, properly in my view, in paragraphs 1, 2 and 3 of the plaint.

And while it is correct to say that the contracts of Employment attached to the plaint had expired, it is incorrect to think that any benefits accruing from those contracts are unenforceable by action in court. Whether or not the impugned contracts of employment were in fact extended by the defendant's conduct and/or representations are matters of both law and fact which can only be resolved after hearing the evidence of both parties. It cannot be resolved on mere submissions of Counsel however ingenuous. Accordingly, it is not for me to decide at this stage whether or not the matter should have been instituted by way of an application for judicial review.

The first objection lacks merit in my view. It is over ruled.

Issue No.* 2: *Whether the suit discloses a cause of action

The phrase 'cause of action' has been interpreted and mis-interpreted in a number of ways. Osborn's Law Dictionary, 9th Edition at page 73 defines it as:

> ***"The fact or combination of facts which gives rise to a 'right of action."***

Halsbury's Laws of England, 4th Edition, (Re-issue) Vol. 37 at page 24 explains it thus:

> ***"Cause of action. 'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from the earliest time to***

include every fact which is material to be proved to entitle the claimant to succeed, and every fact which the defendant would have a right to traverse. 'Cause of action' has also been taken to mean the particular act on the part of the defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the claim, not merely the technical cause of action."

It is such an important aspect of our law that 0.6 r.1 (a) requires all pleadings; generally, to contain a brief statement of the material facts on which the party pleading relies for a claim or a defence. Under 0.7 r.1 (e), the plaint must contain the facts constituting the cause of action and when it arose. The consequences of non-compliance are grave and set out in (0.7 r.11). Under Rule 11 (a), a plaint that discloses a cause of action must be rejected by the court.

It is in my view settled law that the question whether or not a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached to form part of it, and upon the assumption that any express or implied allegations of fact in it are true.

See: .Jeraj Shariff & Co. vs. Chotal Fancy Stores (1960J E.A. 374 at p. 375.

I have studied the plaint. It is pleaded by the plaintiffs that they were all employees of the defendant; that the defendant terminated their services contrary to their contracts of employment and the law; that as a result of this action they have suffered loss and damage for which they seek compensation. As I understand learned Counsel for the defendant's argument, it is that their contracts of employment attached to the plaint (for Nos. 31 and 32 not attached) had expired. I have already indicated that learned Counsel is correct on this. However, that's the farthest I can agree with him. They have pleaded in paragraphs 6 (b), (d), (e), (f), 8 (d) and 9 that they (contracts of employment) were extended by the defendant's conduct and representations. The court can only arrive at the decision, one way or the other, after hearing the evidence of both parties. Where the pleadings are deficient, any omission or defect may be put right by amendment at any stage of the proceedings. The matter cannot be determined on a preliminary point of law.

Now the pleadings as per their plaint show, in my opinion, that the plaintiffs enjoyed a right. And what is that right? The right to employment. They have pleaded that the right has been violated, through termination of the contract extensions, and that the defendant is liable.

This in my view meets the test of a cause of action as summarized in ***Auto Garage & Others vs. Motokov (No. 3) [1971] E. A. 514.*** The rest is for the court to determine on evidence.

On the issue of alleged defamation, the plaintiffs allege that the defendant made utterances which had the effect of defaming the plaintiffs. The utterances are alleged to be in writing. Learned Counsel for the defendant wonders in his submissions as to what is defamatory about an officer who has appeared before a disciplinary Committee to the defendant before the Appointments Board declines to renew his or her contract. Court does not have that evidence. He claims that contracts were not renewed as a result of old age, lack of academic papers, non-performance, late coming, indiscipline, etc, which is what was reported in the Press **'but which were facts and true.'** That this cannot amount to defamation but a fair comment and justifiable in the circumstances not to attract damages. In other words, Counsel has already determined the matter.

Learned Counsel for the plaintiffs has submitted that his colleague's submission only amounts to an effort to put forward a defence of justification and fair comment. That this is not possible at this stage because it can only be established after evidence has been led to prove the alleged facts. I agree and I don't have to belabour the point. It is settled law that though the object of O.6 r.28 is expedition, the point of law must be one which can be decided fairly and squarely one way or the other, on facts agreed or not in issue on the pleadings and not one which will not arise if some fact or facts in issue should be proved: **Lt. David Kabareebe vs. Maj. Prossy Nalweyiso (Court of Appeal) CA No. 34 of 2003** (unreported).

I think the procedure adopted by learned Counsel for the defendant is not cognizant of this fact and it is contrary to established procedure and law.
This objection would also fail and it fails.

Before I take leave of this matter, I find it necessary to re-echo the words of ***Sir Charles Newbold P. in Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969J E. A 696 at p. 701.***
He said:

> ***'The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of a judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop."***

I need not say more on this point except to add that our judicial system has a heavy infestation of back log of cases. Any strategy to reduce the back log which does not address time wasting maneuvers such as this serves only to increase the build up of back log. It makes litigation more expensive and therefore unaffordable by the ordinary folk. Besides, it is recipe for unnecessary bottlenecks in the administration of justice. I rest my case.
For the reasons I have endeavoured to state above, the objections raised by the defendant are disallowed on account of lack of any merit. The plaintiffs shall have costs attendant to this ruling in any event.

Another date shall be set for the completion of the Scheduling Conference.

Yorokamu Bamwine

JUDGE

10/12/2008

10/12/2008:
Paul Kuteesa for plaintiffs

Defendants absent

Court:

Ruling delivered. Scheduling Conference on 23/04/2009 at 12.00 noon.

Yorokamu Bamwine

JUDGE

10/12/08