

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
CIVIL SUIT NUMBER HCT – 02 –CV – SC – 0119 – 2001

ANGWEE KALANGA :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

THE ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. JUSTICE REMMY KASULE – JUDGE

JUDGMENT

Plaintiff sued the defendant claiming for special and general damages for wrongful termination of service, removal from the payroll, salary arrears, gratuity, benefits and for a declaration that he is still a Civil Servant, permanent and pensionable.

On 28.11.1997 plaintiff was appointed by defendant as a clerical officer and posted to police Headquarters, Kampala. He was confirmed in the post on 02.12.1981.

In 1984 plaintiff was transferred to the Ministry of Lands, Minerals and Water Resources and posted to Gulu land office.

While serving at Gulu Land office in 1991 the plaintiff's name was omitted and deleted from the payroll. No reason or explanation was given to the plaintiff for the omission and deletion, inspite of the plaintiff demanding for the same.

On 14.11.2001 plaintiff instituted this suit.

The issues framed for resolution by this court are:-

1. Whether the plaintiff was an employee of the Central Government.
2. Whether the plaintiff's employment with the Central Government was terminated lawfully.
3. The remedies available.

As to the first issue, according to Exhibit P1, the plaintiff was appointed on probation as a Clerical Officer in the Public Service by the Public Service Commission on 28.11.1977.

Some of the terms of his appointment were salary scale U8, a probation period of two years from date of appointment, and an undertaking, when the occasion demands, in the interest of the service, to serve in any part of Uganda by normal posting instructions.

He was subsequently confirmed in service and on 25.09.1984, following transfer from police to Ministry of Lands, Minerals and Water Resources, posted to Gulu Land office: the transfer letter was exhibited as Exhibit P3.

It is while he was at Gulu Land Office in February 1991 that his name was, without any valid reason, omitted and deleted from the payroll as a Public Servant.

On 13.05.1999, The Ministry of Water, Lands and Environment, communicated to the Chief Administrative Officer, Gulu District, as per exhibit P5, regarding the plaintiff's plight, to the effect that, according to the Local Government statute of 1993, all officers found working at the Districts, plaintiff inclusive, were automatically taken over by Local Government when the said statute began to be operative.

The position thus adopted by the Ministry of Water, Lands and Environment was that the plaintiff and his plight were no longer the responsibility of the Ministry, that is Central Government, but rather that of Gulu District Local Government. Reliance for this position was based on the Local Government (Resistance Councils) Statute 1993.

Court has come to the conclusion that the position taken by the Ministry of Water, Lands and Environment as regards who employed the plaintiff when the Local Government (Resistance Councils) statute became operative was wrong in law.

Under the Local Governments (Resistance Councils) Statute, section 29(1) the staff of the District had to be appointed or allowed to act in any office of the Local Government by the District service Commission.

Such staff included the District Executive Secretary, a deputy and assistant District executive secretaries: section 31, Chiefs: section 32 and other staff as may be necessary for the proper performance of the functions of the council: section 34(1). Section 51(2) of the statute deemed one who had been in employment of the council immediately before the commencement of the statute to have been appointed and to hold office under the statute.

Regulation 20 of the Local Governments (Resistance Councils) Statute was similar to section 29(1) of the statute.

In the particular case of the plaintiff, there is no evidence availed to court that the plaintiff was ever appointed or integrated into the staff of Gulu District by the District's service Commission. The defendant does not even plead so in his written statement of defence dated 18th March 2002.

In the administration of the Public Service, transfers between the public service of the Government, to which the plaintiff belonged, and the public service of a district administration may only be made after the approval of the appropriate authority after consultation with the Minister responsible for Local Government and the Minister responsible for Public Service: See section 12(4) of the Public Service Act. There is no evidence of compliance with this section in the case of the plaintiff.

Court answers the first issue to the effect that the plaintiff was at all material time an employee of the Central Government.

The second issue is whether the plaintiff's employment with the Central Government was terminated lawfully.

The evidence adduced establishes that the plaintiff's employment in the Public Service was not terminated by any communication to him by his employer either by way of notice to terminate or through the process of any disciplinary action and procedure. The defendant just omitted and deleted the plaintiff's name from the payroll and stopped paying salary and other emolument in February 1991.

The reason for treating the plaintiff so by the defendant was, according to the defendant, because the plaintiff's employment had now been taken over by Gulu District Administration.

Court has already held the defendant's above reason for so treating the plaintiff to have been wrong and that plaintiff all along remained an employee of the defendant.

A dismissal from employment is wrongful if the same is made without justifiable cause and without reasonable notice: ***See A.M. JABI VS MBALE MUNICIPAL COUNCIL (1973) HCB 191.***

The defendant was, by law, obligated to provide work to the plaintiff and since the plaintiff carried out his part of the contract, then salary and other emoluments were, by law, deemed due from the defendant to the plaintiff at the expiration of every month worked: See sections 17 and 36 of the Employment Act. An employer has an obligation to pay the employee the remuneration for his/her services as agreed under the contract. Failure to do so is a fundamental breach of the employment contract: ***See: KONIG VS KANJE NARANJEE (1968) EA 233.***

In failing to pay salary and other emoluments to plaintiff for work done and in failing to employ or to lawfully terminate the plaintiff's employment, Defendant acted contrary to law and in breach of terms and conditions of service governing the plaintiff's employment with the defendant.

The termination of the plaintiff employment with the Central Government was thus unlawful.

The third issue is what remedies re available.

Plaintiff in his amended plaint and in his testimony to court prayed for special damages by way of arrears of salary, and declaration that he is permanent and pensionable in the Civil Service and is still an employee of Government, an order that he should be paid all his benefits and gratuity, and general damages.

Article 173(b) of the Constitution enjoins this court to apply the protection the constitution gives to the plaintiff as a public officer. It provides: " 173. protection of Public Officers.

A pubic officer shall not be

(a) victimized or discriminated against for having performed his or her duties faithfully in accordance with this Constitution; or

(b) dismissed or moved from office or reduced in rank or otherwise punished without just cause"

This Article, in case of public servants, renders the common law principle that an employer may terminate one's employment, even for no cause, no long tenable in Uganda. Therefore the holding in the case of **Patel vs Madhvani international (1992/1993) HCB 189** is no longer applicable to public servants in Uganda.

Plaintiff claims special damages by way of arrears of salary since January 1990 when his salary was not paid to date.

Plaintiff's evidence is that he has done his best to have the issue of his employment rectified from 1993 to date but no avail.

He consulted his immediate supervisor in January 1990 when his salary was stopped. The supervisor referred him to Ministry of Lands, Minerals and Water Resources, who, at Headquarters, undertook to reinstate his salary, but never did so.

He continued to pursue the matter with the Ministry of Public Service: See exhibit P9, again to no avail.

When he took the matter to the Inspector of Government Business plaintiff was advised to pursue the matter with the Ministries of Lands, Minerals and Water Resources and that of Public Service. The Inspector General of Government Business did not thus help him.

Gulu District Local Government also added its weight calling upon the Defendant to resolve the plaintiff's plight, as per exhibit P6, but the defendant made no response.

Plaintiff then referred the matter to the Uganda Human Rights Commission, who on 27th June 2000 wrote exhibit P10 to the Permanent Secretary, Ministry of Water, Lands and Environment urging that

“this office requests that everything should be done to resolve this complainant's matter as soon as it is possible, for it has remained unresolved for a very long time”

The plaintiff never received any response from the Ministry of Water, Lands and Environment. He decided to lodge this case in court.

The fact that plaintiff has laboured to take this matter to all these offices, coupled with his testimony that he has all along been ready to work and has been reporting to land office, Gulu, where he was denied any office in 1993, all go to show that plaintiff has been ready and willing and still is ready to perform his part of the contract as a Public servant in the service of the defendant.

Section 17(2) of the Employment Act, Cap.219, therefore applies to the plaintiff's case. It provides:

“ Where an employer fails to provide work in accordance with a contract of work, he or she shall pay to the employee, in respect of every day on which he or she shall so fail, wages at the same rate as if the employee had performed a day's work.”

In deciding to apply this section to the plaintiff's case, this court is guided by the interpretative holding of **Justice Karokora J.S.C.**, (as he then was), when he held in **SCCA No. 6 of 1998: GULLA BALLI USHILANI VS KAMPALA PHARMACEUTICALS Ltd**, unreported, that:-

“ If under section 16 of the Decree 4/75 (currently S.17 of cap. 19) the employer failed to provide work to the employee, in accordance with the terms of the contract of employment, like in this case, then the employer was under obligation to pay to the employee in respect of every day on which it so failed, wages at the same rate as if the employee had performed work for the life span of the contract of employment”

Though Justice Karokora’s judgment was a Minority one in the case, their Lordships who held in majority did not disagree with and did not hold that Justice Karokora’s interpretation of this section was in any way faulty. This court thus relies on and adopts Justice Karokora’s interpretation and application of section 17 of the Employment Act.

The plaintiff testified in detail and produced to court standing instructions from 1990 to 2007, exhibits P10 to P21, showing how his annual salary in U8 scale has evolved over the material time to date to accumulate to a total of shs. 13,642,328/=

The particulars are:-

Financial year and salary	salary arrears due
i. 1990/91: shs 350 x 12	= shs. 36,372/= annual
ii. 1991/92: shs 4334 x 12	= shs. 52,008/= annual
iii. 1992/93: shs 96,216 x 12	= shs. 96,216/= annual
iv. 1993/94: shs 12,027 x 12	= shs.144,324/= annual
v. 1994/95: shs 32,522 x 12	= shs. 187,620/= annual
vi. 1995/96: shs 35,744 x 12	= shs. 429,299/= annual
vii. 1996/97: shs 53,743 x 12	= shs. 641,681/= annual
viii. 1997/98: shs. 53,743 x 12	= shs. 641,681/= annual
ix. 1998/99: shs. 58,822 x 12	= shs. 705,849/= annual
x. 1999/2000: shs. 68,703 x 12	= shs. 933,623/= annual
xi. 2000/2001: shs. 71,173 x 12	= shs.854,076/= annual
xii. 2001/2002: shs. 1,026,985/= annual salary	=
	shs. 1,026,985/= annual
xiii. 2002/2003: shs.1,026,985/=annual salary	
	shs. 1,026,985/=annual
xiv. 2003/2004	= shs. 1,026,985/= annual
xv. 2004/2005	= shs. 1,228,449/= annual
xvi. 2005/2006	= shs. 1,289,862/= annual
xvii. 2006/2007	= shs. 1,380,152/= annual
xviii. 2006/2008	= <u>shs. 1,476,763/= annual</u>
TOTAL	<u>Shs. 13,642,328/=</u>

From the evidence adduced court notes that the defendant never communicated to the plaintiff he was no longer an employee in the public service of Uganda. Plaintiff was thus justified to regard and carry out himself as an employee in the Public Service.

Service in the public service has with it entitlement to pension, gratuity and other benefits depending on the number of years served. Continuity of service is thus of paramount value to serving in public service. To purport to terminate the service of a Public servant through unclear and indirect means such as deleting an employee's name from the payroll cannot be allowed by this court as lawfully terminating the service of the plaintiff and thus deprive him entitlement to pension, gratuity and other benefits that are intended for a public servant and his/her family to fall on in retirement. To do so would amount to violating Article 173 of the constitution to the prejudice of the plaintiff.

Given the peculiar facts of this case, justice can only be done to the plaintiff, given the spirit of Article 173 of the Constitution, by granting to plaintiff a declaration that he has been since the date of his appointment and continues to be until he lawfully retires or until his service is lawfully terminated, a permanent and pensionable Public service employee in the Public Service of the Government of Uganda; with entitlement to salary, pension, gratuity and all other due benefits as the law stipulates.

As to general damages, the plaintiff having been awarded his salary from 1990 to date, which sum is to carry interest at an appropriate rate, court finds it unnecessary to award general damages to the plaintiff.

In conclusion judgment is entered for the plaintiff against the defendant for:-

- a. Shs. 13,642,328/= arrears of salary.
- b. A declaration that, until his lawful retirement or dismissal, the plaintiff has all along been and remains an employee in the Public Service of the Government of Uganda with entitlement to salary, pension, gratuity and any other benefits in accordance with the law;
- c. The sum of shs. 13,642,328/= arrears of salary shall carry interest at court rate from 1st January, 1990, until payment in full.

The plaintiff is awarded the costs of this suit.

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Remmy Kasule

Judge

28th March 2008