

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-00-CV-CS-0339-2007

1. **MARTIN FETAA**
2. **KATONGOLE KIIZA HERIDAI:.....: PLAINTIFFS**
3. **MANANA SAMUEL**

VERSUS

UGANDA REVENUE AUTHORITY :.....:DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The plaintiff's claim against the defendant is for special and general damages for wrongful interdiction and termination of employment, interest on the decretal sum and the costs of the suit.

From the pleadings and evidence, the first plaintiff, Martin Fetaa (also variously appearing in the proceedings as Feta or Feeta) was formerly employed by the Uganda Revenue Authority as Commissioner Director Taxes; the second plaintiff, Katongole Kiiza Heridai, as Assistant Commissioner under Business Analysis Revenue Support; and the third plaintiff, Manana Samuel, as Assistant Commissioner Direct Taxes. Before hearing commenced, the suit in respect of first plaintiff was withdrawn. This judgment is therefore in respect of the 2nd and 3rd plaintiffs.

At the conferencing the following facts were admitted.

1. Both plaintiffs were employed by defendant as Assistant Commissioners on renewable contracts from 01/06/02.

2. The contracts were terminable on each party giving the other 3 months notice or payment in lieu.
3. On 06/06/02 the plaintiffs were arrested and charged with causing financial loss and were acquitted on 10/06/06.
4. They were never called to management Disciplinary Committee as required under the Manual governing URA.
5. On 10/02/03 before the criminal trial against them was concluded the defendant interdicted the plaintiffs and started paying them $\frac{2}{3}$ of monthly salary and later half salary.
6. While the plaintiffs were on trial the defendant underwent a restructuring exercise. The plaintiffs' contracts were then terminated on 10/02/05.
7. The plaintiffs were paid some benefits.

Issues

1. Whether the plaintiffs' suit is not barred by limitation.
2. Whether the plaintiffs were wrongfully and/or prematurely and/or terminated.
3. Remedies.

At the hearing the defendant abandoned the issue of limitation. In view of that abandonment, I shall make no finding on it.

2. Whether the plaintiffs were wrongfully and/or prematurely interdicted and/or terminated.

It is not disputed that both plaintiffs were employees of the defendant at the level of Assistant Commissioner. From the evidence of PW1 Katongole, he was picked from his office on 06/06/2002 and taken for questioning by Police. He found other suspects there. All of them did not know what was going on. He spent a night in the cells and appeared in court the following day. Charges of causing financial loss were read to them and they were remanded to Luzira Prison. He was later released on bail. After a trial that took almost four years, they were acquitted. As the criminal case was going on, however,

sometime in February 2003, he received a letter informing him that the URA Board had decided that he be interdicted. The letter of interdiction is on record as Exh. P4. His other colleagues were treated in like manner. Under Clause 13 of the Human Resource Management Manual, Exh. P5, commission of a criminal offence rendered the offending staff liable to disciplinary action. In a case involving staff on the management team, the rules required that the Commissioner General refers his/her recommendation to the Board for appropriate action. The thrust of the plaintiffs' case is that since this procedure was not followed, the interdiction was wrongful and/or unlawful. The defendant does not agree. Its argument is that at the time the plaintiffs were interdicted, they were already on trial.

From the evidence, a one Mangeni was instructed by the then Commissioner General to investigate the plaintiffs. Mr. Mangeni did not give evidence in this case. He only testified in the criminal trial. It is evident from the criminal trial records that several senior staff from the defendant organization testified against the plaintiffs in that case. At the end of the day the court found that URA had indeed suffered loss. However, the court was not persuaded that the accused persons were responsible for that loss. They were accordingly acquitted. It is not the duty of this court in this case to determine whether the trial court was entitled to decide as it did. That would be for an appellate court in that matter which this court is not. However, after studying the exhibits relating to that trial, it is evident that there was a probable cause for the investigation and prosecution of the suspects. It was not altogether a hopeless case.

I have addressed my mind to the arguments of counsel on the issue of the interdiction and termination. From the pleadings and evidence, the plaintiffs were interdicted while investigations in the criminal trial were on-going. In matters of employment, dismissal is a process through which the employer sacks the employee because of a wrong done or committed by the latter in connection with his employment. In most organizations, a dismissal is preceded by an interdiction. The plaintiffs' argument is that the interdiction was unlawful because they were never called to appear before the defendant's Management Disciplinary Committee, MDC. It would appear to me that it was

incumbent upon the defendant, after the plaintiffs had been suspected of wrong doing and had been charged in a court of law, to decide whether or not to interdict them pending determination of the case against them. In a situation where an employee is accused of a criminal case, as herein, the employee may be prosecuted by the State.

I have not understood the plaintiffs' argument to be that before they could be charged in a court of law, they had first to exhaust the Disciplinary procedure in the Manual. Such an argument would be untenable because all persons are equal before and under the law. It could be many months or even years before the criminal case is concluded. In the instant case it took a whole four years. It is not the law, unless the parties have so agreed in the contract of employment, that the employer must wait for the outcome of the criminal trial before he can decide the fate of the employee. In ***British Home Stores vs Burchell (1978) I.R.L.R 379*** an employee was dismissed for alleged dishonesty relating to staff purchases. The Employment Appeal Tribunal held that in such cases the employer had only to show that he entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time.

I'm agreeable to that position. In practice this will require the employer to have made sufficient investigation into the matter before dismissing the employee. I am of the considered view that the employer's obligation in such a situation is to ensure that the employee has had an opportunity to learn what allegations have been leveled against him and should allow him to put his own side of the story to the employer before any decision is taken. Under the Manual, they were entitled to be informed verbally, if possible, or else in writing. This was not done. None of them was allowed or availed opportunity to put down his own side of the story to the defendant before the decision to hand them over to police for prosecution and later to interdict them was taken. It cannot be argued with all seriousness that the investigation carried out by Mangeni constituted any such investigation envisioned in the Manual. I would therefore agree with the submission of learned counsel for the plaintiffs that failure to adhere to the procedure laid down in the Manual amounted to failure to observe the principle of natural justice, *alterem partem*, and it rendered the interdiction and the resultant termination wrongful.

I so hold.

3. Remedies

The plaintiffs aver that by reason of the defendant’s acts they incurred expenses and lost income. They have claimed this as special damages from the defendant as follows:

2nd Plaintiff

- a). Lost property while in custody 250,000/=
- b). Legal expenses 4,900,000/=
- c). Travel costs plus accommodation and feeding
when reporting to police..... 22,355,000/=
- d). Travel costs plus accommodation and feeding
when attending court..... 3,750,000/=
- e). Lost income as a result of ineligibility 399,313,735/=
to apply for re-appointment

In the alternative under the old structure..... 245,399,618/=

lost income as a result of ineligibility to apply for re-appointment.

The claims for the 3rd plaintiff are structured in the same manner.

At the conferencing the parties agreed that the plaintiffs were paid some benefits. They gave no details. The defendant has submitted that the claim for special damages is not tenable because the suit before this court is not for malicious prosecution but a suit for purported breach of contract of employment.

I have accepted the defence submission. It is an indirect way of claiming from the defendant expenses relating to wrongful arrest, false imprisonment and malicious prosecution. They had liberty to sue the state for those alleged tortious acts. In any case,

the plaintiffs did not submit any evidence of expenditure, not even for verifiable expenses like legal fees paid to counsel, hotel bills and/or travel costs.

It has been argued by learned counsel for the plaintiffs that it is a long standing principle that special damages must be strictly proved but they need not be supported by documentary evidence in all cases. True the above is an acceptable legal position regarding assessment of special damages. I should, however, say that it is the exception rather than the rule. It is a more lenient approach adopted by the courts to allow special damages to be proved provided the existence of such claim is clear from the pleadings. But, as said by Saied, Ag. CJ (as he then was) in **Semukima vs John Kaddu [1976] HCB 13**, such leniency should not call for laxity in pleading and proving special damages. In my view the safer approach is that special damages must be pleaded and strictly proved: **Kampala City Council vs Nakaye [1972] EA 446** at 449. Where documentary evidence is not forthcoming, the plaintiff should be able to lead oral evidence in support of his pleadings or else be contented with an award of general damages. In the instant case, the claim for special damages was never proved strictly as the law requires.

Let me now turn to the plaintiffs' claim for "Lost income as a result of ineligibility to apply for re-appointment." Each of them has prayed for Shs.399,313,735/= and/or in the alternative Shs.245,399,618/=.

From the pleadings and evidence, the plaintiffs were employed on three year contracts terminable at the instance of either party by giving three months notice or payment in lieu of notice. As the plaintiffs were undergoing trial in the criminal case, the defendant went through a restructuring which resulted into all contracts being terminated as communicated in a circular dated 8th December, 2004, Exh. D1.

The plaintiffs contracts terminated on 10/02/2005 but they were paid salaries and gratuity up to 31/05/2005 as per Exh. D2. The defence submission is that as long as the defendant paid three months pay in lieu of notice their contracts were then lawfully terminated, that the plaintiffs were under no bounden duty to serve the defendant up to the end of the contract period the same way the defendant was under no duty to keep the plaintiffs in

employment. The long and short of the defence case is that circumstances like the restructuring would be and were remedied by the three months pay in lieu of notice.

I accept that argument. If any authority were required for it, it is *Bank of Uganda vs Betty Tinkamanyire SCCA No. 12 of 2007* where Kanyeihamba, JSC stated:

“The contention that an employee whose contract is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

*I would confine the compensation for the unlawful dismissal of the appellant to the monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice. The principles established by this court in *Barclays Bank of Uganda vs Godfrey Mubiru* remain good law that governs the relationship between an employer and employee with regard to termination of the latter’s employment.”*

I need not say more. Suffice it to add that the right of the employer to terminate the contract of service, whether by giving notice or incurring a penalty of paying compensation in lieu of notice cannot be fettered by the courts. Given that compensation for the unlawful termination of an employee is confined to the monetary value of the period that was necessary to give proper notice of termination, which was done in the instant case, the plaintiffs have not proved any entitlement for award of special damages beyond what the defendant paid them. The claim for “Lost income as a result of ineligibility to re-apply” is highly speculative and legally untenable. It must fail and it fails. Accordingly the entire claim of special damages is disallowed.

As regards general damages, learned counsel for the plaintiffs has submitted that the plaintiffs have been greatly subjected to pain, mental anguish and untold suffering and immeasurable inconvenience of arrest, imprisonment and prosecution before being acquitted. Clearly this submission relates to the prosecution of the plaintiffs, not the wrongful interdiction. There is an ocean of a difference between the two.

Be that as it may, opinion is divided as to whether an employee wrongfully terminated is entitled to an award of general damages for breach of contract against his employer. In **Patel vs Madhvani International Ltd [1992 – 93] HCB 189**, court held that a servant was not entitled to damages for breach of contract of service by the employer as the employer retains the right to terminate his service at any time even for no cause; that the employee could only recover arrears of salary for completed service and accumulated leave, if any. Even in **Eng. Pascal Gakyaro vs Civil Aviation Authority Civil Appeal No. 60 of 2006** (Court of Appeal) the court held that the appellant was not entitled to general damages, having already been paid one month's salary in lieu of notice.

But in **Bank of Uganda vs Betty Tinkamanyire Civil Appeal No. 49 of 2005** (Court of Appeal), the court upheld with approval the sum of Shs.30m as general damages which High Court had assessed. And in **Kiyingi vs National Insurance Corporation [1985] HCB 41** where a senior member of staff's services were wrongly terminated, the court awarded him general damages for embarrassment and inconvenience, a very clear illustration of the saying that every case must be decided on its own unique facts and circumstances.

In the instant case, the plaintiffs were senior members of staff at the level of Assistant Commissioner. Their services were wrongly terminated. But I would add that the wrong termination in the context of this case is really technical because the plaintiffs had already been arrested and were standing trial. It is inconceivable that such people would go back and continue serving the defendant pending completion of the trial. This should of course not have stopped the defendant from following the contractual interdiction procedure laid down in the Manual. As senior members of staff who were denied a fair hearing, it is in

my view just and fair that they be awarded general damages for that error of judgment on the part of the defendant. I consider an award of Shs.10,000,000/= (Ten million only) as general damages for each plaintiff appropriate.

Interest shall accrue on each plaintiff's award of general damages at the commercial rate of 25% per annum from the date of judgment till payment in full.

In view of the defendant's substantial success on the major claim, the plaintiffs shall have half the taxed costs of the suit. In the result, judgment is entered for the plaintiffs in the above terms against the defendant as follows:

- i). A declaration that the two plaintiffs were wrongly interdicted and subsequently terminated.
- ii). Shs.10,000,000/= (Ten million only) as general damages for each of the two plaintiffs.
- iii). Interest on (ii) above for each plaintiff at the commercial rate of 25% per annum from the date of judgment till payment in full.
- iv). Half the taxed costs of the suit (in respect of each plaintiff).

Orders accordingly.

Yorokamu Bamwine

JUDGE

03/08/2009