

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO. 488 OF 1996

1. **ALICE KYEBANGHAIRE** }
2. **JOYCE KAVULU** } **PLAINTIFFS**

VERSUS

UGANDA TELECOM LIMITED }
(SUCCESSOR IN TITLE TO UGANDA
POSTS AND TELECOMMUNICATIONS }
CORPORATION) } **DEFENDANTS**

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The 1st and 2nd plaintiffs (hereinafter collectively referred to as “the plaintiffs”) are former employees of the defunct Uganda Posts and Telecommunications Corporation (hereinafter referred to as the “Corporation.” They were both employed as clerical officers having started work from 1979 and 1980 respectively. They were interdicted from duty by the Corporation on the ground of suspected involvement in malpractices in connection of telecommunication services and later dismissed without benefits.

Their photographs appeared in Newspapers, warning the public that they were no longer employees of the Corporation. On the 27th May, 1996 they filed this suit against the Corporation challenging the interdiction and dismissal and claiming terminal benefits, general and special damages.

Before the suit could be heard, the Corporation was privatized and dissolved. The plaintiffs consequently amended their pleadings and substituted the present defendant in place of the original defendant as successor in title. Hence this judgment. At the conferencing the following facts were agreed to by the parties.

1. The plaintiffs were employees of Uganda Posts and Telecommunications Corporation.
2. They were interdicted on 15/09/1995.
3. They were dismissed on 27/09/95.
4. Uganda Telecom Limited is a successor in the title to Uganda Posts and Telecommunications Corporation.
5. On 3/11/1995 and 6/11/1995 the defendant published photos of the plaintiffs in the Press warning the public not to deal with them on matters of the Corporation as they were no longer their employees.

Issues:

1. Whether the plaintiffs' suit is barred by Statute.
2. Whether the interdiction and dismissal of the plaintiffs were lawful.
3. Whether the plaintiffs are entitled to the reliefs sought.

When learned counsel for the defendant was given opportunity to address court on the law barring the suit in support of issue No. 1, he digressed to the law relating to the defendant's liability. Court was of the view that this could only be determined on evidence. He was accordingly over-ruled in respect to issue No. 1 on condition that issue

No. 2 be re-cast to show that the defendant denies liability in respect of the plaintiff's claim, the denial being premised on a Statute that required court's interpretation. Accordingly, the only issues for determination in this case are:

1. Whether the interdiction and dismissal of the plaintiffs were lawful.
2. Whether the plaintiffs are entitled to the reliefs sought as against the defendant.

I will handle the two issues in the order of presentation above.

Issue No. 1: **Whether the interdiction and dismissal of the plaintiffs were lawful.**

I have already observed that the fact of the plaintiff's employment with the defendant is not disputed. Also un-disputed is the termination of their services. What is in dispute is the manner of termination.

When an applicant for employment lands a job, the usual practice is for the employee to receive from the employer written details of his employment. In the instant case, Exh. P11 is the Staff Regulations, detailing the Terms and Conditions of Service. Where complaints of unfair dismissal are raised, as herein, courts resort to the said written agreements as an embodiment of the terms and conditions of the employment. Unlawful and wrongful dismissal would, in the context of such agreement, relate to the manner of removing the employee from the employment for a reason which did not justify dismissal under the agreement and which is therefore in breach of the contract of employment. Once the employee alleges unfair dismissal, it becomes incumbent upon the employer to show that the dismissal was fair and in accordance with the Terms and Conditions of Service binding both parties. In the instant case, therefore, the defendant has to satisfy court that there was a proper reason for the termination of the contract of employment and that in all the circumstances, it acted reasonably in treating the reason for the dismissal as sufficient reason for dispensing with the plaintiff's services.

In matters of this nature, courts come into the picture after the event, that is, after the dismissal, at a point when an employee is complaining that he/she was removed from the job for a reason, which did not justify dismissal or in a manner contrary to regulations. The wrongfulness of such dismissal may indeed take many forms. It is not necessary for me to go into details of such forms. Suffice it to say, however, that it is trite that a master may terminate the contract with his servant any time and for any reason, or even for no reason at all.

See: Okori vs Uganda Electricity Board [1981] HCB 52.

However, the dismissed employee is entitled to receive in writing the stated reasons for his/her dismissal. The moment the employer assigns a reason which does not appear to be part of the plaintiff's terms of employment, or if it is part of the plaintiff's terms of employment but was executed in a wrong manner, the dismissal is ipso facto wrongful.

Relating the above general principles to the instant case, it is evident from the testimony of both plaintiffs that they were working as clerical officers of the Corporation. They joined in 1979 and 1980 respectively and were on permanent terms. Their employment was governed by the Staff Regulations, Exh. P11. On the 15/09/95 they were interdicted on the ground of suspected involvement in malpractices in connection with telecommunication services. Two weeks later, on 27/09/95, they were dismissed on the ground that the investigations had been concluded and had confirmed that they were a party to the illegal operation of the PCO (public call office). The plaintiffs in their evidence challenged the interdiction as being contrary to the staff Regulations.

They testified that they were never given a hearing to counter the accusations and that they did not appear before a disciplinary committee which was supposed to decide their case. They further testified that they never appeared in any court of law. In summary the plaintiffs' evidence is that the allegations against them were false. According to them,

they were never investigated, never proved guilty and were never given a chance to defend themselves.

The defendant did not call any evidence or produce any documents to counter the plaintiffs' evidence. Their evidence was therefore unchallenged. I have already observed that the relationship between the plaintiffs and the defendant was contractual. It was governed by the Staff Regulations, Exh. P11. Regulation 23: 12: 1 thereof sets out three instances where interdiction is justifiable:

- i). When an officer is charged by the police with an offence, which if proved would lead to dismissal.***
- ii). When suspension of an officer from duty has been lifted after an acquittal of the officer by a court and disciplinary proceedings which would lead to the officer's dismissal are being taken or are about to be taken.***
- iii). When proceedings involving the departmental charges before the disciplinary committee have been taken or are about to be taken leading to the officer's dismissal.***

In the absence of any evidence from the defendant to the contrary, the plaintiffs' case did not fall in any of the above provisions governing interdiction. The letter of interdiction gave the ground as suspected involvement in malpractices. The matter appears not to have advanced any further than that. Court has not been presented with any evidence of investigations which may have been carried out. It is therefore apparent that the interdiction was carried out without regard to the staff regulations. It was arbitrary and therefore unlawful. There were in my view no grounds warranting dismissal, in the absence of any evidence of such investigations and/or any report of such investigations.

Learned Counsel for the plaintiffs has submitted that in the absence of any evidence of any wrong doing by the plaintiffs, their dismissal was wrongful and unlawful.

I have already indicated that there is no evidence that the plaintiffs had been charged with any criminal offence. Even if they had been so charged, the suspicions had not been proved in any court of law. Thus a summary dismissal was not justified in the circumstances. The plaintiffs had not committed any gross misconduct since none had been proved against them. They were in my view wrongfully summarily dismissed. The Corporation breached the service agreements with the plaintiffs.

I so find.

Issue No. 2: Whether the plaintiffs are entitled to the reliefs sought against the defendant.

This issue has two faces to it, namely, whether they are entitled to the reliefs sought; and if so, whether those reliefs are recoverable from the defendant.

In view of my finding that the interdiction and dismissal were wrongful and unlawful in the sense that they were carried out in contravention of the obtaining Staff Regulations, the plaintiffs are entitled to the declarations prayed for, namely:

- i). That the dismissal of the plaintiffs was wrongful, unlawful, illegal and arbitrary.
- ii). The dismissal of the plaintiffs was a manifest breach of their contracts of employment.

I make those declarations.

They have also made a prayer for special damages. They claim that they were permanent and pensionable employees of the Corporation. That they were denied their terminal benefits on account of being dismissed. The benefits were pleaded in paragraph 16 of the Amended Plaint as special damages. For the 1st plaintiff, they were summarized as follows:

- i). 3 months salary in lieu of notice Shs. 1,179,300/=
 - ii). Accumulated leave Shs. 729,000/=
 - iii). Full Pension Shs.27,595,620/=
- Total Shs.29,503,920/=**

For the 2nd plaintiff:

- i). 3 months salary in lieu of notice Shs. 1,144,200/=
 - ii). Full pensionShs.25,126,820/=
- Total Shs.26,271,020/=**

As regards their claim of payment in lieu of notice, it is submitted that both of them were entitled to three months notice and since no notice was given to them, they are entitled to three (3) months salary in lieu thereof. I have seen no reason to think otherwise. The 1st plaintiff's claim of Shs.1,179,300 and 2nd plaintiff's claim of Shs.1,144,200 are allowed. The second relief is for accumulated leave and this is in respect to the 1st plaintiff. Her prayer is for Shs.729,000/=. She made a prayer for it in the plaint and gave evidence in connection thereof at the hearing. The defendant has not challenged that evidence. I also allow this claim.

The 3rd item claimed as special damages is full pension for the 2 plaintiffs. This claim is based on their evidence that they were entitled to pension in accordance with the Staff Regulations and that they had worked for over 15 years.

Hence the 1st plaintiff's prayer for Shs.27,595,620/= and Shs.25,126,820/= for the second plaintiff under this head. I have not received much guidance from the submissions of learned counsel for the defendant on this point because of his pre-occupation with the issue of the defendant's non-liability on account of not being privy to the impugned contracts of service. I will come to his point later. Be that as it is, it is in my view settled law that where any contract of employment, like the instant one, stipulates that a party

may terminate it by giving notice of a specified period, such contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, as happened in this case, the employee is entitled to receive payment in lieu of notice. I have already decreed to them sums in lieu of notice.

In the case of *Lees vs Arthur Greaves Ltd (1974) I.C.R. 501*, a case cited with approval in *Barclays Bank of Uganda vs Godfrey Mubiru Civil Appeal (SC) No. 1 of 1998*, it was held that payment in lieu of notice can be viewed as ordinary giving of notice accompanied by a waiver of services by the employer to terminate by notice. 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. The employee is only entitled to compensation even in those cases where the period of service is fixed. In view of the above legal position, I am inclined to disallow the claims for full pension or at all. Subject to the court's decision on general damages, I would disallow this item in the plaintiff's claim and I do so.

The plaintiffs also seek general damages for wrongful dismissal. Learned Counsel for the defendant has contended that the plaintiffs are not entitled to any award of general damages. His reasons in support of this contention are far from being clear but he appears to be saying that there is no prayer for them in the plaint. With due respect, I do find no merit in that argument since there is a clear prayer for general damages in the amended plaint.

I am of the considered view that where the employment relationship is governed by a written contract such as in the instant case, an employee whose contract of service has been breached by the employer remains with the option of suing for general damages. The courts have in numerous decisions awarded general damages in similar situations.

See: Gulaballi Ushillani vs Kampala Pharmaceuticals Ltd SCCA No. 6 of 1998.

In the above particular case, the Supreme Court upheld with approval the sum of Shs.4,900,000/= as general damages which the lower court had assessed. In the instant case, the 1st plaintiff's pay is stated to have been Shs.430,500/= per month and the 2nd plaintiff's Shs.418,900/=. These figures have not been challenged by the defence. Considering all the circumstances of this case, I would think that using a multiplier of 15 in order to arrive at an award of general damages wouldn't be unfair. I accordingly award $\text{Shs.430,500} \times 15 = 6,457,500/=$ and $\text{Shs.418,900} \times 15 = 6,283,500/=$ as general damages to the 1st and 2nd plaintiff respectively.

The plaintiffs also claim general damages for defamation. This claim stems from 2 newspaper publications of the photographs of the plaintiffs. It is submitted that since the grounds of the dismissal of the plaintiffs were unfounded, the publication of their photographs in the Press was defamatory of the plaintiffs. It is not denied that the photographs appeared in the Press. The defendant pleads, however, that the photos appeared in the Press as a warning to the Public that they were no longer employees of the Corporation. I have accepted this submission. The advert had eleven (11) passport size photos of former employees of the Corporation. Its esteemed customers and the general public at large were warned that the people whose photos appeared in the advert were no longer employees of the Corporation which was a fact. The public was warned that whoever transacted business with any of them, on behalf of the Corporation, did so at his/her own risk. There was no indication in the advert that the said employees had been dismissed or their services otherwise terminated on account of any wrongful conduct on their part. Given the truth in the advert that the plaintiffs were no longer employees of the Corporation, I do not think that the plaintiffs are entitled to damages in defamation each in the sum of Shs.4,000,000/= or at all. I have therefore disallowed this claim.

The plaintiffs also sought exemplary damages. I have considered the prayer. I do not find this to be a proper case for the award of exemplary damages. I have awarded none.

There is also a prayer of interest on special damages. The plaintiffs seek interest on special damages at the rate of 23% from 27th September, 1995 till payment in full. I am

in full agreement that interest should be paid on the plaintiffs' special damages which have been withheld from them since the date of dismissal. I consider the rate of 23% per annum appropriate. I therefore award interest on the 1st plaintiff's special damages of Shs.1,179,300/= + 729,000/= = 1,908,000/=; and on the 2nd plaintiff's Shs.1,44,200/= at the rate of 23% per annum from 27th September 1995 till payment in full.

Interest will also accrue on the general damages at court rate per annum from the date of judgment till payment in full.

The plaintiffs shall also have the costs of the suit.

As to whether these reliefs are recoverable from the defendant, I have considered the admitted fact at the conferencing that the defendant is a successor in title to Uganda Posts and Telecommunications Corporation. The defendant has been sued in that capacity. It would appear to me that by that admitted fact alone the defendant is liable.

At the hearing, learned Counsel for the defendant challenged the plaintiffs, a pair of lay people to produce a Statutory Instrument transferring the Corporation's Assets and liabilities to the defendant as provided in Section 88 (5) of the Communication Act. According to his line of cross – examination, if there was no such instrument then the plaintiffs did not have a cause of action against the defendant as the Corporation's liabilities were not transferred to the defendant. My attention has been drawn to 'the Uganda Communication's (Transfer of Assets and Liabilities) Instrument, 1998 (S.1 1998 No. 16) made under the Uganda Communications Act on 15th May, 1998. It was issued long after the suit was filed. It makes no reference to the fate of cases existing against the Corporation before its dissolution.

From the records, Exh. P10, the Director, Privatisation Unit, Ministry of Finance, Planning and Economic Development, issued a clarification on the matter to M/s Katende, Sempebwa & Co. Advocates, Counsel for the plaintiffs in the following terms:

“ALICE KYEBAGHAIRE & JOYCE KAVULU vs UPTC HCCS NO. 488 OF 1996.

Yours dated 11th June 2007 referenced Ks/Cv/95/3293 regarding the above captioned matter refers.

The Government of Uganda sold its 51% shares in Uganda Telecom (UTL) to UCOM vide the Share Purchase Agreement dated 2nd day of June 2000. Under the said agreement a number of liabilities or threatened liabilities were disclosed and hence taken over by UTL. This is therefore to confirm that the above named case was disclosed in schedule 3.12 Table 1 on page 26 thereof and hence became the liability of UTL. Please find attached the relevant extracts of the Share Purchase Agreement for your case of reference.

We trust this is helpful.

Signed

Michael Opagi

Director, Privatisation Unit.”

The letter was copied to the Company Secretary, UTL, among other people. It is on record as Exh. P10, having been introduced in evidence at the conferencing and marked as an Exhibit without contest. I am cutely aware that at Conferencing Stage, documents are tendered only as to their existence and their suitability at law to be used in evidence and not as to their truth and correctness unless the opposite party expressly says so or fails to cross-examine on them and does not expressly dispute their contents. Either party should feel free to cross-examine on the admitted documents with a view to discrediting them or ascertaining their correctness. In the instant case, there has been no attempt on the part of the defence to discredit Exh. P10 or to ascertain its correctness or lack of it. In the same vein, there is no evidence before the court that the defendant challenged its contents on receipt of a copy. Its content therefore stands undisputed by any credible evidence on the part of the defendant or at all.

I have already indicated that before the suit could be heard, the Corporation was privatized and dissolved. The Corporation is therefore for all intents and purposes no more.

One of the maxims of equity is that it (equity) will not suffer a wrong to be without a remedy. It (equity) also looks to the intent rather than the form. I am of the considered view that with the sale of the Corporation to UCOM vide the Share Purchase Agreement of 02nd June, 2000, and the subsequent dissolution of the Corporation, all its responsibilities, assets and liabilities passed or are deemed to have been passed on to the defendant by operation of law.

The defendant became the successor company and as Exhibit P10 shows, a number of liabilities or threatened liabilities were disclosed and hence taken over by UTL. Among those disclosed liabilities was the instant case. In all these circumstances, I would consider it immaterial that the author of Exh. P10 did not appear as a witness for either party. The burden of proof in a suit or proceeding was on that person who would fail if no evidence at all were given on either side (section 102 of the Evidence Act, Cap.6). In the instant case, in view of the existence of Exh. P10, which has not been challenged by direct evidence or at all, I would find no merit in learned Counsel's argument grounded in the plaintiffs' non-production of a Statutory Instrument specifying the transfer of the instant case as a liability to the defendant. Learned Counsel for the plaintiff has cited to me **Uganda Electricity Generation Company Ltd vs Mavunwa Edison & Others SCCA No. 24 of 2007** (unreported). In that case the issue was whether the dissolved UEB was responsible for the payment of terminal benefits to its former employees whose services had been taken over by UEGC Ltd, one of the successor companies to UEB.

Although no Statutory Instrument had specifically been made by the relevant Minister transferring the liability to the successor company, court held that the successor company was liable. I would agree with the submission of learned counsel for the plaintiffs that the same principle applies herein. In these circumstances, I am inclined to the view that the objection raised by learned Counsel for the defendant as to the defendant's liability

herein lacks merit. Under Article 126 (2) (e) of the Constitution, this court is enjoined to administer substantive justice without undue regard to technicalities. It would appear to me that Counsel's objection is the typical mischief, the unsatisfactory state of affairs which Article 126 (2) (e) of the Constitution was indeed enacted to remedy. I would accordingly over rule the objection and I do so.

In the result, judgment is entered for the plaintiffs against the defendant in the following terms:

- (i). A declaration that the dismissal of the plaintiffs was wrongful, unlawful, illegal and arbitrary.
- (ii). A declaration that the dismissal of the plaintiffs was a manifest breach of their contracts of employment.
- (iii). Shs.1,908,000/= and Shs.1,144,200/= as special damages to the 1st and 2nd plaintiffs, respectively.
- (iv). Interest on each award in (iii) above at the rate of 23% per annum from 27th September, 1995 till payment in full.
- (v). Shs.6,457,500/= and Shs.6,283,500/= as general damages to the 1st and 2nd plaintiffs, respectively.
- (vi). Interest on each award in (v) above at the obtaining court rate from the date of judgment till payment in full.
- (vii). Costs of the suit.

Yorokamu Bamwine

JUDGE

10/06/09