

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

CIVIL SUIT NO. 263 OF 2007

MUGISHA RICHARD BOB KAGORO:.....:PLAINTIFF

VERSUS

UGANDA WILDLIFE AUTHORITY:.....:DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

This is an action brought by the plaintiff against the defendant seeking special, general and exemplary damages for wrongful and/or unlawful dismissal from employment under contract and for compensation under the Workers' Compensation Act, Cap 225, interest and costs of the suit.

According to the plaintiff, he was employed by the defendant as a driver for four years under a 4 year contract effective 1st August 2004. While on official duty as a driver at his duty station, Queen Elizabeth National Park, Rwenzori, Kasese on the 31st December 2005, and driving the defendant's motor vehicle, Registration number UG 0231T, Land Cruiser, the plaintiff was involved in an accident when an owl bird entered the vehicle causing disturbance to the driver and other occupants. The driver lost control and collided with the bridge at a place called Bugoye and the vehicle fell into the river.

The plaintiff sustained injuries and was hospitalized at Kasese Hospital and subsequently various other places and while on official sick leave in April, 2006, he was verbally

dismissed by the defendant allegedly for absenteeism from duty and told to stay away from the defendant's duty stations.

He did not get his letter of dismissal until in December, 2006 when he got a dismissal letter dated 28th August 2006 with the said dismissal having retrospective effect from 27th April 2006.

The plaintiff appealed against the dismissal, and the defendant, by a letter dated 5th January 2007, revised the effective date of dismissal to 23rd May 2006. The plaintiff being dissatisfied with the defendant's action instituted this suit.

The plaintiff made the following prayers:

- a) General damages for wrongful and/or unlawful dismissal.
- b) Special damages of UShs. 15,689,170= (Fifteen million, six hundred eighty nine thousand, one hundred seventy shillings only).
- c) UShs. 6,073,830= (Six million, seventy three thousand, eight hundred thirty shillings only) as compensation under the Workers Compensation Act, Cap. 225.
- d) Interest on (a), (b) and (c) above at 25% per annum from the date of filing till payment in full.
- e) Costs of the suit.
- f) Any other with leave of court.

Upon service of the summons to file a defence on the defendant, which was duly acknowledged, as per return of service by affidavit sworn on 1st June 2007 by Loum Jackson, and filed in court on the same day, and the defendant writing another letter

referring to this suit on 5th June 2007 (Exhibit P.10), the defendant did not file a Written Statement of Defence.

The plaintiff applied for interlocutory judgement under Order 9 rule 8, Civil Procedure Rules, SI 71-1 and this court consequently entered judgement against the defendant on the 1st June 2007, and the suit was set down for formal proof.

At the hearing, the following were the issues for the determination by court:

- 1) Whether the dismissal of the plaintiff from employment by the defendant was lawful.
- 2) Whether the plaintiff is entitled to the remedies sought.

The plaintiff adduced evidence of one witness, himself. The first issue is whether or not the dismissal of the plaintiff from employment was lawful. The plaintiff testified that he was dismissed verbally from his duties around April or May 2006. This was when he went to report at the Defendant's Kampala office as had been agreed with the Defendant. The information was passed on to him by the Human Resource Manager who told him he was no longer welcome. He, however, did not get his dismissal letter until December 2006, after several trips to the Human Resource office in Kampala.

Counsel for the plaintiff, Mr. Mulema Richard, submitted that the plaintiff had a 4 year contract and had gone beyond the probationary period of 6 months. He was confirmed by time of dismissal. Although the appointment letter talked of a contract to be signed later, it was never availed to the plaintiff, so Counsel invited court to rely on the terms in the appointment letter produced in court by the plaintiff, as Annexure "K" to the plaint.

Counsel argued that although the dismissal letter stated that the plaintiff had absented himself from duty, the dismissal was effected without an investigation of the circumstances surrounding the non-availability of the plaintiff at work. Even when they

knew the defendant had been unwell and had gone on sick leave, his supervisors and the approved defendant's medical providers where he continuously attended were never contacted. Further, no form of hearing was afforded to the plaintiff before the decision to discuss him was taken.

Counsel further referred court to the plaintiff's testimony regarding the sick leave granted by the Defendant's Park Supervisor up to March 19th 2006, and to the exhibited medical reports giving the plaintiff successive extensions of sick leave. In April, 2006, according to Exhibit P.19(b) and (c), the plaintiff was granted further 4 months bed rest by a doctor at the Mbarara Referral Hospital. Had the defendant carried out any investigations or given the plaintiff a hearing, they would have known all this.

When the plaintiff appealed against his dismissal, the defendant, by a letter dated 12/1/2007 revised the dismissal whose effective date had been stated to be 27/4/2006 to 23/5/2006. Counsel concluded that the plaintiff was dismissed when he was on sick leave, and had the defendant's investigated the circumstances of his absence; they would have avoided the embarrassing dismissal.

Counsel submitted that the law on dismissal was well settled that the master or employer had the right to dismiss his employee without assigning any reason therefore. Alternatively, he could assign a reason that shows that the appellant contravened the terms of his employment, but the moment he assigned the reason which does not appear to be part of the employee's terms of employment, the dismissal was wrongfully.

Counsel further relied on ***AM Jabi Vs Mbale Municipal Council (1975) HCB 191 and C. Ushillani Vs Kampala Pharmaceuticals Ltd. SCCA No. 6/1998*** for the view that the reason given for the dismissal has to be justifiable under the law. The plaintiff could only in the instant case have been terminated according to contractual terms and conditions, by being given stipulated notice or by summary dismissal. The plaintiff was summarily dismissed verbally around April 2006, later formalized in December 2006. Summary dismissal, which is termination without notice or with less notice than the employee is

entitled to by a statutory or contractual provision, should only be done where the employee's conduct was so gross that it affects his line of employment. (See A.M Jabi's case (Supra).

Since the plaintiff explained his absence with evidence, on account of sickness resulting from an accident while on official duty, and this was not controverted by the defendant who never entered appearance in the suit, and since the effective date of termination fell within the period when he was on sick leave, the dismissal was unlawful. The defendant's actions were in utter repudiation of the contract amounting to a breach thereof. The plaintiff was turned away from work and not given any remuneration or assigned any duties. Counsel relied on *Hon. Francis Mukama Vs Uganda Wildlife Authority Civil Suit Bi. 290 of 2002* where court held that;

“I accept the plaintiff's evidence that before the termination he had not been investigated for any wrong doing. This was a contract for a fixed duration i.e. 4 years. It did not provide for termination by notice. He could therefore only be dismissed for a fundamental breach on his part. There was no such breach. The reason assigned for the termination by the defendant was not part of the plaintiff's terms of employment. The dismissal was wrongful”.

I have carefully considered the submissions of learned Counsel for the plaintiff, the evidence and law and authorities referred to. According to the appointment letter, the plaintiff was supposed to sign a contract of service. This never happened, as none was availed to him by the defendant.

When complaints of unfair dismissal are raised, as is the case here, court's resort to such conditions as the embodiment of the conditions and terms of such employment. The court shall, therefore, rely on the terms and conditions in the only document availed to the plaintiff, the appointment letter. Wrongful dismissal would in the context of such agreement relate to removing the employee from the employment for a reason which did not justify dismissal under the employment contract.

In the instant case, the plaintiff has led evidence to prove that his dismissal was unfair. The dismissal letter (Exhibit P.III) written to him on 28/08/2006 but effective on 27/04/2006 indicated the reason for dismissal as being prolonged absenteeism as per the Human Resource Manual. It was stated that after involvement in an accident, his sick leave was to expire on 24/3/06 but he did not seek extension of absence nor did he communicate what happened to him.

The plaintiff's testimony is that the sick leave was extended further by his doctors as per Exhibit P.18, and P.19(b) and (c), and that the date his dismissal became effective he was on sick leave. The plaintiff's uncontroverted evidence was that he was always in touch with his Human Resource Officer in Kampala as per agreement with his supervisors in Queen Elizabeth National Park. On 8/4/2006, prior to the date his dismissal was to take effect, the plaintiff wrote to the Human Resource Manager of the defendant, Kampala office, copied to the Chief Park Warden, Queen Elizabeth, giving a statement of his health, attaching copies of doctor's letters from various hospitals. Further, the defendant was regularly informed of the employee's state of health by the defendant's medical providers. The defendant neither carried out any investigations before the dismissal, nor gave the plaintiff any hearing. If they had they would have discovered the truth of the matter. In fact when the plaintiff appealed, the defendant realized that they had made some mistakes and sought to correct it by extending the effective date of the termination. This did not help matters, or make the unlawful dismissal lawful.

It is trite that the employer may terminate the contract with his servant any time and for any reason, even for none. See ***Okori Vs UEB [1981] HCB 52***. However the moment the employer assigned a reason and the reason does not abide by the plaintiff's terms of employment, the dismissal is wrongful. See ***Ahmed Ibrahim Bholm Vs Car and General Ltd. SCCA No. 12/2002***.

The defendant sought to justify the plaintiff's dismissal by seeking to fit it within the Human Resource Manual. However, according to the evidence on record which was

never controverted, no investigation took place prior to dismissal. Neither was the plaintiff given a hearing. This went against the principles of natural justice, and violated the plaintiff's constitutional right to a fair hearing and the right to a just and fair treatment in administrative decisions guaranteed by Article 28 and 42 of the Constitution of the Republic of Uganda. According to Article 44(c) the right to a fair hearing cannot be derogated from. The dismissal which flouted the above provisions is retiring a nullity.

Further, the contract was for a fixed term of 4 years duration. It did not provide for termination by notice. The plaintiff could, therefore, only be dismissed for a fundamental breach on his part (See Bholm's case (Supra)). The reason assigned by the defendant for the dismissal was not justified given the circumstances surrounding the plaintiff's absence. The dismissal was therefore wrongful. The first issue is, therefore, answered in the negative.

The second issue is what remedies are available to the plaintiff.

Since the dismissal was unlawful, the plaintiff is entitled to certain reliefs.

His first claim for relief is in respect of special damages for the unexpired term of the contract of employment. In *Gulaballi Ushillani Vs Kampala Pharmaceuticals (Supra)*, the appellant's employment was for a fixed term.

In this respect, the statement of the law on damages in this respect was declared by the Supreme Court in the lead judgement of Mulenga JSC as follows:

“In deciding that issue (of damages), the Court of Appeal appreciated that the employment in the instant case, was for a fixed period. The court made a distinction between a contract which makes no provision for termination prior to expiry of the fixed period, and one in which there is a provision enabling either party to terminate the employment. The learned Justices stated the law to be that in the event of wrongful termination by the employer, the employee in the former contract would be entitled to recover as damages, the equivalent of

remuneration for the balance of the contract period, whereas in the latter case the wronged employee would be entitled to recover as damages, the equivalent of remuneration for the period stipulated in the contract for notice. I respectfully agree that this is the correct statement of the law. I would add that it is premised on the principle of restitution in integrum. Damages are intended to restore the wronged party into the position he would have been in if there had been no breach of contract. Thus, in the case of employment for a fixed period which is not terminable, if there is no wrongful termination, the employee would serve the full period and receive the full remuneration for it. And in the case of the contract terminable on notice, if the termination provision is complied with, the employee would serve the stipulated notice period and receive remuneration for that period, or would be paid in lieu of the notice”.

Basing on the above authority, the plaintiff’s claim for the unexpired term of the contract should succeed.

According to the plaintiff, he was earning Ug. Shs. 260,500= per month and was last paid in April 2006. The contract of employment according to Exhibit P.II was for 4 years effective 01/08/2004, and the starting salary was Ug. Shs. 252,600= per month. Special damages must be specifically proved. The last pay slip of the plaintiff was not produced to indicate his last pay. Court can only therefore rely on the sum in the appointment letter. The payment for the unexpired period would therefore be allowed at Ug. Shs. $252,600 \times 28 \text{ months} = \text{Shs. } 7,072,800=$.

The next head of claim is gratuity which is claimed at Ug. Shs. 1,763,370= and Housing and other allowances of Ug. Shs. 1,849,650= for the 28 months constituting his unexpired contract. No evidence was produced to prove that the plaintiff was entitled to these allowances, or how much he was entitled to per month. These claims have therefore not been proved, and are disallowed.

A claim for unpaid leave pay was made for the last year the plaintiff worked, and for the balance of the unexpired 2 years on the contract. He testified that he earned Shs. 30,000= over and about his salary as leave pay. The Shs. 30,000= has not been specifically proved. I shall therefore accept a claim for payment of the monthly salary of Shs. 252,600= x 3 years = Shs. 757,800= as the payment for the unpaid leave benefits.

Claims for special damages relating for medical treatment and dieting expenses were also made. However, no receipts were presented and hence the claims were not proved. Even for the dieting expenses, no details of these were availed to court, albeit without receipts.

The plaintiff further made a claim under the Workman's Compensation Act Cap. 255, which claim arose out of the same transaction, and a joinder of causes with that of unlawful/wrongful dismissal was made under Order 1 of the Civil Procedure Rules.

Exhibit P7 which is the Assessment of Compensation under the Workman's Compensation Act, by the District Labour Officer, shows that the plaintiff suffered temporary incapacity as a result of the accident which was put at 80%. Permanent incapacity was put at 31%. The compensation was assessed at Ug. Shs. 6,073,830=. The plaintiff admitted to having received Shs. 468,900= from Citibank, under this claim. This is under Exhibit P16. The outstanding balance claimed is Ug. Shs. 5,604,930= which is the difference between the above two figures. Exhibit P7 bears signatures and stamps of the employer, the Executive Director, Mbarara Referral Hospital, and the District Labour Officer.

Further under Exhibit P11, which is the letter from the defendant to the plaintiff's advocate dated 5/6/2007, the defendant admitted that the plaintiff was entitled to the claim under the Workman's Compensation. Ug. Shs. 5,604,930= is, therefore, allowed under this claim.

The plaintiff further claimed for general damages and exemplary/punitive damages. Under this item a claim of Ug. Shs. 15,000,000= was made for general damages. And because of the embarrassing way in which the plaintiff was dismissed a claim of Shs. 20,000,000= was made in respect of exemplary/punitive damages.

In respect of the general damages claim, in *Bholm's case (Supra)* the Supreme Court opined that where special damages representing loss of salary for the balance of the contract of employment were awarded, an award of general damages for wrongful dismissal would not be appropriate. Basing on the above, I will disallow the claim for general damages.

In claiming for the exemplary/punitive damages, the plaintiff's case was that the defendant being a public body was supposed to be an exemplar as pertaining enforcing and respecting employment rights, but instead they failed to observe the plaintiff's right to a fair hearing under Article 28 of the Constitution of the Republic of Uganda. The plaintiff was dismissed in the most disparaging and inhumane way when he was on sick leave, and the manner of dismissal was embarrassing to both parties and to the public, the defendant being a public body.

The dismissal letter (Exhibit P.3) stated that the plaintiff is "dismissed with disgrace on charges of prolonged absenteeism". Hence the claim of Ug. Shs. 20 million for punitive/exemplary damages. I agree that circumstances under which the plaintiff was dismissed as clearly brought out in the evidence were inhumane having decided on his dismissal at a time when he was still nursing injuries sustained while on official duty. This would justify an award for damages that are punitive in nature. Considering the high handed manner in which the defendant handled the dismissal of the plaintiff, exemplary/punitive damages of Shs. 5,000,000= considered appropriate and are awarded under this item.

Lastly, the plaintiff prayed for a Certificate of good service to be issued for proper discharge from the defendant's employment in light of the manner in which he was

dismissed. The court's view is that having declared that the dismissal of the plaintiff by the defendant was wrongful the court has thereby cleared the plaintiff of wrongdoing. There was no evidence to show under what circumstances a Certificate of good service is awardable under the Human Resource Manual or other regulations of the defendant. The court is therefore not able to determine whether or not one should be awarded to the plaintiff by the respondent.

On the awards I have made above, I would add interest of 20% per annum on the special damages from the date of breach, and 15% on the punitive damages from the date of judgment, till payment in full.

In conclusion, judgment is entered for the plaintiff against the defendant and the following awards are made:

- a) Special damages for the unexpired period of the contract UShs. 7,072,800=
- b) Unpaid leave allowance Ug. Shs. 757,800=
- c) Workman's compensation Ug. Shs. 5,604,930=
- d) Exemplary/Punitive damages Ug. Shs. 5,000,000=
- e) Interest of 20% per annum on (a), (b), and (c) above from the date of breach, and 15% per annum from the date of filing, till payment in full.
- f) Costs of the suit.

Elizabeth Musoke

JUDGE

27/07/2009