

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO.0093 OF 2002

GLADYS ASERUA OROCHI :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

KABALE DISTRICT LOCAL

GOVERNMENT COUNCIL :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT:

The Plaintiff, a public servant employed as Chief Administrative Officer by the defendant, sued the said defendant for damages and other reliefs by reason of the latter's termination of her employment as Chief Administrative officer. The termination was by first sending her on an indefinite forced leave on 30.01.99 and subsequently retiring her from service in the public interest on 05.08.99.

The defendant is a Local Government established under the then The Local Governments Act No.1 1997; now The Local Governments Act, Cap.243, Laws of Uganda, 2000 Edition.

By way of background, the employer/employee relationship between the defendant and plaintiff deteriorated resulting in the plaintiff being subjected to disciplinary proceedings in 1999. The defendant, in accordance with the then obtaining law, raised a number of charges against the plaintiff on account of which it sought to remove her from office. A tribunal of three (3) High Court Judges headed by Musoke-Kibuuka, J., (herein after to be referred to as "The Tribunal)", was constituted and did investigate the charges against the plaintiff. The Tribunal, at the end of the investigation, found that the plaintiff had no case to answer on each of the charges brought against her and thus concluded that the statutory grounds upon which the plaintiff could be removed from office had not been established. The tribunal report was issued on 21.06.99. Its final conclusion was:-

“89. In the circumstances, we have no option, but to make only one final finding. It is that, on the basis of the evidence adduced before us, in respect of all the allegations contained in the instrument constituting this Tribunal no prima facie case exists, within the meaning of the provisions of sections 69(2) and 15, of the LGA, 1997, for the removal of Mrs Gladys Aserua – Orochi from office as CAO, Kabale District.”

In spite of the above final conclusion of the tribunal, the Kabale District Service Commission (DSC), a statutory organ of the defendant, proceeded to and did retire the Plaintiff from the defendant's employment as Chief Administrative Officer. The Kabale District Service Commission justified their such decision on the basis that they had received the Tribunal's Report and found that the same referred to a number of irregularities on the part of the plaintiff and that these, in their view, justified retiring the plaintiff in the public interest. Contending that the termination of her employment was unlawful, the plaintiff instituted this suit.

The defendant denied the plaintiff's claims maintaining that the termination of her employment was lawful.

At scheduling these facts were agreed upon:

- (i) The Plaintiff was employed by the defendant as Chief Administrative Officer (CAO) at the time of termination of her employment.
- (ii) She was retired on 12.08.09.
- (iii) Before 12.08.99 a tribunal was constituted under The Local Governments Act, chaired by Hon. Justice Kibuuka-Musoke.
- (iv) Hon. Justice Kibuuka Musoke's Tribunal made a report dated 21.06.99 and it found no prima facie case established against the plaintiff within the provisions of sections 15 and 69 of The Local Governments Act, 1997, for the removal of plaintiff from office of Chief Administrative Officer of the defendant.

On 26.02.07 court recorded the following as the agreed upon issues for due determination:-

1. Whether the retirement of the plaintiff from the defendant's employment was lawful.
2. Whether the plaintiff is entitled to payments under section 61(2) (a) (c) and (d) of the Local Governments Act, Cap 243. (Section 62 (2) (a), (c) and (d) of Act 1 of 1997).
3. Whether the plaintiff is entitled to the reliefs sought.

Pursuant to Order 12 Rule 6 of the Civil Procedure Rules and with the consent of the parties, part Judgment was entered in the suit by court in the following terms:-

- (a) The Plaintiff's claim in the suit for pension stands withdrawn.
- (b) The Plaintiff's claim for damages for defamation stands withdrawn.
- (c) The defendant to pay to the plaintiff the sum of Shs.4,676,000/= as transport from Kabale to Moyo and from Moyo to her home village.
- (d) The defendant to pay to the plaintiff the sum of Shs.10,000,000/= as general damages.
- (e) The defendant to pay to the plaintiff the sum of Shs.8,500,000/= as reimbursement of fees paid to Counsel in the Tribunal proceedings.

The first issue for resolution is whether the retirement of the plaintiff from the defendant's employment was lawful.

Plaintiff in her testimony and also through submissions of her Counsel, asserted that the defendant's District Service Commission acted arbitrarily and contrary to law when, on receipt of the Tribunal Report, the Commission did not take the appropriate action of forwarding the Report to the District Council for the speaker of council to proceed upon it in accordance with section 15(15) of the then Local Governments Act No.1/97. The result of this failure was that the plaintiff was removed from office without the District Council first, or at all, passing a resolution and requesting the District Service Commission to remove plaintiff from office. Plaintiff further contended that the act of the District Service Commission of retiring her in the public interest was taken without giving her notice and a hearing, and as such was contrary to the rules of natural justice.

For the defendant, Mr. Christopher Rwanika, who in 1999, when the plaintiff was retired, was Chairperson of the Defendant's District Service Commission, testified to the effect that the Council relied on the District Council resolution that the council had made prior to setting up the tribunal seeking the plaintiff's removal from office.

This witness further explained that since the plaintiff had been given a hearing by the Tribunal, it was not necessary to give her a further hearing by the District Service Commission before deciding to retire her from her employment with the defendant.

This court finds on the facts and the law before it, that the plaintiff, at the material time, as Chief Administrative Officer of the Defendant, was a public officer in terms of Article 175 of the 1995 Constitution. As such she enjoyed the constitutional protection of public officers under Article 173 of the Constitution. She could not be victimized or discriminated against for having performed her duties faithfully in accordance with the Constitution, or be dismissed or removed from office or reduced in rank or otherwise punished without just cause.

Sections 15 and 69(2) of the then Local Government Act No.1 of 1997, provided for the procedure to be followed to remove a Chief Administrative officer from office. That procedure, no doubt, was to execute the intent and effect of Article 173 of the Constitution.

According to Section 15 of the said Act, the procedure to remove a Chief Administrative Officer from office was exactly the same as that which had to be taken to remove from office a Chairperson of the District, with only one exception, to be considered later on in this judgment.

In summary the procedure, was that a notice of intention to pass a resolution of the council to remove the Chief Administrative Officer had to be submitted to the speaker of the Defendant. This notice had to be in writing and signed by not less than one third of all the members of the defendant. The notice had to state that the signatories to it intended to pass a resolution of the Council to remove the CAO. The same notice had also to set out the particulars of the allegations against the CAO. The allegations had to fall under the categories set out in section 69 of the Act, which stipulated that the CAO can only be removed from office for:

- a) abuse of office
- b) incompetence
- c) misconduct or misbehaviour or
- d) such physical or mental incapacity as would render the Chief Administrative Officer incapable of performing the duties of Chief Administrative Officer.

The speaker, on receipt of the notice, had to transmit the same to the CAO and the Chief Justice within 24 hours. The Chief Justice then, within seven days of the receipt of the notice had to constitute a Tribunal of three Judges of the High Court to investigate the allegations in the Notice. The Tribunal had

to determine whether or not there was prima facie case for the removal of the CAO; and for purposes of The Local Governments Act No.1 of 1997, **prima facie case**, meant that, the allegations had to be proved on a balance of probabilities, the standard of proof required for the proof of issues in the ordinary civil suits.

At the end of the investigation by the Tribunal, a report of the tribunal containing its findings had to be submitted to the District Service Commission for the said Commission to take appropriate action. Herein lies the substantial exception in procedure in contrast to that of removal of the District Chairperson. In the case of the District Chairperson, the Tribunal, after investigating, had to submit its report of findings to the speaker of the Council and the Council would then, if the tribunal found a prima facie case made out, proceed to consider the motion for resolution for removal of Chairperson from office.

The law as to procedure for the removal of a CAO from office as set out above, was the law applicable as at the time the facts constituting the cause of action of the plaintiff's case arose. It was contained in The Local Governments Act No.1 of 1997. It is thus the law applicable to this case. Since then however the Local Governments Act, No.1 of 1997, has been amended and the current The Local Governments Act, Cap.243 in the 2000 Uganda Edition Laws, no longer carries the same procedure for removal of a CAO from office.

From the evidence adduced before this Court by both sides to the suit, the events leading to the plaintiff's removal from office are in summary, that on 29th – to 30th January, 1999, the defendant Council sat and considered reports of its standing committees. In the course of considering the report of the Finance Committee, the defendant Council resolved and sent the plaintiff, as the Chief Administrative Officer, on indefinite forced leave, effective 30th January, 1999, pending investigations by the Council Committee into the Plaintiff's financial mismanagement and abuse.

The plaintiff thus left office. On 3rd March, 1999, the District Council Chairperson, Dr. Mwesigye Runumi Francis, wrote to the plaintiff recalling her to resume the duties of her office, regretting what the defendant council had done to her. The Plaintiff resumed work on 9th March, 1999. However on 29th March, 1999, on receipt of the report of the Council's investigating Committee into the alleged

Plaintiff's financial mismanagement and abuse, set up on 30th January 1999, the defendant council, insisted on, and implemented again, its resolution of 30th January, 1999, sending the plaintiff on forced leave. The Council further resolved that a submission be made to the District Service Commission recommending that the plaintiff be removed from the office of Chief Administrative Officer of the District immediately. It is subsequent to these events that His Lordship the Chief Justice appointed the Tribunal of the three Judges of the High Court to investigate whether or not a prima facie case existed for the removal of the plaintiff from office.

As already stated, the Tribunal exonerated the plaintiff of all the allegations put up as the reasons for removal from office of Chief Administrative Officer. The Tribunal Report, in accordance with the law, was submitted to the Defendant's District Service Commission; and, the exoneration of the plaintiff by the Tribunal notwithstanding, the Commission resolved, inter alia, to retire the plaintiff from service in the public interest.

In the considered view of this Court given the position of the law as provided in The Local Governments Act No.1 of 1997, after the Tribunal of the three judges had completed its findings and submitted its Report to the District Service Commission, the law did not require that the District Council speaker again convenes another meeting of the Council to again pass another appropriate Resolution of Council on whether or not to remove the plaintiff from office. This is so because the then Local Governments Act No.1 of 1997 did not contain any provision to the effect that the District Service Commission would seek for further action from the District Council before taking appropriate action on the Tribunal's Report. This Court thus holds that on the issuance of the Report by the Tribunal, the power to take "appropriate action" lay with the District Service Commission, without any further directions from the District Council. This must have been the intent, purpose and meaning of section 69(2) of the then The Local Governments Act No.1 of 1997 which stated:-

"69

(2) The provisions of section 15 except subsection (18) shall apply to the removal of the Chief Administrative Officer or Town Clerk with such modification as may be necessary, but the Tribunal, in this case, shall submit its findings to the District Service Commission to take appropriate action."

The real issue for resolution by this court is whether it was lawful for the District Service Commission to retire the plaintiff in the public interest when she had been exonerated by the Tribunal.

From the language of section 15(4) and (6) of The Local Governments Act 1 of 1997, the Tribunal has to report whether it has found the **prima facie case** established or not. It is only after the Tribunal has determined that a **prima facie case** for removal has been established that, in case of the District Chairperson, then the Council convenes for purpose of considering passing, or not passing, a resolution supported by the votes of not less than two thirds of all members of the Council, and once that resolution is passed, then the Chairperson ceases to hold office.

It follows from the wording of section 15 (4) and (6) of the Act, that where the Tribunal finds no **prima facie case** established, against the Chairperson, no further action is taken as regards the findings of the Tribunal. In effect, a finding of the tribunal that **no prima facie case** is established binds and stops further action intended to remove the Chairperson from office on the part of the District Council, or any other organ for that matter.

In the same measure, as regards the Chief Administrative Officer, the finding of the Tribunal that no **prima facie case** had been established against the plaintiff bound the District Service Commission, and the District Council, for that matter, against taking any action intended to remove the plaintiff from office. The “**appropriate action**” that had to be taken, had to be towards and/or related to reinstating the Chief Administrative Officer in office given the fact that **no prima facie case** had been established against her in respect of all the allegations. That the above is the correct position, both in law and in fact, is reinforced by the fact that the Tribunal envisaged in section 15(4) of the Local Governments’ Act No.1 of 1997, was required to investigate the allegations against the CAO and report the findings stating whether or not there is a **prima facie case** for removal of the CAO. Thus the mandate of the Tribunal was by law Judicial, rather than administrative, in that it had to receive facts and then apply the law to them impartially before reaching reasoned decisions on them. The tribunal thus acted as a court of law. As such, the Local Governments Act No.1 of 1997 cannot be said to have vested in the District Service Commission or for that matter the District Council, with powers to deal with the Tribunal’s Report in such a way as to find the plaintiff guilty and punish her by removal from office when the Tribunal had

exonerated her. Yet the District Service Commission letter to plaintiff, Exhibit P1 dated 12th August 1999, with sub-title: **“Retirement in Public Interest”** did exactly this.

An examination of the contents of the said letter exhibit P1, clearly shows that the plaintiff was punished for the very matters that the Tribunal had exonerated her of. As regards paragraph 3.1 of this letter, the Tribunal dealt with the issue of Bank Account No.3862 in paragraphs 21 to 35 of the report and concluded that there was no illegality at all pertaining to or perpetuated by the plaintiff in respect of the Account.

The matters of the two payments of shs.1,055,000/= and shs.1,000,100/= to Ms Capital Saw Mills and District Internal Security Officer alluded to in paragraph 3.2 of exhibit P1, were considered by the Tribunal in paragraphs 36 to 42 of the Report and plaintiff was exonerated.

Paragraph 4 of exhibit P1 concerned misuse of the two motor-vehicles; Tata Lorry Reg. No. UPB733, and Isuzu-Pick-Up, Double Cabin Reg. No.559UZU. The Tribunal dealt with this subject in paragraphs 63 to 69 of the report and found no merit whatsoever in the allegations.

With regard to paragraphs 5 and 6 of Exhibit P1, the Tribunal dealt with the allegation of misappropriation of finances by the plaintiff in paragraphs 68 to 73 of the Report and dismissed the same as not proved at all.

As to what is stated in paragraph 7 of exhibit P1, the Tribunal dealt with the same in paragraphs 44 to 58 and found the same not proved.

In the considered view of this court the District Service Commission had no basis and thus wrongly stated and concluded as concerning the plaintiff in exhibit P1 page 4, last paragraph that:-

“Arising out of paragraphs 3-7 above based on Tribunal Report, the DSC has concluded that, you, as appointed Head of Public Service in the District, are guilty of incompetence, abuse of office, and financial misconduct.”, given the fact that the Tribunal Report completely exonerated the plaintiff of any wrong doing of the very same matters.

The District Service Commission was under a duty to act fairly to the plaintiff. The plaintiff was entitled to be heard in a cause where she was being condemned and punished by the District Service Commission, and yet the Tribunal of three High Court Judges had exonerated her in the very same cause. The plaintiff was entitled to be treated in accordance with the Rules natural Justice.

Natural Justice is:-

“----- after all ----- only fair play in action” : See: Harman LJ in Ridge Vs. Baldwin [1963] 1 Q B539 at 578. Acting fairly includes a duty of acting with substantial fairness, consistency, honestly and without bias and or caprice: See: H.T.V. Ltd Vs Price Commission [1976] I.C.R. 170 at 189 (Scarman L.J.) and also see: MCInnes Vs. On slow-Fane [1978] 1 WLR 1520.

In the Judgment of this Court, by acting as it did, namely by holding without affording any hearing to plaintiff, that the plaintiff was guilty of incompetence, abuse of office and financial misconduct, on the very allegations based on the very facts that the tribunal of three Judges of the High Court had exonerated her of, the District Service Commission acted unfairly and denied natural justice to the plaintiff. A decision reached in contravention of the Rules of Natural Justice of Audi Alteram Partem is void ab initio: See: **Matovu & 2 Others Vs Sseviri & Another [1979] HCB 174. See also: SCCA 3/96: Kamurasi Charles Vs. Accord Properties Limited.**

For the reasons stated above, this Court finds on the first issue that the retirement of the plaintiff from the defendant’s employment was unlawful.

The second issue is whether the plaintiff is entitled to the payments under Section 61 (2) (a) (c) and (d) of the Local Governments Act Cap.243, (Section 62(2) (a) (c) and (d) of Act No.1 of 1997). The section is to the effect that an employee whose services are terminated by the Council contrary to the terms and conditions of service or contrary to the ruling of the Public Service Commission shall be entitled to the benefits specified in (a) to (f) of the section.

To the extent that the plaintiff’s removal from office by retiring her in the public interest as contained in the Defendant’s District Service Commission decision contained in Exhibit P1 has been held to have been unlawful, it follows therefore that that decision was contrary to Article 173 of the Constitution and

the then section 60 of the Local Governments Act 1 of 1997. It is now section 59 of the Local Governments Act, Cap 243. Such contravention of the Constitution and the Act entitles the plaintiff to the benefits which the Act sets out in Section 62(2) of Act 1 of 1997; now section 61(2) of Cap 243, as such termination was of necessity contrary to the terms and conditions of her service.

The section entitles the plaintiff to one year's gross pay in lieu of notice. Plaintiff's evidence that she was never given any notice and that her termination was with **"immediate effect"**, is supported by Exhibit P1 which states on page 5 thereof that:-

"1. You be retired from service in public interest without loss of retirement benefits, *with immediate effect.*" **Emphasis by court.**

As to gross pay, plaintiff testified that at the time of her termination, her gross pay was shs.789,886/= per month. She tendered to Court the pay slip dated 15.07.99 as Exhibit P6 as proof of this. The plaintiff was not cross-examined on the above evidence. Defence adduced no evidence to re-but the same. Court thus accepts the plaintiff's evidence on this point and holds that plaintiff is entitled to one years' gross pay which is Shs.(789,886 x 12) = 9,478,632/=.

Plaintiff further claimed basic salary in lieu of all earned and officially carried forward leave. Plaintiff testified that, as at the time of her removal from office, she was entitled to, as a benefit, by virtue of her public service to earned and officially carried forward leave for five (5) years. To this effect she submitted to court Exhibits P5 and P6 whereby she earned and was allowed to carry forward 90 days accumulated annual leave for 1984, 1985 and 1986 while she worked as assistant District Commissioner, Mbale District, and 60 days accumulate leave for 1988 and 1989 when she was Assistant District Executive Secretary 1, Hoima District.

The defendant while not rebutting the plaintiff's evidence submitted that the defendant is not liable to pay the same as the same accrued to the plaintiff while she was in service elsewhere, in Mbale and Hoima Districts respectively.

This Court finds that the act of the defendant in unlawfully retiring the plaintiff in the public interest from her public service employment adversely affected the plaintiff's whole period of service from the time she joined public service up to the time of her removal from office. The defendant thus bears the

consequences of the loss and suffering caused to the plaintiff. Court thus holds the Defendant liable to the plaintiff for the claim of basic salary in lieu of all earned and officially carried forward leave for 5 years which is Shs.(789,886 x 5) = 3,949,430/=.

A claim by plaintiff of unpaid salary for the month of August 1999 was not controverted by the defendant. The same is awarded to Plaintiff, that is shs.789,886/=.

Plaintiff claims a severance package equivalent to six (6) months basic pay for every completed year of service as provided by the law. Plaintiff testified that she joined Public Service in June 1980 as Assistant Secretary/Administrative Officer class 2, and rose in ranks up to the level of District Administrative Officer. By the time of her retirement i.e August, 1999, she had served for 19 years. This evidence was not in any way rebutted by the defence. Court accepts the same as truthful. The plaintiff is thus awarded the severance package of Shs.(6 x 789,886 x 19) = 90,047,004/= . For the same reasons given in respect of the claim of basic salary in lieu of all earned and officially carried forward leave, the defendant is held liable to pay the severance package to the plaintiff.

The plaintiff's claim for Transport expenses, Tribunal expenditure and general damages have been consented to by the parties in the sums of Shs.4,676,000/= Transport expense, Shs.8,500,000/= Tribunal expenditure, and Shs.10,000,000/= general damages.

As to the claim for exemplary damages, though Court has found the Defendant's act of terminating the plaintiff's employment by retiring her in the public interest to have been illegal and contrary to the Constitution the evidence, that there is, shows that, the plaintiff was not unduly subjected to oppressive and high handed conduct. At one time the Chairperson of the District Council apologized to her as to what had been done to her and for the mistreatment suffered and in court the Defendant was forthcoming in admitting some of the claims. Court, considering the circumstances of this case, on the basis of the evidence availed and conduct of the parties, holds that this is not a case where exemplary damages are awardable. Court awards none.

The third issue, whether the plaintiff is entitled to the reliefs sought, has already been resolved upon while resolving issues numbers 1 and 2. Judgment will thus be entered incorporating the reliefs the parties consented to and those resolved upon by court.

Accordingly Judgment is entered for the Plaintiff against the defendant for:-

- (a) Shs.4,676,000/= Transport expenses from Kabale to Moyo and from Moyo to Plaintiff's home village.
 - (b) Shs.10,000,000/= general damages
 - (c) Shs.8,500,000/= reimbursement of fees paid to legal Counsel by Plaintiff in the Tribunal Proceedings,
 - (d) Shs.9,478,632/- one years gross pay in lieu of notice,
 - (e) Shs.3,949,430/= basic salary in lieu of all earned and officially carried forward leave,
 - (f) Shs.789,886/= unpaid salary for the month of August, 1999,
 - (g) Shs.90,047,004/= Severance package equivalent to six (6) months basic pay for every completed year service, the number of years of service being 19.
 - (h) The Plaintiff's claims for pension and damages for defamation stand withdrawn.
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- (i) The sums awarded above are to carry interest at Court rate p.a. from 12th August, 1999, till payment in full, except in respect of the sum awarded in (b) above as general damages, interest thereon is to run as from the date of Judgment till payment in full.

The plaintiff has been overall successful in the suit and is by reason thereof awarded the costs of the suit.

Remmy K. Kasule

Judge

6th February 2009

