

hearing defence counsel did not appear and no representative from the defendant also came to court. Since the date had been fixed by court and in presence of defence counsel and a representative from the defendant, court ordered the hearing to proceed. Further, though written submissions of the plaintiff were served upon the defence, no reply to the same was made by the defence, and on 29th September, 2008, court ordered and fixed a date for delivery of judgment.

The plaintiff testified and called no witnesses.

As to the first issue, plaintiff's evidence is that he joined Public Service of the Government of Uganda in 1973 as a youth Assistant in salary scale E 4- 3. In 1995, while still at work he obtained a diploma in Social Development. In 2000 he was seconded and appointed on transfer within the service from Kitgum District to the defendant, which then was a new District. He was appointed on transfer to Assistant Probation and Welfare Officer in scale U5C. He headed the Probation Department. From 15th December, 2000 until 15th June 2005 he worked, in acting capacity, as the District Probation and Welfare Officer, in the absence of a substantive officer, until the 15th June 2005, when he was promoted to Senior Assistant Probation and Welfare Officer. A month later after his promotion, defendant's District Service Commission retired the plaintiff from service by reason of lack of qualifications. Plaintiff protested the decision to retire him and appealed to Public Service Commission who on 23rd June 2006 held that ***“your appeal against retirement and request for reinstatement into the service was, however, not accepted”***. This decision was tendered in court as exhibit D1.

No evidence was adduced by the defendant to controvert the plaintiff's assertion which is also confirmed by exhibit P3 that as from 06th June, 2005, the District Service Commission, Pader District under minute 48/2005 appointed the plaintiff on promotion to the post of Senior Assistant Probation and Welfare Officer, scale U4 lower. Defendant has offered no plausible explanation as to why the plaintiff was appointed on promotion, when he possessed no requisite qualification. The rejection of the plaintiff's appeal by Public Service Commission, exhibit D1 gives no reasons at all as to why the appeal was not accepted. There is also nothing in exhibit D1 stating what qualifications the plaintiff lacked for the post to which he had just been appointed on promotion only a month ago.

On the evidence availed before court, court holds that the plaintiff was unlawfully retired.

As to the second issue, the evidence of the plaintiff that from 15th December, 2000, to June 2005, he performed in an acting capacity the duties of the District Probation and Welfare Officer, even though his substantive appointment was that of the assistant probation and Welfare Officer, has not in any way been controverted. Exhibit P2 confirms this, even though, according to this exhibit, the acting appointment was to be valid up to 15th May 2002. The plaintiff's testimony that he acted in the acting capacity beyond 15th July 2002 up to June 2005 is not rebutted. Court believes the same. Pursuant to the Uganda Government Standing Orders Chapter 1 E-III pages 331 – 332, the plaintiff is entitled to an acting allowance for the period he was in an acting capacity. The acting allowance is the amount arrived at by subtracting the substantive current basic monthly salary for the post held by the officer, from the monthly remuneration of the higher office he performed in an acting capacity. Plaintiff's net basic monthly salary for his substantive office was shs 217, 327/= as Assistant Probation and Welfare Officer: as per exhibit P7. The evidence adduced before court, and not controverted by the defendant, is that the salary of the office of Senior Probation and Welfare Officer, the office the plaintiff acted in was shs 702, 169/= per month. Thus the difference between the plaintiff's salary for the substantive office and that of the office he acted in is: shs. $(702, 169/- - 217, 327/=) = 484, 842/=$. The period from 15.12.2000 to June 2005, is 44 calendar months. This would give shs $484,842 \times 44$ – 21,333,048/= as the acting allowance. The evidence of the plaintiff however is to the effect that he claims only shs 17, 828,690/= as the acting allowance due to him. Court thus awards him that sum.

Plaintiff asserts that pursuant to section 12(1) of the Pension Act, Cap. 286, he would have compulsorily retired from Public Service at the age of 60 years. He has thus lost salary by his being unlawfully terminated from service from the date of retirement from service of 8th July 2005, till November 2011 when he would have compulsorily retired. This is a period of 64 months. Thus the salary lost is shs. $(415,255 \times 64) = 26,576,320/=$ court accepts the plaintiff's evidence on this point and accordingly awards the plaintiff shs. 26, 576,320/= as lost salary.

Court, notes that for unclear reasons, the plaintiff did not base his claims to section 61(2) of the Local Governments Act, Cap. 243, where he would possibly have recovered more in terms of the benefits provided for in that act. Court cannot award the plaintiff for what he did not plead for, let alone testify to. Suffice to point out that the severance package of shs. 4, 862, 180/= admitted as having been paid to the plaintiff is far much less than what the plaintiff would have been awarded pursuant to section 61(2)(d) of the Local Governments Act. For this reason court sees no reason for subtracting that amount from the sums awarded to the plaintiff under this judgment.

As to general damages, these are awardable at the discretion of court, and arise by reason of a breach of contract. The plaintiff, no doubt suffered greatly for loss of employment after giving a service of almost 33 years. The retirement was based on unclear reasons as is obvious from the language of exhibit P4, the defendant's letter communicating the decision to retire the plaintiff. The letter mentions abolition of posts giving an impression that the plaintiff's post was one of those abolished. Yet in the same measure; the letter states that the plaintiff was being retired due to lack of qualification. The requisite qualification is also not mentioned. Yet the plaintiff had just been promoted only a month ago to the very post, he is now said not to possess the qualifications of. All this must have increased the agony of the plaintiff. He was treated in a very callous manner. Court having considered the circumstances of this case awards the plaintiff shs. 3,000,000/= general damages.

Judgment is therefore entered for the plaintiff in the following terms:-

- a) A declaration is hereby issued that the retirement of plaintiff from service was unlawful,
- b) Shs. 17,828,690/= acting allowance
- c) Shs 26,576,320/= lost salary
- d) Shs. 3,000,000/= general damages
- e) Interest at the court rate on the amounts awarded as from 8th July 2005, in respect of the sums awarded in (b) and (c) and as from the date of judgment in respect of the sum awarded in (d) till payment in full.
- f) The severance package paid to the plaintiff on retirement is not to be deducted from the sums awarded in this judgment.

The plaintiff is also awarded the costs of the suit.

.....

Remmy K. Kasule

Judge

30th January, 2009