

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CS – 0042 – 2007

OGWANG BENARD :::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

APAC DISTRICT LOCAL GOVERNMENT:::::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HONOURABLE JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff instituted this suit against the defendant seeking for a declaration that his dismissal was wrongful hence null and void. Plaintiff also sought an order, and claimed to be paid, that he be reinstated in service, special damages of shs 13,849,473/= being unpaid salary, as well as general damages for wrongful dismissal

At scheduling both parties agreed that the plaintiff was, at the material time, an employee of the defendant as Head Teacher Grade I at Aber Primary school. That to date, the plaintiff has never been convicted of any Criminal offences. Instead the plaintiff had been tried and discharged of the criminal offence of Indecent assault c/s 122(1) of the Penal Code Act, in Criminal case No. 501 of 2000 by the Chief Magistrate’s Court Grade I, Lira, sitting at Apac. The plaintiff’s services as Head Teacher Grade I had been terminated on the 18.05.04. By a letter dated 25.11.04 the Public Service Commission noted that the procedure used to effect the plaintiff’s dismissal was illegal.

The issues framed were:-

1. Whether the termination of the plaintiff’s employment was lawful.
2. Whether the plaintiff was entitled to the reliefs prayed for.

The plaintiff testified in person and called no witness. Though the defendant filed a written statement of defence denying the plaintiff's claims, and was represented at commencement of hearing, defence counsel and defendant did not turn up at subsequent hearings of the case and gave no reasons for their absence. Defendant never called any witnesses at the trial. Defence counsel however submitted written submissions maintaining the defendant's denial of liability.

The testimony of plaintiff was that, while carrying on his duties as Head Teacher Grade I at Aber Primary School, he was on 18.05.04 dismissed from defendant's service with immediate effect: see Exhibit P.4. The dismissal letter did not disclose any reasons for the dismissal. The plaintiff appealed to Public Service Commission against the dismissal on 20.08.04. The Public Service Commission on 25.11.04 communicated to the defendant's District Service Commission to the effect, inter alia, that :-

“.....the procedure used to effect his dismissal was irregular. There was no evidence to indicate that he was formally charged and given the opportunity to defend himself.”

The Public Service Commission advised the District Service Commission to review the procedure and handle the case in accordance with the laid down guidelines and in liaison with the office of the Chief Administrative Officer.

On 06.04.05, the Acting Chief Administrative Officer communicated to plaintiff to the effect that the District Service Commission of the defendant had decided to stay its earlier decision to dismiss the plaintiff from service. The author regretted to plaintiff" any inconveniences caused by the earlier defendant's decision: See Exhibit P7.

In spite of the above communication (Exhibit P7) the plaintiff was not reinstated in his former job and defendant did not pay to him his emoluments, including monthly salary.

In his evidence to court, plaintiff asserted that, contrary to what defendant pleaded in the written statement of defence, he, plaintiff had never been charged, let alone convicted before a court of law, or any other lawful body, with the criminal and/or disciplinary offences of defilement,

indecent assault and embezzlement. Instead the defendant, inspite of being communicated to by Public Service that they were wrongly dismissing the plaintiff, went ahead by serving an interdiction letter upon the plaintiff on 13.12.04, which interdiction letter had been back dated to 04.03.2003.(Exhibit p9), purportedly to show that the defendant had first interdicted the plaintiff before dismissing him on 18.05.03.yet the plaintiff had been in service, and not under interdiction up to 08.06.04 when he was served with the dismissal letter: Exhibit P4. This was proof, according to plaintiff, that his dismissal was effected without any notice being given to him without being afforded an opportunity to know the allegations against him and to be afforded an opportunity to answer those allegations.

On 28.02.07 the plaintiff successfully re-appealed the decision of the defendant's District Service Commission of dismissing him from service to the Public Service Commission. The Public Service Commission accepted the appeal and advised the defendant's District Service Commission to:-

- i. ***“ rescinding your dismissal from the service as Head Teacher Grade I, Scale U4.***
- ii. ***Reinstating you in appointment as Head Teacher Grade I scale U4.***
- iii. ***The period between 18.05.04 when you were dismissed and date of your reinstatement be treated as leave without pay.”***

This advice of the Public Service Commission to the defendant was totally ignored by the defendant.

The plaintiff, as Head Teacher, is an officer in the Public Service of Uganda in terms of Articles 157 of the constitution. He thus enjoys the protection of Article 173 of the constitution in that he is not to be victimized, dismissed or removed from office except for just cause. This constitutional protection is reiterated by Section 59 of the Local Government Act, Cap. 243, which section also enjoins the defendant to comply with the decision made in appeal by the Public Service Commission. Section 59 (2) of the Act provides:-

“ 59 (2) A person aggrieved by a decision of the district Service Commission may appeal to the Public Service Commission, but the ruling of

the district Service Commission shall remain valid until the Public Service Commission has ruled on the matter.

(3) *The ruling of the Public Service Commission on appeal shall be final.”*

Defendant has not offered any explanation as to why there was no compliance with the Ruling of the Public Service Commission (exhibit P12) with regard to the appellant. Neither has any evidence been adduced by defendant to rebut the plaintiff’s evidence that he was not given any notice, let alone made aware of the charges he had to answer and an opportunity to answer them, before he was condemned by being dismissed from employment. It is the duty of the employer to observe the regulations before dismissal and also to provide the employees with an opportunity for a fair hearing in accordance with the dictates of natural justice, See: JABI VS MBALE MUNICIPAL COUNCIL (1975) HCB 190.

Court therefore accepts the evidence of the plaintiff adduced in support of the first issue. The answer to the issue is that the termination of the plaintiff’s employment was unlawful.

The second issue is whether the plaintiff is entitled to the reliefs prayed for.

Plaintiff seeks an order that he be reinstated in service. The law with regard to this specific prayer is set out in the JABI case (supra) that: where the dismissal is wrongful by whatsoever reason, the appropriate reparation for such dismissal is compensation and not reinstatement on the job for an employer had an unentered right to dispense with the service of an employee.

The above being the law, this court declines to order reinstatement of the plaintiff in to the employment of the defendant.

The plaintiff is however entitled to be compensated by way of damages.

Court notes that the plaintiff brought this action on the basis that he was employee of the defendant, a local Government. The employment relation of the plaintiff and defendant is thus

governed, for purposes of this case, by the Local Government's Act, Cap 243. Court will thus rely on the provisions of that Act while determining the issue of damages that the plaintiff is entitled to.

Section 61(2) of the said Act provides 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 of:

- i. one year gross pay in lieu of notice.
- ii. Pensions in accordance with the pensions Act.
- iii. Basic salary in lieu of all earned and officially carried forward leave
- iv. Severance package equivalent to six months' basic pay for every completed year of service.
- v. Transport expenses at a stated rate from duty station to the employees home district headquarters.
- vi. Transport expenses at a stated rate, from home district headquarters to employee's home village.

The evidence of the plaintiff is that his gross pay as at the date of his dismissal was shs. 488,830/= per month; and net was shs. 419,000/= per month.

Plaintiff, who was dismissed without any notice is thus entitled to shs. $(488,830/= \times 12) = 5,865,960/=$ as one years gross pay in lieu of notice. The said amount is awarded to him.

As to pension, the evidence of the plaintiff is that he was aged 48 years old and had served in Public Service since 1983. He was thus eligible for pension under sections 9 and 10(2) of the Pensions Act, Cap.286 in that the plaintiff was aged above 45 years and had served for more than ten (10) years. The defendant is thus ordered to pay the plaintiff pension in accordance with the pensions Act, Commencing from the date of his dismissal i.e. 18.05.04 to date, and also to continue in future to pay the said pension to the plaintiff in accordance with the provisions of the pensions Act.

The plaintiff testimony is that he started work in 1983; so that by the date of his dismissal i.e. 18.05.04 he had served in public service for a continuous period of 21 years. He is thus entitled to six months basic pay for each year of service: i.e. shs (419,000 x 6 x 21)= shs 52,794, 000/=.

The plaintiff's claim for salary for 33 months becomes un maintainable given the fact that the plaintiff has been given relief in lieu of notice as well as a severance package. Court received no evidence of any month actually worked by the plaintiff and was not paid for.

As to leave and transport entitlements, no evidence was adduced before court for court to make any award in respect of the same.

Court however appreciates that the plaintiff's dismissal was sudden, plaintiff was deprived of the opportunity to explain his case to defendant. Defendant, for no apparent reason, disregarded and acted with benign contempt of the well intended and well meaning advice of the Public Service Commission. All this caused much suffering to the plaintiff as well as members of his family. In the circumstances the plaintiff is entitled to be awarded damages in the nature of aggravated damages. Court considers a sum of shs. 3,000,000/= as adequate. Thus shs 3,000,000/= are awarded to plaintiff as aggravated damages.

Accordingly judgment is entered for the plaintiff against the defendant for:-

- a. shs. 5,865,960/= one years gross pay in lieu of notice.
- b. An order that the defendant pays to the plaintiff pension as from the date of his dismissal to date; and also to continue to pay the same to the plaintiff in accordance with the provisions of the pensions Act.
- c. Shs 52,794,000/= being severance package.
- d. Shs 3,000,000/= aggravated damages.
- e. The sums awarded in (a)(c) and (d) shall carry interest at court rate from the date of judgment as pleaded in the plaintiff, till payment in full.

The plaintiff is awarded the costs of the suit against the defendant.

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Remmy K. Kasule

Judge

27th March, 2009