

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-00-CV-CS-0699-2003
ARAKIT MARY MARGARET ::::::::::::::: PLAINTIFF
VERSUS
THE ATTORNEY GENERAL ::::::::::::::: DEFENDANT
BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The plaintiff's claim against the defendant is for a declaration that her appointment in the Public Service by the Government was lawful; a declaration that the removal of her name from the Government payroll was unlawful; an order for re-instatement into the Public Service and on the payroll; an order of clearance; payment of her salary arrears from August, 2002 to-date; general and punitive damages; interest and costs. In the alternative, she seeks an order that she is entitled to full pension and gratuity and/or terminal benefits.

At the conferencing the parties agreed that:

1. The plaintiff entered Public Service on 26-02-1991 as Accounts Assistant.
2. While in Public Service, she worked in Ministry of Local Government and the Judiciary.
3. Her name was deleted from the payroll in 2002.

Court is invited to determine the following issues:

1. Whether the plaintiff validly joined Public Service.

2. Whether the plaintiff's name was validly removed from the payroll.
3. Whether the plaintiff is entitled to the reliefs claimed.

Counsel:

Mr. George Omunyokol for the plaintiff

Ms. Margaret Nabakooza for the defendant

It is not disputed that the plaintiff entered Public Service as an Accounts Assistant in February 1991. Her name was deleted from the payroll in 2002. Her case is that the deletion of her name from the payroll was unlawful.

The defence does not agree. The reason for the disagreement is that she entered Public Service illegally, that is, that she was never appointed by the Public Service Commission. According to the defendant, irregular entrants into service were removed and the plaintiff happened to be one of them.

This draws me to the question of proof. In law a fact is said to be proved when the court is satisfied as to its truth, and the evidence by which that result is produced is called the proof. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption.

In the instant case the plaintiff has asserted that she entered the Public Service legally. The burden is on her to prove so.

Issue No. 1: Whether the plaintiff validly joined the Public Service.

She has presented to court evidence of an appointment to the Public Service of Uganda as Accounts Assistant on the 26th February, 1991. There is also evidence that while in Service, she served in the Ministry of Local Government and in this very institution, the Judiciary.

The appointment letter dated 26-02-1991 is on record as Exh.P2 and the various places in which she served are sufficiently documented.

From the evidence also, the plaintiff had been sponsored by the Government under capacity building programme by the Ministry of Finance to pursue a diploma course in accountancy. She commenced studies at the Institute of Certified Public Accounts of Uganda based in Kampala. In the course of time, she was transferred to a court station in Lira which is distant from Kampala. She appealed against the transfer on the ground that transferring her to Lira would jeopardise the course. In August 2002, while awaiting the results of her appeal against the transfer to Lira, her name was deleted from the payroll. She was subsequently arrested, taken to Central Police Station (CPS) in Kampala on allegations that she entered into the Public Service illegally, and later released on Police Bond. By a letter dated 31-12-2002, Exh.P10, the Police cleared her. She felt aggrieved and filed this case.

She was the sole witness for her side. She narrated to court how she joined Public Service pursuant to an advertisement in the New Vision newspaper of 22nd January, 1990. It was advertising for various posts but she applied for one of Accounts Assistant (Trainee). The copy of the advertisement is on record as Exh.P12. Her evidence is that she applied for the job, did the interview and was offered an appointment letter, Exh.P2.

From the evidence, following the appointment, she was posted to the Ministry of Local Government to work in the Community Development Section of that Ministry and later by the Ministry of Public Service to High Court, Kampala.

As I will show shortly herein, the defendant disputes the purported posting. The dispute is premised on the grounds that she was not in the category of staff transferrable by the Ministry

of Public Service and that the posting instruction is itself fake. Be that as it may, there is ample evidence before court to support the facts admitted at the conferencing that the plaintiff entered the service in 1991; that she worked in the Ministry of Local Government and the Judiciary; and, that her name was deleted from the payroll in 2002.

The plaintiff has accordingly adduced sufficient evidence to raise a presumption that what she asserts, that is, that she entered the service legally, is true. This now shifts the burden of proof to the defendant.

I shall now turn to the defence contention that the plaintiff was never validly appointed by the appointing authority, the Public Service Commission (PSC), and that she did not validly join Public Service, in order to determine whether or not the said evidence rebuts the presumption.

The defendant led evidence of two witnesses:

DW1 Emmanuel Tugabirwe, a Principal Personnel Officer (PPO) with Public Service Commission and DW2 J.J. Nanseera, Commissioner Human Resource Management in the Ministry of Public Service.

First, DW1 Emmanuel Tugabirwe. He was not with the Commission at the material time. He testified on behalf of Secretary PSC.

He stated that candidates who pass interviews are appointed and that when the best candidates are selected, the Commission issues out Minutes that are delivered to different Ministries to effect appointments.

According to him, the plaintiff's appointment letter, Exh.P2, indicates that the appointment was effected under Public Service Commission MIN. NO. 1049 of 1990. It is his evidence that the plaintiff's name does not appear in the Commission records among appointees under

Minute 1049 of 1990.

The latter Minute is on record as Exh.D1. It is for prospective candidates holding the ‘Ordinary’ level and ‘Advanced’ level certificates of Education for appointment in the Public Service of the Government of Uganda, 1990. Under this Minute, **“the Commission reviewed the records of the Interviewing Boards held at the Public Service Commission Offices, Kampala and various selected centres upcountry for the purpose of considering prospective holders of ‘Ordinary’ and ‘Advanced’ level certificates of Education for appointment in the Public Service of the Government of Uganda. It was AGREED that the candidates listed in the annexure II to part II of these Minutes be offered appointment on probation and conditions as indicated against their names as appropriate”** (emphasis mine).

As fate would have it, the plaintiff’s name does not appear in the said Annexure II to Part II of the PSC Minutes of 1124th meeting held on the 21st October, 1990.

He stated that a corrigendum (plural - corrigenda) makes a correction/addition to what has been issued and that as regards PSC Minute 1049 of 1990, Corrigenda IV is the only one that was issued by the Commission. As fate would have it also, the plaintiff’s name does not appear in Corrigenda IV, a list of names attached to a letter dated 22nd April, 1991, Exh.D2. DW1 explained that this would mean that the plaintiff was never appointed in the Public Service, let alone being appointed under Public Service Commission Minute 1049 of 1990. Minute 1049 of 1990 and the Corrigendum issued under it do sufficiently support the witness’s conclusion. I have therefore seen no reason to doubt it.

Paragraph 4 of Exh. D2 states:

**“4. Corrigenda IV corrects PSC Minute No. 1049 of 1990:
Recruitment of Holders of the Uganda Certificate of Education or its equivalent into the Uganda Public Service, 1990.**

You are please requested to NOTE that as regards PSC Minute No. 1049 of 1990, Corrigenda IV is the ONLY one that has been issued out to you by the Commission.”

The same letter to all Permanent Secretaries continued:

“It has been learnt that Ministries have twice received corrigenda of the same reference dated 12th February, 1991 respectively. You are hereby informed that the Public Service Commission’s Minutes do not contain the two issues of the corrigenda.

Therefore, they should be ignored. If letters of appointments have been issued to some or all of the names of persons appearing therein, those letters must be withdrawn immediately.

You are please warned that the Commission will not be responsible for what may happen as a result of failure on your part to comply with this directive”.

The letter was from the Ag. Secretary, Public Service Commission, one Erina Baingana (Mrs).

DW1 Tugabiirwe was shown Corrigenda to PSC Minute No. 1049 of 1990 dated 14-02-1991 ref. PSC 744, Exh. D6. The plaintiff attached this Exhibit to her appointment letter following the amendment to the plaint. It is signed by one H.W.B. Rwabushaija.

It is the evidence of DW1 Tugabiirwe that though the said Rwabushaija signed for the Ag. Secretary of the Commission, the Corrigendum was not a true record of and was not issued by the Commission. The defence case is that Rwabushaija issued this Corrigendum without the authority of Public Service Commission.

I have already indicated that DW1 did not testify from personal knowledge of the matters in issue. His evidence is based on records maintained at the Commission, a form of circumstantial evidence. It is trite that circumstantial evidence is a series of circumstances leading to the inference or conclusion of guilt (in criminal cases) when direct evidence is not available. Evidence which although not directly establishing the existence of the facts

required to be proved, is admissible as making the facts in issue probable by reason of its connection with or relation to them.

It is sometimes regarded as of higher probative value than direct evidence, which may be perjured or mistaken: A Concise Law Dictionary by P.G. Osborn, 5th Edition at p.70.

Relating the above principle to the instant case, DW1 Tugabiirwe testified that the said Rwabushaija was interdicted vide a letter dated 18th March, 1991 (Exh.D15). The letter is addressed to the said Rwabushaija and it partly reads:

“Following the forgeries that have been discovered in the various PSC Minutes, Public Interest requires that you should cease to exercise the powers and functions of your office and you are hereby interdicted from the exercise of those functions. The interdiction takes immediate effect”.

DW1 testified that after the PSC detected the fake appointments, it (PSC) informed Permanent Secretaries vide letter dated 22nd April, 1991. I have already set out contents of the said warning to all Permanent Secretaries, Exh.D2.

He further testified that the said Rwabushaija was subsequently dismissed from Public Service. This is contained in the Minutes of the 1170th meeting of PSC held on 04-09-1992, Exh.D16. Under Minute 880 of the said meeting, it is indicated that the said Rwabushaija, Principal Personnel Officer, was dismissed with disgrace from the Public Service of the Government of Uganda.

Again, I have seen no reason to doubt the authenticity of these records. I take it that it was so.

At the hearing, the plaintiff denied knowledge of the impugned Corrigenda issued by Mr. Rwabushaija, Exh.D6.

She claimed that she had no access to Public Service Commission records. However, as pleadings clearly show, she made reference to it in paragraph 4(a) of the amended pleadings and actually attached a copy of it thereon. She further referred to the same document in paragraph 4 of her appeal to the Head of the Civil Service dated 18th March, 2003, Exh.D9 when she stated:

“

.....

.....

The allegations raised in the letter of 16th August, 2002 are false as I was properly admitted to the Civil Service as per my appointment letter attached and marked C and as per the Public Service Commission Minute 1049 of 1990 which are hereto attached and marked D”.

In all these circumstances, I found it very strange that the plaintiff could feign ignorance of the said document. It is settled law that a party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings: **Interfreight Forwarders (U) Ltd Vs EADB [1994 - 95] HCB 54.**

Learned counsel for the defendant has submitted that since the plaintiff failed to explain how she obtained the said Corrigenda, one cannot rule out the possibility that she connived with the said Rwabushaija in doctoring of the PSC Minute 1049 of 1990 to include her name among the appointed Accounts Assistants; that in any case it was not possible for Rwabushaija to include names of people whom he had no knowledge of. In view of the plaintiff’s decision to distance herself from her own exhibit, I am unable to fault learned counsel’s submission.

In my opinion, by distancing herself from the very document her case is based on, the plaintiff has drawn into disrepute her own conduct in the saga.

In connection with the case, DW1 Tugabiirwe testified that PSC received a copy of the letter dated 6th August, 1991 (Exh.D17).

The said letter was addressed to the plaintiff, Thru Permanent Secretary Ministry of Local Government, Kampala and it stated:

“Dear Sir/Madam

I am directed to in form you that the Public Service Commission has directed through circular letter No. PSC 744 dated 22nd April, 1991 that the offer of appointment of Accounts Assistant (Trainee) made to you in my letter FC 3/44 dated be cancelled and that the letter referred to above be withdrawn from you with immediate effect.

The Permanent Secretary/Head of Department under whom you are serving is requested to stop your salary and remove your name from the payroll with effect from 15th June, 1991.

I take the opportunity to thank you for the services you have rendered for the few months you have been in Civil Service. I wish you the best in all your future endeavours.”

The letter was signed by one Sserunkuma Samuel for: Secretary to the Treasury.

The letter (Exh.D17) makes reference to No. FC 3/44 indicated in the plaintiff’s appointment letter (Exh.P2). it is therefore from the same office that had issued the impugned appointment letter.

Again, the plaintiff has denied knowledge of this document much as it was addressed to her. Much as it bears no evidence of receipt by her, I have seen no reason to doubt its authenticity.

It is evident from this letter that her appointment was revoked on 06-08-1991. Nevertheless, she kept in office till 2002.

Second, DW2 Mr. Nanseera. He testified that despite warnings about her improper entry into Public Service, somehow she remained in service.

There is on record a letter dated 30-09-1994, Exh.D7. In this letter, PSC states that the plaintiff was genuinely recruited, that her name was submitted for termination of appointment in error and that she should be reinstated in her post. The said letter is copied to Min. of Local Government where the plaintiff was based when the appointment letter was cancelled. It cited Ref: 748.

According to DW2 Nanseera, Ministry of Public Service subsequently received confirmation from PSC that file Ref: PSC 748 did not exist in the Commission; that the said letter did not originate from PSC; and, that PSC had no copy of it. By implication Exh.D7 was also fake.

Learned counsel for the defendant has submitted that the plaintiff was aware of this forged letter wherein she was a beneficiary.

Again there is no direct evidence of such knowledge on the part of the plaintiff. However, I find it rather mind boggling that anybody could have continued after Mr. Rwabushaija's disgraced exit, championing the plaintiff's cause in PSC, without her knowledge and/or personal participation. It is in my view highly unlikely.

The plaintiff stated that in February 1998 she was posted by Ministry of Public Service to High Court of Uganda, Kampala, implying that a person not validly appointed in 1991 could not be a subject of the posting instruction in 1998, seven years along the way. That in any case the letter of appointment was not challenged by the defendant at the trial.

I have considered the impugned Posting Instruction, Exh.P4, dated 13th February, 1998 under Ref: CP 65777. It reads:

***“Ms Arakit Mary M
Accounts Assistant Grade II***

***Thru’: The Permanent Secretary
Ministry of Local Government
Kampala.***

Dear Madam,

POSTING INSTRUCTION

In the interest of the service and your own interest, it has been decided to post you to the High Court, Kampala.

Please report to the Chief Registrar for detailed duty instructions as soon as you get this letter.

By copy of this letter, the Permanent Secretary, Ministry of Local Government is requested to forward your ACR Folder, Open and confidential files, last local pay certificate and details of service on Pension Form NS. 14 to Chief Registrar.

***Yours faithfully,
J.J. NANSERA***

FOR: PERMANENT SECRETARY”

The letter is copied to: Chief Registrar, High Court of Uganda, Kampala.

It is not disputed that while in the Judiciary as Accounts Assistant the plaintiff was posted to various Courts as follows: Mpigi Court, Nsangi Sub-County Court, Kakiri Court, Kampala High Court, Kajansi Court and Jinja Court.

At the hearing, DW2 Nanseera trashed this letter. He gave a number of reasons: he spells his name as Nanseera (double e) and not Nansera (single e) as indicated on the document; the signature appearing on the letter is not his; the Ministry of Public Service does not transfer Accounts Assistants (they are transferrable by the parent Ministry); the said letter did not originate from him nor the Ministry of Public Service; the File Ref. quoted therein (CP 65777) belonged to a one Aziku Ochatre Patrick who at the time was Assistant Settlement Commandant (Office of the Prime Minister) and not the plaintiff's.

At the hearing DW2 Nanseera insisted that the fact that his name was misspelt in Exh.P4 was not a mere typographical error because he does not sign documents where his Secretary makes mistakes with regard to his name and that the signature is in any case not his. Exh.D10, a letter signed by him on behalf of PS for Ministry of Public Service to the Secretary to the Judiciary dated 27-02-2003 bears him out. I am unable to fault his assertions on this point. I am of the view that the misspelling of his name coupled with the use of another person's CP Number are further indicative pointers to forgery of the impugned letter. It is circumstantial evidence which is consistent with other evidence of forgery which I have already alluded to herein.

Learned counsel for the plaintiff has submitted that the letter has not been challenged because the defendant did not adduce evidence of an expert on the matter. I do not agree. In law the burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular

person: Section 103 of the Evidence Act, Cap.6. In the instant case, it is the plaintiff who wishes the court to believe in the existence of the document, Exh. P4. The defence disputes it. The burden was on the plaintiff to establish its authenticity on the balance of probabilities. She has not discharged that burden.

At the hearing also DW2 Nanseera testified that Ministry of Public Service as a policy only transfers Personnel Officers in Ministries not Accounts Assistants like the plaintiff. I am also unable to fault him on the policy. He sounded knowledgeable and truthful in that regard. In any case, she was purportedly interviewed by Public Service Commission, an independent body. Her name was then forwarded to Ministry of Finance for appointment. The letter of appointment, Exh. P2, is indeed signed on behalf of the Secretary to the Treasury. The parent Ministry then deployed her in the Ministry of Local Government to serve as an Accounts Assistant (Trainee) there. I have failed to understand how then the Ministry of Public Service would come in to issue Posting Instruction to her as if she was an employee of that Ministry, in the absence of a policy to that effect. It simply lacks logic. It is in my view further evidence of forgery on the part of the plaintiff and whoever was assisting her in her endeavours. It is evidence that supports the defence case in very material particular that Ministry of Finance had revoked the appointment (vide Exh. D17) for reasons stated therein and the plaintiff had to look for another source of authority (not her parent Ministry of Finance) to keep her in service. In my view, Exh. P4 does not offer any unrebuttable proof that the Plaintiff entered Public Service validly. If anything, it is highly suspect.

The Plaintiff stated that she was invited for and sat for the Ministerial review interviews conducted by the Joint Implementation Monitoring Board of the Ministry of Public Service and the Public Service Commission in 1994, Exh. P14.

DW1 Tugabiirwe's evidence is that the purpose of these interviews was to validate, to find out those who entered the Service illegally, non-performers and 'ghosts'. He further testified that according Exh. D3, an Extract from the Minute of the 1311th meeting of PSC held on 04-04-1997, Ministries and Departments were to remove them from the pay roll.

As fate would have it, the plaintiff's name appears as number 41. Court is satisfied that Exh. D3 bears names of candidates who got into the Service without PSC authority and were discovered by the PSC/TIMB Board interviews in 1994, which interviews, the plaintiff by her own admission attended.

The meeting resolved, after thorough discussion, that the matter of 'ghost employees' be handled administratively by sending the list to the Ministry of Public Service for their removal in case those people were still in the Service, as part of the on-going pay roll cleaning exercise.

From the records and the evidence of DW2, Exh. D3 was sent to the Ministry of Public Service in 1997 and implemented. However, the plaintiff's name bounced back onto the payroll on account of the discredited Posting Instruction to the Judiciary in February 1998 (Exh. P4)

It is an agreed fact that her name was deleted from the payroll in 2002. DW2, Nanseera testified that upon deletion of her name on the payroll, she went to his office and he explained to her what had happened. He further testified that he saw the Posting Instruction, Exh. P4, when she presented the same to the Ministry. He stated that in view of the forged posting instruction, among others, he advised the Judiciary to refer the matter to the Police for investigation.

With regard to the letter from CID to the Secretary to the Judiciary, Exh. PIO, the witness (DW2 Nanseera) stated that it was not true that specimen signatures and handwriting were not obtained from him. He stated that a CID officer went to his office and took his statement which had his names and signature. He stated that there was need for the plaintiff to explain the origin of documents in her possession and that in his view not enough investigation was made by the Police in this matter.

In view of what I have said about the forgeries allegedly committed by one Rwabushaija, his interdiction and eventual dismissal from Public Service with disgrace, and the plaintiff's

deletion from the payroll in 1997 and her reinstatement in 1998 on the basis of a fake Posting Instruction, Court is in agreement with the evidence of DW2 that Police did not carry out sufficient investigation in the matter.

I have given due attention to Exh. D10, a letter to the Secretary to the Judiciary. According to this letter, the Ministry of Public Service, expected the CID to investigate how the plaintiff obtained the letter transferring her to the Judiciary. Exh. P4, and the Minute under which she claims to have been appointed Accounts Assistant in 1990 and to establish the authenticity of Exh. D7, a letter dated 30/9/94 certifying that after careful check through their records, it had been established that the plaintiff was genuinely recruited and her name was submitted for termination of the appointment by error.

I have already pointed out that the defendant has successfully established lack of genuineness of this letter. In all the circumstances, it is very clear to me that Public Service Commission never authorised the appointment of the plaintiff. The appointment was authorised by a crook in the Commission, one Rwabushaija. Upon discovery of this dirty scheme, PSC went ahead to cause cancellation of the letter of appointment and the removal of the said Rwabushaija from the Service.

For the reasons I have given above, the plaintiff was not appointed into the Service. She invalidly joined the same.

There is evidence that the plaintiff forwarded a complaint to the Head of the Civil service in March 2003 wherein she raised a number of allegations against DW2 Nanseera. At the hearing, Mr. Nanseera rubbished the allegations raised by the plaintiff against him. He denied existence of any grudge against her.

With the greatest respect to the plaintiff, I have not seen the basis for any such grudge. Mr Nanseera was simply doing his job. In any case he did not work in the Public Service

Commission to raise inference that he engineered the deletion.

In a letter dated 14th May 2003, Exh. D8, the Permanent Secretary, Ministry of Public Service communicated to the Head of the Civil Service detailed reasons for their conclusion that the plaintiff entered the service illegally.

The Commission subsequently considered the plaintiff's appeal for reinstatement and rejected it. In view of the uncontradicted evidence that Rwabushaija without the authority of the Commission issued out a Corrigendum to PSC Mm. 1049 of 1990 and that the said Corrigendum was doctored to include the plaintiff's name; and in view of the evidence that the doctored Corrigendum was forwarded to Ministry of Finance which issued her with an appointment letter, I have seen no reason to fault the decision of the Commission.

I would answer the first issue in the negative and I do so.

I now turn to the remaining two issues, namely, whether the plaintiff's name was validly removed from the payroll and whether the plaintiff is entitled to the reliefs claimed. I will conveniently handle them together.

Arising out of the above analysis, the defendant has proved to the satisfaction of the court that the plaintiff was not appointed into the service. She joined the service on the basis of a doctored instrument. There was no appointment in law but a nullity. The effect of a nullity was considered in **Macfay Vs United Africa Co. Ltd [1961] 3 ALL ER 116** thus:

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You can not put something on nothing and expect it to stay there.

It will collapse”.

I agree.

Applying the same principle to the facts herein, both the Ministry of Public Service and Public Service Commission are in agreement that the plaintiff entered the Service illegally. There is no reason for me to fault their decision. Likewise the deletion of her name from the payroll cannot be faulted. Since she was not validly appointed, then she invalidly accessed the payroll.

At the hearing, it came to light that upon deletion from the payroll, the plaintiff sought to re-enter Public Service vide her application for appointment to the Uganda Civil Service dated 13th October, 2003. This application is on record as Exh. D14. She applied for a post of Senior Accounts Assistant and indicated that she was in the Ministry of Finance, Treasury Department of Accounts. She indicated in that application that she was employed on permanent perms, and attached, inter alia, a confirmation letter. The same is dated 12th November, 1999 and it states:

“Mr/Ms: Arakit Mary M

***Thru: The Secretary for Judiciary,
High Court, (Jinja)
Kampala***

CONFIRMATION IN APPOINTMENT

I am pleased to in form you that the Public Service Commission has directed that you be confirmed in your appointment as ACCOUNTS ASSISTANT GRADE II with effect from the dated (sic) of your appointment.

Your attention is drawn to the Standing Orders Chapter 1, Section A-e with (sic) explains the effect of your confirmation.

KAKOOZA G. B.

FOR: Permanent Secretary/Secretary To The Treasury.”

From this evidence, the plaintiff sought to re-enter the service in October 2003, after she had been deleted from the payroll.

In her testimony, she had said that she had been on probation for over loyears and had not been confirmed. However, when it came to this application for a higher post, she stated otherwise. At the hearing, she shamelessly denied knowledge of the Confirmation Letter, part of Exh D4, and yet she had attached the same on her application. As fate would have it, the said confirmation letter quoted PSC Mm. 363 of 1999 but the list of the confirmed Accounts Assistants, with regard to PSC Mm. 363 of 1999 did not include her name. It is noteworthy that earlier on the same plaintiff had testified that she was due to sit for the confirmation interviews, as per Exh. P15, but the same were cancelled by PSC. This has been rebutted by DW1 Tugabiirwe whose evidence is that the Commission does not hold confirmation Interviews, but rather it receives submissions with recommendations from a person to be confirmed. The submissions are studied to find out whether the person was properly appointed and whether the probation period has been completed.

If all is clear, the Commission confirms. That for 10 years or more she was never confirmed in service speaks volumes about the appointment. She denied knowledge of the Confirmation letter, attached to her application, Exh. D4, the same way she denied knowledge of the impugned Corrigendum to PSC Mm. 1049 of 1990, which she had attached on to her plaint. With the greatest respect to her, I was not impressed by her conduct, especially as regards unwarranted denials of documents she had clearly produced in support of her claim against the defendant.

Finally, the plaintiff prays for reinstatement to the Public Service and payroll, among other reliefs. DW1 Tugabiirwe, and DW2 Nanseera testified that she cannot be reinstated when she was not duly appointed by the appointing Authority, that recovery of salary and allowance arrears only applies to a person duly appointed; that pension, gratuity and/or terminal benefits only apply to persons who are properly appointed, confirmed and have worked for a number of years. They stated that the plaintiff does not qualify for any of the claims. I agree. She is not entitled to those claims, the same way she was not entitled to any letter of interdiction and/or dismissal as the two apply to those properly appointed by the appointing authority.

I have read the case of **Bank of Uganda vs Betty Tinkamanyire, SCCA No. 12 of 2007** (unreported) cited to me by learned counsel for the plaintiff.

The case is irrelevant to the facts herein considering that Betty Tinkamanyire had validly joined the appellant Bank and was therefore in lawful employment of the Bank. The plaintiff herein did not validly join Public Service and her appointment letter was validly cancelled. To grant her anything would be to allow her to benefit from an illegality. This the court can not do.

As regards costs, the usual result is that the loser pays the winner's costs. This practice is of course subject to the court's discretion, so that a winning party may not necessarily be awarded costs. In the instant case, considering the role of the disgraced Rwabushaija in the entire appointment saga, whether the plaintiff was directly or indirectly privy to it, notwithstanding that she was not entitled to any letter of interdiction and/or dismissal, she was in my view entitled to a written response to her complaint, so that at the end of the day she decides on a better course to pursue. The defendant gets no credit for withholding vital records from court and from the plaintiff till the last minute. Trusting as I do that the suit was prompted by the defendant's lack of effective communication or at all, I would dismiss the suit and order each side to bear its own costs.

I so order.

YOROKAMU BAMWINE

JUDGE

25/02/2009