

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

5

HCT-C.S-0058-1997

GEORGE WANYERA :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

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KAKIRA SUGAR WORKS LIMITED (1985) :::::::::::::::::::DEFENDANT

15

BEFORE: THE HON. LADU JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

20 This is a very old case filed way back in 1997. It has overstayed in court for various reasons that I will refer to briefly later in this judgment.

25 According to the plaint, the plaintiff was an employee of the defendant company, where he worked as a laboratory Technician at Kakira Secondary School. Later, the plaintiff was made a personnel manager and became a permanent employee of the defendant.

The terms and conditions of service were governed by the Memorandum of Agreement of terms and conditions of employment between the Defendant Company and the National Union of Plantation and Agricultural Workers (Uganda).

30 It is the plaintiff's contention that on 22.07.97 by way of a letter of the same date, the defendant wrongfully terminated the employment of the plaintiff, contrary to the terms and conditions he had with the defendant company and the laws governing employment contracts in Uganda.

Further that, terminating his employment amounted to breach of contract, as the purported termination was based on expired terms and conditions of 1987. The plaintiff asserts that the terms and conditions applicable at the time of termination of his contract were those of 04.10.96 or there about.

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The plaintiff claims that he was victimised for strongly promoting and protecting the rights and interests of the defendant's workers. And that as a result of the termination of his employment he suffered special and general damages. The particulars of damage are set out in paragraphs 6A and 6B of the plaint.

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The plaintiff prayed for judgment to be entered in his favour and special and general damages awarded with interest at 15% and 6% respectively from the date of filing the suit until payment in full, together with costs of the suit and any other remedies court may deem proper.

15 The defendant company strongly denied the claim of the plaintiff and vowed to put the plaintiff to strict proof thereof.

In the alternative, the defendant argued that the plaintiff's employment was legally and lawfully terminated. Further that, the termination of the plaintiff's employment was in
20 exercise of the employer's inalienable right to dispense with unsatisfactory services of an employee.

The defendant prayed for dismissal of the suit with costs.

There began a long history of adjournments for various reasons appearing on record and
25 which I do not intend to repeat here but which have led to the delayed disposal of this case. The adjournments went on up to 27.06.07; when counsel for the defendant's indicated that the defendant company was willing to pay the plaintiff's terminal benefits as per the letter of dismissal. However, the plaintiff declined the offer and opted to proceed with hearing. He was unrepresented all throughout the trial.

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The following were the agreed two issues for court to determine.

1. Whether the plaintiff's employment was lawfully terminated.
2. Whether the plaintiff is entitled to the remedies sought.

Hearing was then fixed for 03.10.07.

The plaintiff testified that he was suing the defendant for special and general damages for breach of contract of employment. He stated that he was employed by the defendant in
5 October, 1994 on temporary terms. The letter of appointment was tendered in as exhibit P1.

After an interview the plaintiff was given a letter of confirmation as a laboratory technician grade G- exhibit P2. And that since all workers from Grade A to G are unionized workers, immediately after confirmation the plaintiff joined the National Union of Plantations and
10 Agricultural Workers, upon paying the necessary dues. The payroll slip of February, 1997- exhibit P3; together with a letter dated 17.06.97 from the Human Resources Manager allowing him to attend Union meetings-exhibit P4 were admitted in evidence.

The plaintiff also signed an employment contract no.05223 and was issued with an
15 employment card that has a photograph, name and address; employment number, job description, deployment date and signature of the Personnel... of the defendant. The identification card was exhibited as P5.

It is the assertion of the plaintiff that upon acceptance of the contract, his terms and
20 conditions of service regarding working conditions, wages and salaries and settlement of disputes were determined by collective bargaining between the defendant and the National Union of Plantation and Agricultural Workers which represented him. That this was in accordance with Article 40(3) (b) of the Constitution and the International Labour Organization Convention –no.97, ratified by Uganda and the Labour Act of 2006.

25 Also that it was agreed by the parties that the agreement of terms and conditions of service of employment signed on 04.10.96; governed the terms and conditions of service of the employees of the defendant, represented by the union. The agreement that is said to have been signed by the officials of the Union, the Manager and Personnel Manager of the
30 defendant company was received in evidence for identification purposes as ID₁.

The plaintiff contends that this agreement did not provide for termination of employment and the grounds for termination.

Eventually, the plaintiff was recommended for salary increase-Exhibit P6. Nonetheless, by letter dated the 22.07.97, the defendant terminated the services of the plaintiff. - Exhibit P7.

5 The letter, according to the plaintiff does not state any reasons for termination of the plaintiff's employment and the one month's salary in lieu of notice offered in the letter does not exist in the employment contract . Neither does the special allowance set at 35% as the agreement provides for 30%. The travelling allowance of Shs. 25,000/- was also not provided for as it was still under negotiation. And neither was the luggage allowance of shs.5000/- nor the basic salary given as leave entitlement.

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The plaintiff alleged that the letter terminating his employment was contrary to the terms and conditions of service. And that without any termination clause in his contract, the termination of his services was illegal as the only binding contract at the time of termination was ID1.

15 Adding that the termination was also contrary to the laws governing contracts of employment in Uganda, for the defendant relied upon an older document that had expired in 1987. Clause 8 of the 1987 agreement provided for notice to be given to an employee whose services had been terminated under clause 32 thereof. - Identification ID2.

20 The plaintiff affirms that he neither received any written warnings or suspension nor was disciplinary proceedings undertaken against him. No reasons were given for the termination.

That as a result of the wrongful termination of his employment the plaintiff suffered general and special damages that he set out as follows:

- 25
1. Accumulated salary from date of termination until judgment at the rate of shs.68,240/- per month- Exhibit P8 payslip.
 2. Housing allowance at Shs. 34,120/- per month from date of termination until judgment.-Exhibit P9.
 3. Contribution to social security fund per month Shs. 12,283/-
 - 30 4. Special allowance Shs. 20,472/-
 5. Shs. 300,000/- being costs of transport of plaintiff's property from Kakira to Mbale. (The receipt for this claim was rejected under O.7 r.14 and 18 C.P.R. for not being annexed to the plaint).

General damages were claimed for:

- 5 ▪ Mental torture suffered due to sudden termination without reason or disciplinary proceedings being conducted; terror and embarrassment for being put under tight security and being escorted from the defendant's premises when no crime had been committed.
- Embarrassment suffered by the plaintiff and family as a result of the immediate halting of payment of future allowances and salaries, resulting in failure to pay school fees and lack of medical treatment.
- 10 ▪ Failure to get alternative employment due to age and for losing a chance to further his education (Higher Diploma in Applied Scheme at Uganda Polytechnic Kyambogo, where he was to be sponsored by the defendant.-Exhibit P9
- Loss of retirement benefits from NSSF due to illegal termination and loss of gratuity.

15 In cross-examination the plaintiff said that he did not collect the money offered by the defendant in the termination letter because he feared that his identity card would be confiscated.

20 He failed to report to Kyambogo on 14.10.96 within the 7 days required by the admission but intended to reapply in August, 1997, but lost his job in July of the same year.

 The plaintiff admitted that the NSSF entitlement was paid but that had he continued working he would have earned more.

 The next hearing was not until 04.07.11, when the plaintiff's witness was heard.

25 PW2 Mukhwana Tom is a former workmate of the plaintiff at the defendant company. He joined the company in 1994 and got to know the plaintiff later the same year. The witness confirmed that the plaintiff was employed by the defendant and that his services were terminated in 1997. They were under the Uganda Workers National Agricultural Plantation Union and were governed by the agreement signed between the defendant company and the
30 Union.

 The witness also asserted that the agreement did not provide for termination and that therefore the plaintiff's services were terminated under the old agreement. The agreement provided for 3 months notice prior to termination, leave and transport allowance.

That the plaintiff's name was tarnished as he was escorted off the company premises under tight security; and he suffered damages for failure to be given notice resulting in his children falling out of school.

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The witness clarified that the period during which they were working; the defendant company had 3 agreements:

1. February 1987 which was for two years but was used up to 1995.
2. 1995 – 1996 which was revised.
- 10 3. 1996-1997 signed by both parties and valid at the time of termination of plaintiff's employment.

But when the 1987 was shown to him in cross-examination the witness said it was not the right one because of the signatures on it. Admitting that the defendant used the 1987
15 agreement, he added that the Union never complained as they sided with the company. However, he denied knowing that the plaintiff was planning a strike.

The defendant called two witnesses in defence.

Harry Dramadri DW1 is the Union Branch Secretary of the National Union of Plantation and
20 Agricultural Workers, Uganda, Kakira Branch. He joined the Union on 18.12. 96.

DW1 told court that the Defendant Company and the Union had agreements in writing concerning collective bargaining. The agreements provided for:

1. **Wages and salaries.**
- 25 2. **Terms and conditions of service.**

However, he clarified that the terms and conditions of service did not apply to employees who were not members of the Union.

30 This witness first met the plaintiff in 1996, when the Union Branch was conducting Branch Executive elections. Both the plaintiff and the witness were contesting for posts. DW1 won the elections and became the Union Branch Secretary in December, 1996.

When he took office, he found photocopies of the 1987 agreement signed between the Union and the Management of Kakira Sugar Works 1985 Limited.

5 The agreement spelt out the monetary elements i.e. salaries and wages, plus terms and conditions of service that governed the unionized employees. It is the agreement referred to in paragraph 4 of the amended plaint and was signed in February, 1987.

At page 2 of the agreement, paragraph 8 provided for notice of termination after satisfactory completion of the probationary period. Any employee who had worked for 1 – 4 years was entitled to one month's notice.

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In the last paragraph at page 9, it was provided that the agreement was to be effective for a period of 2 years from 1st February, 1987. The agreement was tendered in evidence as exhibit D1. It was duly signed by both parties.

15 In 1992, another collective bargaining agreement was concluded between the defendant and the National Union of Plantation and Agricultural Workers (Uganda). In clause 8 of the agreement it was provided that **“services to be terminated in accordance with the contract”**. The document was duly signed and witnessed. It was tendered in court as exhibit D2.

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The witness contended that the agreement signed in 1995 between the defendant and the Workers Union does not provide for termination of services. - Exhibit D3. The agreement was only negotiated for the monetary elements but never revised the terms and conditions of service, since the 1992 agreement was still valid and applied in this respect.

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By the time the witness saw the plaintiff in December, 1996, the plaintiff had worked for the defendant company for about 3 years. He therefore qualified for one month's notice or one month's salary in lieu of notice.

30 The letter of 22.07.97 terminating the plaintiff's services was copied to the witness in his capacity as Branch secretary. - Exhibit D4. Normally, it would have been his duty as Branch Secretary to talk to the plaintiff to ensure that he understood the clause under which his services were terminated. However, by the time DW1 received a copy of exhibit D4, the plaintiff had already left the company premises and returned to his home district.

DW1 stressed that the defendant Company used the 1992 Collective Bargaining Agreement to terminate the services of the plaintiff. He pointed out that while the plaintiff had been elected Union Branch Chairman on 18.12.96, his post was honorary. In 1998 when the plaintiff complained, the witness advised him to take up the matter with the Union Branch
5 Secretary.

In cross-examination, the witness stated that he was not aware that the Union was involved in termination of the plaintiff's employment. He also denied that the 1992 agreement was forged and emphasised that all agreements were signed between the Union and the Management of
10 the Defendant Company. There were no agreements with individual members of the Union.

DW2 Moses Nyende is the audit Officer of the Defendant Company. He began work in September, 1991 and was in office by the time the plaintiff's services were terminated. He identified exhibit D4 as the copy of the letter terminating the plaintiff's services.
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It was the testimony of DW2 that the plaintiff was supposed to receive some monetary benefits upon termination of his services and that the computation was made. He presented to court the salary ledger card for a period of 24 months from May of the financial year of 1997 – April 1998.
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The ledger indicates that the plaintiff last received payment in June, 1997 (normal monthly earnings).

The terminal dues were computed at Shs. 336,492/- before taxation. After deduction of taxes
25 the final figure was Shs. 311,700/- Exhibit D5.

The Court was also shown a cash payment voucher dated 22.07.97 issued by the paying accountant of the defendant company. It was for the final dues of the plaintiff upon termination of employment- Shs. 311,700/-.

30 According to this witness the voucher was signed by the Payment Accountant, the Auditor, the Accountant, Financial Controller and the Plaintiff.- Exhibit D6 A, B, C, and D. However, he was quick to add that he is not familiar with the signature of the plaintiff. The voucher was signed by the Payee.

The attendance book was put in as ID1 to help court identify the signature of the plaintiff.

The witness concluded saying that the plaintiff was paid his terminal benefits upon handing in his clearance form. But he could not recall if the plaintiff returned his identity card.

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A clearance form is proof that all company property has been handed over. But the plaintiff was escorted from the premises immediately upon termination of his services.

At the close of the defendant's case the parties were given time to file written submissions.

10 Lengthy submissions were filed by each party and they were taken into consideration in determining the issues.

The first issue is whether the plaintiff's employment was lawfully terminated.

15 The plaintiff contended in respect of this issue that his services were wrongfully and illegally terminated contrary to the terms and conditions of service of the agreement 04.10.96 made between the parties.

20 The plaintiff then went through his first appointment; to confirmation when he was give computer no.05223 and was issued with an Identity card and became a Union member. He submitted that the agreement that was in force at the time of termination of his services was the one of 04.10.96. That this can be evidenced from the preamble and clause 1 of the agreement.

25 He argued that the 1987 agreement under which his employment was purportedly terminated had expired. And that ID2 presented by the defendant in evidence was a false document as the original was never signed.

30 Further that since the agreement of 195/96 had been revised; it ceased binding when the agreement of 04.10.96 came into force. He relied upon clause 22 of Exhibit ID1 which provides that **“the agreement supersedes previous agreements or terms and conditions covered therein”**.

The plaintiff insisted that since the agreement of 1996/97 does not have any clause providing for termination of employment, the termination of his services was in breach of contract, more so as there was no proof from the defendant that his services were unsatisfactory. He says that he was recommended for salary increase because of his excellent services.

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Attacking the agreements of 1987 and 1992, the plaintiff contended that both were false as the signatures were forged and there were also signatures on page 3 and 10 whereas a normal agreement is signed only once. Later he says that the 1987 agreement was unsigned and invalid and had expired.

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Intensely denying that he ever received any terminal benefits, the plaintiff stated that once he received and signed the letter of 22.07.97 terminating his employment, he was escorted by the Security officer to the main gate and was told never to be seen on the defendant's premises.

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In addition that he never carried out the usual clearance procedures which would qualify him to receive the terminal benefits. Otherwise his employment card would have been left with the defendant's cashier.

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In response, while the defendant admitted that the plaintiff had been confirmed in service and was a member of the workers union and that the relationship was governed by the memorandum of agreement of terms and conditions of service between the Union and the defendant; the defendant argued that the agreement was revised and changed from time to time to suit the needs of the union members and the defendant.

25

It was also the submission of the defendant that the plaintiff's employment was terminated on 22.07.96 when he had worked for 2 years and 4 months; under the provisions of the agreements then in force as negotiated by the union on behalf of the plaintiff. That the agreements satisfied the provisions of the law. The plaintiff's claim that there was no valid agreement in force was therefore unsustainable.

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Going through the evidence of all parties and the agreements defence exhibits D1 and D2, counsel argued that though the 1987 agreement had expired 2 years after the date it was made, it had established a practice/custom about the length of the termination notice.

Moreover that, the 1995 agreement did not provide for termination since it only amended parts of the previous agreements by improving monetary conditions of the workers. And by the time the plaintiff's employment was terminated both the 1992 and 1995 agreements were in force.

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Counsel challenged the evidential value of the unsigned document ID1 provided by the plaintiff as the one in force at the time of termination saying that the Branch Secretary denied certifying it.

10 Court was urged to find that Exhibit D2 and D3 were the valid contracts governing the employment relationship between the plaintiff and the defendant's; maintaining that when read together with exhibit D1, it is established that the period of notice for a person who had worked for 2 years and 4 months was one month's notice.

15 In the alternative but without prejudice to the foregoing, counsel submitted that if there was no agreement or trade practice as regards termination notice, then the parties had to revert to the law in force at that time.

In this respect counsel invited court to look at the provisions of S. 25(2) (b) of the
20 Employment Act, Cap 219 then in force, which provided for "15 days notice if service had lasted at least one year but less than 3 years.

That therefore, since the plaintiff had worked for 2 years and 4 months, the termination of his services was lawful and did not in any way contravene the Constitution. A month's salary in
25 lieu of notice may be given.

Referring to the plaintiff's claim that as a permanent employee his services could not be terminated, counsel explained that this was a wrong impression. The case of **East African Airways Vs Knight [1975] EA 165** was cited in support. It was held in that case that
30 "**permanent employment is not necessarily a life appointment with the status of irrevocability**".

Counsel then argued that the plaintiff's services could consequently be terminated provided proper procedures were followed. In the present case, counsel asserted that the defendant chose to give 1 month's salary in lieu of notice.

5 As to the failure to give reasons for termination, it was counsel's submission that the defendant was not required to give reasons for termination once notice or payment in lieu of notice is given. He added that this was not a case of summary dismissal but of termination as evidenced by exhibit D7. The case of **Robert Wasikye Vs Kakira Sugar Works Ltd H.C.T. C.A. 05/2001** where it was held inter alia that "**under the law, an employer retains**
10 **the right to terminate the services of an employee at any time even for no reason at all**" was relied upon to support the arguments.

Declaring that the termination of employment would have been unlawful if no payment in lieu of notice was made, counsel cited in support the case of **Barclays Bank of Uganda Vs**
15 **Godfrey Mubiru S.C.C.A. 01/98**. The case was relied upon in **Wasikye's** case (Supra).

Pointing out that the salary ledger Exhibit D5 shows that salary and other allowances due to the plaintiff were computed to a total of Shs. 311,700/- after tax deductions; and that the payment voucher Exhibit D6A indicates that the plaintiff received payment, counsel averred
20 that the allegations of forgery by the plaintiff were never proved.

Further that once the plaintiff's employment was terminated and salary in lieu of notice paid, his rights as employee ceased and he was thereafter not entitled to any incidental benefits. The case of **Wakiro Vs Committee of Bugisu Co-op Union [1968] EA followed in Lulume**
25 **Vs Coffee Marketing Board [1970] EA 155** was relied upon in support. Counsel then prayed court to find that the plaintiff's employment was lawfully terminated.

Bearing the evidence of the parties in mind and giving their submissions the best consideration that I can in the circumstances, I find that it is not disputed that the plaintiff was
30 a permanent employee of the defendant company. He was taken on in October 1994 on temporary terms and was confirmed in service on 16.03.95.

It is apparent from the evidence available that there were a number of agreements between the Union and the Defendant Company signed on behalf of the unionized employees by the

Union Officials. The agreements referred to were 1987, 1992, 1995-1996 and 1996 – 1997. What is not certain is which of these agreements between the Union and the defendant company governed the terms and conditions of service of the plaintiff.

5 The agreement of 1987-Exhibit D1 provided for terms and conditions of service inter alia. Under clause 8 thereof, the agreement could be amended or terminated by either party on giving the other 3 month's notice.

10 Under the addendum page 2, the agreement was to remain in force for a period of 2 years with effect from 01.02.87.

The agreement of 1992 -exhibit D2 was in recognition of the negotiations procedure, access and other terms and conditions of service. **Under clause 4 the employees covered by the agreement were those engaged in growing of cane and production of sugar, including maintenance, engineering, and security personnel in all matters set out under clause 6 of the agreement.**

20 The agreement of 1995/1996 dated 01.11.95 –exhibit D3 governed terms and conditions of service where monetary elements were involved.

Under clause 23 the agreement superseded previous agreements **on terms and conditions of service covered therein other** than salaries/wages. The duration was one year with effect from 01.07.95 but was to remain binding until revised by the parties.

25 The agreement of 04.10.96-ID...was presented by the plaintiff. According to clause 1, it governed the terms and conditions of service of Kakira Sugar Works Employees represented by the Union. **It provided for terms and conditions of service where monetary elements were involved.** It did not provide for termination.

30 Under clause 22 thereof, the agreement superseded previous terms and conditions of service covered herein other than salaries/wages and other monetary elements. The duration was 1 year with effect from 01.07.96 and was to continue binding unless revised by the parties.

It can be discerned from the above information that apart from the agreement of 1987, none of the subsequent agreements provided for termination of services. Yet, the agreement of 1987 had expired within 2 years of its making. The copy of the 1996 agreement put in for identification by the plaintiff though signed and certified, the person who is purported to have signed and certified it on behalf of the Union denied doing so. But even then, the agreement did not provide for termination of services. - See Exhibit ID1 put in on 03.10.07.

I find from the evidence available that there was no valid agreement providing for termination of employment in the present case. Yet it has been settled by case law that **“the right of a party to terminate a contract of employment arises in three main ways”**:

- a) **Express conditions of a contract**
- b) **Implied terms under common law**
- c) **Provisions of the statute**

Refer to **Magezi Vs MultiChoice Uganda Ltd [2007]1 EA 164 (HCU)**.

15

Without express conditions of contract terminating employment in this case, I find that the Employment Act in force at the time of the termination of plaintiff’s service applied.

As pointed out by counsel for the defendant and rightly so, the Employment Act then provided for 15 days notice if employment had lasted for one year but less than 3 years. - **S.25 (2) Employment Act.**

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In Magezi’s case (supra) where it was stated that **“The right to terminate a contract by notice is basic to the employment relationship. The purpose of the notice being to enable a party to sort out his/her affairs and seek alternative employment”**.

25

In the case before court, the employment of the plaintiff was terminated by letter of 22.07.97 with immediate effect, **but one month’s salary in lieu of notice was offered together with other terminal dues**. See Exhibit P7 admitted on 03.10.07. In those circumstances court finds that the termination of plaintiff’s employment was lawful. One month’s salary in lieu of notice offered by the Defendant Company was reasonable, compared to the 15 days that were provided by statute then

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It is generally recognised that Payment in lieu of notice is viewed as ordinary giving of notice accompanied by a waiver of the requirement of the employer to terminate by notice.

The plaintiff's argument that because he was a permanent employee and without any provisions in the contract for termination, his employment could not be terminated is unsustainable. It has been laid down in decided cases that **"permanent employment is not necessarily a life appointment with the status of irrevocability"**. - See **East African Airways Vs Knight [1975] EA 165.**

The plaintiff's employment could therefore be terminated provided proper procedures were followed. And I find that the procedures were followed in this case.

10 The defendant company did not have to give any reasons for the termination of plaintiff's employment for it has been established that **"under the law the employer retains the right to terminate the services of an employee at any time even for no reasons at all"**. – See **Wasikye Vs Kakira Sugar Works Ltd C.A. 05/2001.**

15 In any case it on record that the plaintiff was trying to organise a workers' strike and that in itself was sufficient reason for termination of his services.

The first issue is answered in the negative for all those reasons.

20 Court now proceeds to determine whether the plaintiff is entitled to the remedies sought.

As earlier pointed out, the plaintiff seeks general and special damages for loss of employment. For special damages, in his evidence he claimed accumulated salary, at the rate of 68,240/- Exhibit P8- pay slip; housing allowance, special allowances, NSSF contributions and transport back home.

The general damages the plaintiff stated were for embarrassment and or humiliation suffered as a result of termination coupled with failure to be given reasons for the same; for failure to get other employment and missing out on further training among other things. The details of these claims are set out in the plaint and were referred to at the beginning of this judgment. He also sought to be granted costs of the suit.

The plaintiff reiterated these claims in his submissions.

In response thereof, it was submitted by counsel for the defendant that where the plaintiff's employment is terminated under the law, he is only entitled to benefits only provided by the contract. That in the agreements exhibits D1- D3 there is no provision for damages of any kind to be paid to the employee after termination. Further that, once notice is given or
5 payment in lieu of notice made, no damages can be paid to the plaintiff. The case of **Wasikye (supra)** was relied upon to support this point.

The principle in the case was reiterated to state that the plaintiff was not entitled to any damages, housing allowances or any benefits upon termination if these benefits were not contractual.

10

Counsel concluded saying that with the unchallenged evidence on record showing that the defendant was paid all benefits and payments in lieu of notice, he is not entitled to the remedies sought.

15 It is true as submitted by counsel for the defendant that it is generally accepted that **“an employee is not entitled to damages for breach of contract of service by the employer as the employer retains the right to terminate his service at any time even for no cause. And in such a situation an employee is only entitled to recover arrears of completed service and accumulated leave if any”**.

20

As a rule, general damages claimed in such circumstances would not be granted. Since similar circumstances prevailed in the present case, court finds that the plaintiff is not entitled to general damages.

25 **Special damages:**

It is trite law that special damages have to be specifically proved.

In the present case, the plaintiff sought to be paid as special damages accumulated salary from date of termination until judgment at the rate of shs.68, 240/- per month; Housing allowance at Shs. 34,120/- per month from date of termination until judgment; contribution to
30 social security fund per month Shs. 12,283/-; Special allowance Shs. 20; Shs. 300,000/- being costs of transport of plaintiff's property from Kakira to Mbale.

In cross examination, the plaintiff admitted that the NSSF entitlement was paid but that he would have earned more if he had remained at work. It is also on record that the receipt for the transport fare was rejected as it had not been attached to the plaint.

5 The defendant company on the other hand had offered one month's salary in lieu of notice; special allowance (35%) of the salary; leave travelling allowance for 1996/97; luggage allowance, salary for 1996/97 leave entitlement; special allowance (35%) of salary and 2 days worked. Upon computation of the dues, the total amount came to shs.213, 626/- and the final figure after taxation **was Shs.311,700/=**.

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As already pointed out in this judgment, once employment is terminated, an employee is only entitled to recover arrears of completed service and accumulated leave if any.

For those reasons, I find that the amounts claimed by the plaintiff were on a higher scale. He is accordingly only entitled to what the defendant company offered him, if he has not yet
15 received the money.

Counsel for the defendant claims that the dues offered were paid and that the voucher – **Exhibit...** indicates that the plaintiff received the money. The plaintiff however is adamant that he never received the money as the requirement of clearance before payment was never
20 met and he did not hand in his identity card as would have been the case if he had been paid. The identity card was admitted in evidence as Exhibit P5. Defence witness DW2 who claims the plaintiff was paid admitted to court that he did not know the signature of the plaintiff. The daily attendance book put in for court to compare signatures is not very helpful either as no sample of the plaintiff's signature was taken by court. More significantly, it is on record that
25 on the day hearing of the case took off; **counsel for the defendants was ready to forego hearing if the plaintiff could accept the dues offered by the defendant.** The plaintiff opted for hearing. That to me is an indicator that plaintiff was never paid.

While the plaintiff's receipt of the one month's salary in lieu of notice together with other
30 terminal benefits was conditioned upon his handing over all company property after being cleared by his supervisors. After clearance he would be expected to hand over the identity card and then leave the company premises. The plaintiff was handed the letter terminating his employment and was thereafter escorted from the premises by security personnel as persona non grata. This does not mean that he would not have been paid the dues if he had asked for

them. Indeed when asked in cross examination why he did not collect the dues offered by the defendant company, he replied that **“he did not do so because he feared to lose his identity card!”**

5 For special damages therefore, I find that the plaintiff is only entitled to one month’s salary in lieu of notice together with all the other allowances the defendants offered him upon termination of his employment. Interest is granted on those sums at court rate from date of judgment until payment in full.

Costs:

10 Court is now left to determine the whether the defendant is entitled to costs. It is trite law that costs follow the event unless court for good cause orders otherwise.

If the plaintiff had collected the money offered by the defendant company he would have mitigated his losses and moved on with his life without suffering further unnecessary
15 inconveniences. However, he preferred to go into litigation which was unnecessary for reasons already stated herein. That is, **the right of an employer to terminate services of an employee at any time even without reason.** In the circumstances it will be more just if each party meets its own costs. It is so directed.

20 Judgment is entered in those terms.

FLAVIA SENOGA ANGLIN

JUDGE

25 **12/06/2012**