

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**CIVIL SUIT NO. 0279 OF 2008**

**ELIZABETH NABATANZI LUGUDDE KATWE :::::::::::::::PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL:::::::::::::::::: DEFENDANT**

**BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGMENT**

The plaintiff sued the defendant for general and punitive damages, costs of the suit and interest for breach of contract when HE the President wrote a letter in which he is alleged to have purported communicated a decision not to renew the plaintiff's contract, which according to her was still subsisting.

The facts of the plaintiff's case are that she was appointed a Special Presidential Assistant, Special Duties vide an appointment letter dated the 19<sup>th</sup> day of January 2006 which she accepted through hers dated 27<sup>th</sup> day of January 2006. On the 16<sup>th</sup> day of April, 2007, a Local Agreement was signed by the plaintiff and the Permanent Secretary, Ministry of Public Service, on behalf of Government stating the duration of the contract of service to be 24 months. The plaintiff was on the 28<sup>th</sup> day of May 2008 forcefully evicted from her office on the strength of the alleged non-renewal of contract. It is further alleged by the plaintiff that the Local Agreement signed on the 16<sup>th</sup> day of April 2007 amounted to a new contract which

was to run for period of 24 months. It was breached/terminated before the expiry of the stated period.

At the Scheduling Conference, the following facts were agreed to:

- 1) The plaintiff worked in the President's office as Special Presidential Assistant.
- 2) On the 16<sup>th</sup> day of April 2007, an agreement was executed between the Government of Uganda and the plaintiff.
- 3) The plaintiff was forcefully evicted from her office.
- 4) The duration of plaintiff's contract was to be 24 months.
- 5) The defendant is vicariously liable for acts of its agents and/or servants.
- 6) The plaintiff was entitled to a consolidated salary package of Shs. 24,600,168= (Twenty four million six hundred thousand and one hundred sixty eight shillings only) per annum.

The following issues were agreed:

- 1) Whether the defendant breached the contract of service between the plaintiff and Government.
- 2) What are the remedies available to the parties.

Both Counsel filed written submissions.

On whether the defendant breached the contract of service between the plaintiff and Government;

The plaintiff, in her testimony, stated that she started work as a Special Presidential Assistant/Special Duties on the 3<sup>rd</sup> day of December 2005 basing on an oral contract. On the 19<sup>th</sup> day of January 2006 the plaintiff received an appointment letter which she accepted on 27<sup>th</sup> January 2006. There was a valid contract, the terms of contract included; a duration of 24 months subject to renewal by mutual agreement between the parties; terminal gratuity at the rate of 40% of the basic salary for the period of service; leave of 3 days per month and free medical attention for the plaintiff and immediate family members in a Government Hospital in Uganda.

The plaintiff further testified that the 1<sup>st</sup> appointment of 19/1/2006 was cancelled when she was told to leave office by Amelia Kyambadde, the then Principal Private Secretary to the President, but thereafter she received a new appointment by signing a local contract dated 16/04/2007. During cross-examination the plaintiff stated that she was fired by Ms. Kyambadde in January 2007 but the President called her back into office.

In her submissions, Counsel for the plaintiff contended that when the plaintiff was fired by Ms. Kyambadde in January 2007 her earlier contract expired. The President called the plaintiff back to work in 2007 April, after which Ms. Amelia Kyambadde gave her a new office, and she also signed the Local Contract in April 2007. The new contract was for twenty four months w.e.f. 16/4/2007. This new contract was breached when the plaintiff was forcefully thrown out of her office on

28/5/2008, several months to the expiration of her new contract. The contract was, therefore, breached when the plaintiff was thrown out before it expired.

The defendants had a different view. In the defendant's submissions, it was contended that the plaintiff had been appointed as a Presidential Special Advisor by letter dated 19/1/2006 (Exhibit 1A) and the terms and conditions of the contract were stated in the letter of appointment, and the Local Agreement Form (Exhibit 2B) as required under the Public Service Act, Regulations and Standing Orders. Section 59 of the Employment Act also provides for written particulars of the plaintiff's contract of employment. The Local Agreement reiterated what was in the earlier letter of appointment of the plaintiff. The elements for existence of contract, that is to say, offer, acceptance and consideration, all existed within the duration of the plaintiff's employment with the Government. The effective date of contract was stated in the Local Contract (Agreement) to be the date of assumption of duty.

The defendant further contended that there had been a valid contract of employment between Government and the plaintiff, for 24 months running from 19<sup>th</sup> January 2006 to 19<sup>th</sup> January 2008.

I have considered the submissions of Counsel on both sides, the law and authorities relied on. It is not disputed that there was a valid contract of service between the Government and the plaintiff. The dispute is the date of commencement and expiry of this contract. The plaintiff has claimed cancellation by Ms. Kyambadde of her 1<sup>st</sup> appointment in April 2007, and the signing of a new one on 16<sup>th</sup> April 2007. There appears to be no evidence to prove the allegation of cancellation of

the contract by Ms. Kyambadde, or of the President calling the plaintiff back to work on fresh terms; and the burden of proof lay on plaintiff to prove this. (See Section 101 of the Evidence Act, Cap 6).

Further still, Ms. Amelia Kyambadde who is alleged to have cancelled the 1<sup>st</sup> contract was not the appointing authority (President), or the service authority (Public Service). Further still, even during the period of alleged termination the plaintiff testified that she was still receiving salary.

Based on the above, the court therefore finds that the plaintiff's contract could not have been lawfully terminated by Ms. Kyambadde in April 2007 or at all as she had no authority to do so, and neither was there evidence to that effect.

The plaintiff's Counsel had further contended that the fact that the defendant recommended the plaintiff for a loan of a 12 (twelve) months' duration in January 2008 meant that the plaintiff's contract was to run for the duration of the loan. Counsel for the plaintiff thus reinforced her earlier argument that indeed there was a new contract commencing on 16/4/2007. I agree with the defendant's submission on this issue that the fact that the plaintiff obtained a loan on recommendation of the defendant did not in itself constitute an assurance that the plaintiff's contract would last that long. It is in fact inconceivable that the recommender could guarantee employment to the plaintiff for the duration of the loan period even if circumstances for cancellation of the contract existed, or even when the contract expired. The court's view is that the above arrangement did not

in any way assume or infer that the intentions of the parties to the original contract had been amended or changed. The parties' intention was clearly stated in the letter of appointment that the contract of service was for 24 months from 19/1/2006 to 19/1/2008, subject to renewal.

The court further noted that on 18<sup>th</sup> September 2007, the plaintiff applied for renewal of her contract which she stated was due to expire on January 19<sup>th</sup> 2008. This was done after the signing of the Local Agreement. It can thus be deduced that the intention of both parties was that the Local Agreement signed on 13<sup>th</sup> and 16<sup>th</sup> April 2007, respectively, was intended to be part and parcel of the Appointment Letter of January 19<sup>th</sup> 2006.

The plaintiff's contract was a fixed contract which was set to expire after a specified period. The Employment Act, 2006 defines 'termination of employment' as 'discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of a contract, attainment of a retirement age etc.' The Public Service Standing Orders, 2010 under S.A-N 22 provide that one of the ways to leave the Public Service was upon expiry of a specific period of employment under the agreement. It further provides that notice shall be given to an officer on termination of his or her agreement in which the period of employment is expressed following the expiration of such period.

On the 18<sup>th</sup> September 2007 the plaintiff applied for renewal of her contract. However, on May 3<sup>rd</sup> 2008 the President communicated to the Head of Public Service/Secretary to Cabinet that the plaintiff's contract would not be renewed and that an announcement should be made to the media that she was no longer a member of staff of the President's office. This was communicated to the plaintiff by a letter dated May 16<sup>th</sup> 2008 and the plaintiff was informed to hand over office and property in her possession. After numerous requests to hand over office and refusal by the plaintiff to do so willingly, assistance of the police was sought by the Secretary, Office of the President to oversee the exercise of taking up and locking up the plaintiff's office.

From the foregoing therefore, this contract was for a definite period of 24 months from 19<sup>th</sup> January 2006 to 19<sup>th</sup> January 2008. It did not necessitate a period of notice since the contract was for a definite period. The contract of service expired when the plaintiff was notified that her contract would not be renewed. No notice was required prior to the expiry as stated. Court, therefore, finds there was no breach of contract as alleged.

The plaintiff further submitted under heading "Alleged misconduct ....." that whereas the defendant cited misconduct on the part of the plaintiff in their written statement of defence no evidence of such misconduct was produced, or evidence led in that respect. Further, the Head of State in his letter of 3/5/2008 to the Head of Public Service & Secretary to Cabinet stated that "*I have heard so many cases of indiscipline in respect of Nabatanzi Lugudde and I have decided not to renew her contract .....*;" the plaintiff was not given any hearing as far as these allegations were concerned.

It is the defendant's case that the disciplinary procedures relied on by plaintiff would only arise where the contract was still subsisting, and the employee was terminated before its expiry; and not where the period of service had come to an end/expired. In the instant case the plaintiff's contract had expired on 19/1/2008 in which case she was no longer properly engaged to fall under the Local Agreement (Clause 25). The court agrees with the above position of the defendant, in as far as the contract of employment between the plaintiff and the defendant had expired at the time the President's letter citing indiscipline of the plaintiff was written on 3/5/2008. Since the contract was allowed to expire, before action was taken, there was no breach of any kind since as there was no contract to breach. I had already ruled that the contract had expired by the above stated date.

The plaintiff also claimed what were termed as Employment obligations in the form of transport, accommodation, medication, paid annual leave, and gratuity. She stated that during the currency of her contract, she resided at her house in Luwero, and no housing allowance was given to her; she travelled from Luwero to Kampala everyday and the car she was promised never came.

The Local Agreement contract Clause 17, provides that government quarters may be provided, **if available**. The appointment letter provided that the plaintiff and her immediate family could seek medical assistance from a Government Hospital. However, although these and other benefits claimed were mentioned in the plaint, Counsel just mentioned the alleged entitlements in the plaintiff's submissions, the details of what was alleged to be due and the basis, were not canvassed in the



submissions. Attempts were made to address some of these anomalies of rejoinder but this was not the right place to do so. Moreover these are claims that should have been raised during the currency of the contract, not after its expiry. Court therefore finds it difficult to consider such claims under such circumstances, and I am unable to find there was a breach.

In her rejoinder, Counsel for the plaintiff stated that since the oral contract was formalized on 16/4/2006 that is when it commenced. It was, therefore, to expire on 16/4/2009. The plaintiff continued working for her employer in return for remuneration; salary could not have been paid on an expired contract. “Silence” on part of the defendant for the extra 5 months meant approval of the renewal; that is if the contract had expired in January 2008. Further, that if the contract had expired, HE the President would not need to give reasons for non-renewal.

Counsel relied on *Robert Mukembo Vs Ecoleb, East Africa (U) Ltd C/S No. 54 of 2007* and *David Massa Vs National Housing Corporation, Civil Suit No. 274 of 2001* for the proposition that the defendant had to satisfy court that there was a proper reason for the termination of employment. In the present case, however, I have already found that the contract had expired in January 2008. The letter of non-renewal had also communicated to the plaintiff. Although reasons were given for the non-renewal, since the contract had expired, no justification was required. I don't agree with Counsel's argument that the continued employment of the plaintiff meant her contract had been renewed.

Counsel further attempted to give calculations of the amounts due to the plaintiff in respect of gratuity, transport costs, and general damages. These should however have stemmed from the pleadings, and then been canvassed in the main submissions. Counsel cannot use a rejoinder to fill gaps in the pleadings or submissions.

Finally, court reiterates its findings that there was no breach of contract and hence no merit in the plaintiff's claims. I believe the plaintiff could still follow up with her former employer her lawful claims that flow from the contract, like the gratuity, if not paid to her already. Reasons were given why they are not tackled here.

The plaintiff's case is, therefore, dismissed with costs to the defendant. It is so ordered.

**Elizabeth Musoke**

**JUDGE**

**19/06/2012**

