

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO.0108 OF 2009**

1. KIKOMEKO SAIDA
2. ALEX BIRUNGI
3. NAKAIRE TWAHA
4. DR. WAISWA KIBUMBA
5. NANTUME ZALIA
6. SEMBATYA HAFISWA
7. NAMPINDO JULIUS
8. OKINDO STEWARD
9. KAYAGA HASIFA
10. KAJJA ISMA
11. NAMUGGA MARIAM
12. ESTHER KALYOWA KISAKYE
13. NSUBUGA RAMATHAN
14. KAGOYA KHRUTHUM
15. OCHWO MADINAH
16. NASSUNA STEPHANIE SOPHIE
17. ABDU KHADIR
18. MUSIWA MADINA
19. MUYAMA JACKLINE

.....PLAINTIFFS

**VERSUS**

**KIBULI GIRLS HIGH SCHOOL LIMITED:.....DEFENDANT**

**BEFORE: THE HONOURABLE JUSTICE STEPHEN MUSOTA**

**RULING**

Nineteen Plaintiffs represented by M/s Lukwago & Co. Advocates filed this suit seeking for declaration orders from this court that:

- a) The dismissal of Kikomeko Saida, Musiwa Madina, Nassuna Stephanie Sophie, Ochwo Madinah, Abdul Khadir, Kagoya Khruthum, Nakaire Twaha, Okindo Steward and Nantume Zalia by the Defendant Company without terminal benefits and notice was wrongful and unlawful.

- b) A declaration that the Defendant's refusal to pay the Plaintiffs their salary arrears, terminal benefits for the above mentioned Plaintiffs was wrongful and unlawful.

The Plaintiffs further sought for payment of salary arrears, payment in lieu of notice, NSSF remittance and terminal benefits due to each Plaintiff.

They also sought for an order terminating all the services of un terminated Plaintiffs, Special, general and exemplary damages, costs of the suit. The plaint tabulated the designation of each claimant as well as month and year of employment. It also tabulates the outstanding amount claimed on account of entitlements and un remitted NSSF contributions.

The Defendant, represented by M/s Kwesigabo, Bamwine and Walubiri Advocates is a School called Kibuli Girls High School Limited. It denies liability and contends in its written statement of defence that the Plaintiffs have no cause of action against it because the suit is prolix frivolous, vexatious, bad in law and an abuse of court process. It threatened to raise a preliminary objection to that effect and indeed it did so at the commencement of hearing this suit.

The defence also filed a counter claim against the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs for allegedly having gone with several text books worth Shs.6,000,000/=. It claims that amount as compensation for the stolen text books and costs of the counter claim and interest at 25% per annum from the date of filing till payment in full.

In his preliminary objection, Mr. Walubiri learned Counsel for the Defendant contended that the Plaintiffs have no cause of action against the Defendant because they did not show in their pleadings/plaint that they had a right which was violated by the Defendant. That paragraph 4 (a) of the plaint simply shows they had been teachers from some date but does not show for how long the contract was to run.

Further that the Plaint does not indicate when the contract was terminated unlawfully. That the plaint has no attached document to indicate existence of the contracts of employment. That this implies that the Plaintiffs have no running contract which was terminated. It is not indicated who terminated the contract. According to Mr. Walubiri whatever contract the Plaintiffs ever

had with the Defendant had expired. Regarding Plaintiff's numbers 4 and 6, Mr. Walubiri submitted that their alleged suit was filed without instructions as shown in the defence annexures A & B. That both the 4<sup>th</sup> and 6<sup>th</sup> Plaintiffs are happily employed by the Defendant and have never been dismissed. That the alleged suit by them be dismissed.

In reply, Mr. Katumba for the Plaintiffs maintained that the plaint as presented discloses a cause of action. That this is in the reliefs sought that the dismissal be declared unlawful. Further that there is a claim for salary arrears and terminal benefits as well as the un remitted NSSF contribution. He further contends that paragraph 4 (a) of the plaint shows the date of appointment and paragraph 4 (c) shows money is claimed. That the amounts of money claimed is indicated in paragraph 6. Mr. Katumba further submitted that the date of termination is a matter of evidence. When the suit is heard. Regarding the 4<sup>th</sup> and 6<sup>th</sup> Plaintiff's instructions, Mr. Katumba contended that, that was an issue of evidence since it is framed as issue No.2.

I have considered the submissions by respective Counsel. It is trite law that to constitute a cause of action the plaint must show that the Plaintiff enjoyed a right and that right has been violated and the Defendant is liable. **Auto Garage & Another vs Motokov (No.3) [1971] E A 514.**

It is settled law that the question of whether or not a plaint discloses a cause of action must be determined upon perusal of a plaint alone together with anything attached to form part of it. The claim should be read generously to accommodate any inadequacy in the pleadings.

This is done with the assumption that any express or implied allegations of fact in it are true. However, court is not required to assume the truth of allegations that are incapable of proof. This is however a general rule. There are pleadings which require mandatory and detailed disclosures to make such pleading valid to disclose causes of action. For example in suits for defamation the words complained of must be reproduced and suits based on negligence particulars of negligence must be given. Non compliance will render the plaint defective and with no cause of action.

According to **Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 37 P.24** a cause of action is defined as a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. This includes every fact which is material to be proved to entitle the claimant to succeed, and every fact which the Defendant would have a right to traverse. Cause

of action can also mean the particular act on the part of the Defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the claim, not merely the technical cause of action.

That is why under Order 6 rule (1) of the Civil Procedure Rules:

***“Every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence as the case may be.”***

It is also a requirement under Order 6 rule (2) Civil Procedure Rule that:

***“Every pleading shall be accompanied by a Brief Summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on; except that an additional list of authorities may be “produced later with the leave of court.”***

All these requirements and safeguards were intended to avoid trials by ambush.

After perusing the plaint under consideration, I am inclined to agree with Mr. Walubiri that the plaint in its present form does not disclose any cause of action against the Defendant because it is difficult to tell if they have a right which was violated by the Defendant and the Defendant is liable.

Paragraph 4 (a) of the plaint simply shows the Plaintiffs were teachers with several un explained dates against their names. It is not indicated how long the contracts of employment were running. It was ambiguous for the Plaintiffs to merely list their names designation, month and year without specific dates of when the contracts of employment began and when they were terminated. In paragraph 14 (d) of the plaint it is pleaded that:

***“The 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> have been unlawfully dismissed when they demanded payment, while the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Plaintiffs have been threatened with dismissal for demanding to be paid and the***

***Defendant continues to default in paying salary arrears without any lawful cause.”***

It is not particularized as to what type of payment was being demanded and for what period. That ought to have been revealed to give notice to the Defendant of the nature of claim that was brought to court for.

Secondly, threats of dismissal cannot amount to a cause of action without anything more.

No where in the Plaintiff's pleadings is it revealed as to when the contract in question was unlawfully terminated. The plaintiff has no single attached document or a list of the said documents to indicate the existence of any contract of employment. The plaintiff does not reveal who terminated the contract of employment.

In addition to the above, the plaintiff under consideration is contradictory.

Whereas the Plaintiffs are listed as 19 nineteen, paragraph 3 (a) and (b) list the Plaintiffs as 9 only. Later in paragraph 4 (a) and 6 it lists the claimants as 19. In the prayer for judgment against the Defendant, only the names listed in paragraph 3 (a) and (b) are listed. Whereas it is permitted to amend a plaintiff at any time of the proceedings to clarify a claim, it would be difficult to extend this reprieve to the plaintiff in this case in the form it stands.

Although not commented upon by either party, the Plaintiffs claim NSSF remittances and terminal benefits due to each of the Plaintiffs. It would appear that by law, none of the Plaintiffs herein has the locus standi to claim any monies on behalf of the National Social Security Fund.

According to Section 43 of the National Social Security Fund Act (NSSF Act) the administration of the fund is done by an appointed Inspector. The Inspector can enter at all reasonable times any premises or place of trade or business where he or she has any reasonable cause to believe that persons are being employed in respect of whom contributions are payable under the Act. He/She can then make any examination or inquiry to satisfy himself or herself that the provisions of this Act are being complied with. He/She can question any employer or employee or any other person on any matter concerning the application or compliance with any of the provisions of the Act and require this production for examination any books, register, account, receipt or other documents relating to contributions or to liability to register or contribute under the Act.

An Inspector is appointed by the Minister. Therefore if the Plaintiffs herein claim that their contribution to NSSF was never remitted, then the correct course of action would be to report the NSSF itself upon which the Inspector would swing into action to cause an investigation of the Defendant under Section 43 of the Act.

If anything contrary to the law is found then resort would be had to Section 44 of the Act which creates offences and penalties for contravening the Act. One of such offences is failure to remit deductions to the fund or failure to register if one is eligible to do so.

According to Section 46 of the NSSF Act:

***“All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any Inspector or other public officer of the fund in a Magistrate’s Court.”***

Clearly, the institution and conduct of cases for and on behalf of NSSF must be by an Inspector or other public officer authorized to do so. This means that none of the Plaintiffs herein had the authority to institute a claim for monies which were supposed to be remitted to the NSSF. They had no locus standi to sue on behalf of NSSF. All cases regarding any question of liability of an employer to register as a contributing employer or any question of his or her liability to pay contribution to the fund have to be handled under the Magistrate’s Courts Act.

Section 47 of the Act provides that:

***“Subject to the Magistrate’s Courts Act a Magistrate of any Grade has jurisdiction to hear any cause or matter in all cases arising under this Act regarding any question of liability, “of an employer to register as a contributing employer or any question of his or her liability to pay contribution to the fund.”***

Had the default of the Defendant been reported to NSSF then the fund would have filed the case in question in a Magistrate’s Court since the alleged un remitted contribution amounts to Shs.13,274,000/= only.

For the reasons I have outlined herein above, I am inclined to uphold the preliminary objections raised by Mr. Walubiri for the Defendant that the plaint in its present form discloses no cause of actions. No amount of amendment can cure it. The same will be struck out with costs.

**STEPHEN MUSOTA**

**JUDGE**

**5.12.2012**