

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT MBARARA

CIVIL APPEAL NO. HCT-05-CV-CA-NO.001-2002

(Arising from Mbarara Chief Magistrate's Court Civil Suit No. 001 of 1991)

BUSHENYI DISTRICT ADMINISTRATION ::::::::::::::: APPELLANT

VERSUS

EPHRAIM KATOROBO ::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW.

JUDGMENT

*BUSHENYI DISTRICT ADMINISTRATION (hereinafter referred to as the “Appellant”) brought this appeal against the judgment and orders of the Chief Magistrate – Mbarara, Her Worship Flavia Anglin (as she then was)(hereinafter referred to as the “trial court”) in **Civil Suit No. 01 of 1991.***

Background.

EPHRAIM KATOROBO (hereinafter referred to as the “Respondent”) who was the Plaintiff at trial sued the Appellant seeking general and special damages for unlawful suspension, a declaration that the suspension was unlawful, among other remedies. The Respondent was employed by the Appellant as Treasurer. However, on 2/11/89, without any notice whatsoever, he received a letter suspending him

from his duties, and on 11/12/89, he received yet another letter from the Secretary, Ministry of Local Government, approving the suspension and putting him on half pay.

The trial court while holding that the Respondent's suspension was lawful, it went on to find that since the allegations that led to the suspension were never substantiated and the Respondent was transferred to Nebbi to mark the end of his inconvenience and redundancy, he was entitled to general damages of Shs.1,000,000, and special damages together with costs of the suit. Dissatisfied with this decision, the Appellant filed this appeal and preferred the following grounds of appeal;

1. ***That the learned Chief Magistrate erred in law and contradicted herself when she gave judgment to the Plaintiff after making a finding that the suspension of the Plaintiff/Respondent was unlawful.***
2. ***The learned chief magistrate erred in law and contradicted when she awarded the Respondent damages that had not been pleaded and/or proven in evidence.***
3. ***The learned Chief Magistrate erred in law when she awarded salaries and subsistence allowance "which were speculative and unqualified"***
4. ***The learned Chief Magistrate erred in law and fact when she failed to find that the Respondent was an employee of the Central Government.***
5. ***The learned Chief Magistrate's award of Shs.1,000,000/= as general had no legal basis.***
6. ***The Respondent had no cause of action and his claim was frivolous and devoid of merit and should have been dismissed.***

Mr. Tumwesigye Charlie, Counsel for the Appellant, and Mr. Kahungu – Tibayeita for the Respondent, filed written submissions to argue the appeal. The grounds of appeal will not necessarily be resolved in the manner they were presented and argued owing to the fact that some of them are interconnected. These will be concurrently disposed off for convenience.

Ground 1.

The Appellant faults the trial court for giving judgment in favour of the Respondent after finding that the suspension of the Respondent was lawful. Counsel for the Appellant submitted that answering the issue as to whether the suspension was lawful in the affirmative or in favour of the Appellant, it was a contradiction for after the trial court to turn around and award damages to the Respondent.

In reply, Counsel for the Respondent submitted that the issue would be whether the Appellant was the right party, or the right employer with power to dismiss. That the Respondent's contention was that he was employed by the Public Service, and not the Appellant, and therefore, the Appellant had no power to dismiss or suspend him. Further, that the power to dismiss was vested in the Public Service Commission. The trial court held that it was the method of dismissal which was wrong, and that the Respondent, a Senior Civil Servant, should have been given a warning and a chance to be heard before he was suspended.

In resolving issues raised in this ground of appeal, it is important to critically re-appraise the basis of the trial court's holding, at pages 5 and 6 of its judgment, where it observed that the Respondent's suspension was lawful. The trial court stated that although the case concerned a suspension and not a dismissal, the same reasons that an employer has a right to suspend his employee subject to the

provisions to any contract between them would apply to the circumstances of this case.

The trial court further observed that the District Administration was not satisfied with the way the Respondent was performing his duties of financial management, but that while the trial court was not aware of the terms of service under which the Respondent was employed, it was of the view that he had to conduct his duties to the satisfaction of the employer. In particular the trial court held that;

“....since they were not satisfied with his performance, they were entitled to suspend his services pending investigation into the allegations. To that extent, the plaintiff’s suspension could not be said to be wrongful it is the method of dismissal which was wrong not the actual suspension. The plaintiff, a senior civil servant, should have been given a warning and a chance to be heard before he was suspended.”

The trial court relied on the case of ***Dan Lutalo Kiyangi v. National Insurance Corporation [1985] HCB 41*** where it was held that any employer has an inalienable right to dismiss his employee subject to the provisions of any contract to service between them.

This court entirely agree with the findings of the trial court that the Respondent was a suspended and not a dismissed, and also that the principles of natural justice demanded that the Respondent be accorded the right to be heard before the decision to suspend him could be taken. Indeed, ***Article 28 of the 1995 Constitution*** makes a right of a party to be heard non - derogable, but in this case the Respondent was transferred to Nebbi in November 1991 and was not paid full salary for ten months from the date of the suspension.

Clearly, although the suspension was lawful, the method used in effecting the suspension was unlawful for having, inter alia, violated the principle of natural justice of Respondent's right to be heard. It was the duty of the Appellant to show that the method of suspension was not wrongful or that it was lawful; which they failed to discharge. The trial court could not be reasonably faulted for finding as it did. Ground 1 of the appeal is thus dismissed.

Ground 2 and 3.

In both grounds, the main complaint is that the trial court awarded damages that had not been pleaded and or proven in evidence, and salaries and subsistence allowance which were speculative and unqualified. Both grounds will be disposed of concurrently. Counsel for the Appellant submitted that the award of subsistence allowance for two nights in Kampala, which had not been pleaded, was based on a wrong principle of law because there was no figure in the plaint or the evidence as to how much the Respondent was claiming hence not strictly proved. To fortify this argument Counsel cited the case of ***Jack Busingye & 2 O'rs v J.M.K [1992 – 1993] HCB 171*** to the effect that special damages must be specifically pleaded and strictly proved.

Regarding the salaries from December, 1989 to November, 1991, Counsel argued that the award was based on a wrong principle of law after suspension was handed out on 2/11/89. Counsel relied on ***Othieno Andrew v. National Water & Sewerage Corporation C.A.C.A. No. 67 of 2002 (unreported)*** to buttress his argument on this point.

In reply, Counsel for the Respondent submitted that the Respondent adduced evidence as to the losses incurred after his suspension, when he was paid half salary for ten months, and also when he was not paid salary at all for the two months of

October and November 1991. That he was also not paid subsistence allowance for two nights in Kampala on official duty.

Further, that even though the Respondent may not have given the exact figures, the court was right to award damages that were adequate in the circumstances, and that all these claims were never disputed by the Appellant in the trial court. That as for subsistence allowance for the two nights, the trial court never mentioned the amount, but that this was governed by law and the Respondent would not get more than what he was entitled to. Also, that his salary from December 1989 to November 1991 was fixed and that there was no need for the trial court to mention figures.

The position of the law is that special damages must be pleaded and strictly proved, See: *Jack Busingye & 2 O'ers v J.M.K (supra)* but they need not always be supported by documentary evidence. See: *JB Semukima v. John Kaddu [1976] HCB 13; Obwolo v. Barclays Bank Ltd. [1994] III KARL 101*. The Respondent pleaded, *inter alia*, the specific losses he incurred owing to the Appellant's actions; particularly loss of one half of his salary from 2/11/1989 to December 1989, and loss of full salary for the two months. According to the record of proceedings, at page 9, the Respondent testified as follows;

“From the date of my suspension I suffered losses. I was not paid my full salary to 10 months i.e. from December 1989 – October 1991. My full salary was Shs. 17,000 per month. The subsequent 2 months i.e. October and November, 1991 I was not paid at all. I was not paid subsistence allowance for 2 nights spent in Kampala in October, 1989 while on official duty to take draft estimates for approval by Minister of Local Government.”

This evidence was not rebutted by the Appellant during cross examination or by adducing contrary evidence. The Respondent pleaded salary and subsistence allowance in his plaint, and strictly proved them in his testimony when he stated that he earned Shs. 17,000 as salary; which could be computed to ascertain how much he is entitled to as full salary from December 1989 to November 1991. For subsistence allowance, this could also be computed with regard to the Respondent's position and the salary scale. It was, therefore, not necessary for the trial court to mention figures of special damages. The trial court properly exercised its discretion in awarding the special damages the Respondent was entitled to. Ground 2 and 3 of the appeal are dismissed.

Ground 4.

The Appellant's main complaint is that the trial court failed to find that the Respondent was an employee of the Central Government. Counsel for the Appellant submitted that the Respondent was working as Treasurer of the Appellant, and that at the time there was no decentralization and control was by Central Government. That evidence of the Respondent is that the Appellant suspended him and the Ministry of Local Government approved the suspension, and that it was the Central Government that transferred him to another station. In the premises, Counsel opined that the Respondent was controlled by the Central Government and that after approval of the suspension the Central Government took over the fate of the Respondent.

In reply, Counsel for the Respondent submitted that the Respondent was posted to Bushenyi by the Public Service Commission which had power to appoint and or dismiss. The letter of appointment was written by the Public Service Commission, and not the Bushenyi District Local Government. The Respondent was transferred

to Nebbi by the Public Service Commission, and not by the Appellant. The power to appoint, discipline or dismiss was vested in the Public Service Commission, and not in the Ministry of Local Government.

The trial court, in its judgment, stated that;

“The plaintiff was suspended from duty on 2nd November 1989 on the directives of the RC5 Executive and the Finance Committee. These are servants and/or agents of the District Administration...The suspension was confirmed by the Ministry of Local Government on 11th December 1989. The Ministry approved the letter of the District Administration of 2nd November 1989... The plaintiff, a senior civil servant should have been given a warning....”

The above holding sharply contradicts the Appellant’s contention that the trial court failed to find that the Respondent was an employee of the Central Government. Indeed, even all the exhibits available; in form of letters which were adduced in evidence by the Respondent, show that he was an employee of the Central Government. Civil Servants are ordinarily employees of the Central Government. The trial court rightly found that the Respondent was an employee of the Central Government, and even referred to him as “A senior Civil Servant” in the judgment. Ground 4 of the appeal lacks merit and it is dismissed.

Ground 5.

The Appellant criticized the trial court for having awarded Shs.1, 000,000/- as general damages, without legal basis. Counsel for the Appellant submitted that the Respondent did not lead evidence to prove general damages loss. That the plaintiff does not particularise general damages suffered by the Respondent, and the award

of Shs.100, 000/= was guess work. Counsel for the Respondent submitted in reply that the trial court had the discretion to award general damages, and rightly did so.

The guiding principle in assessment of damages is that the plaintiff who suffers damages due to wrongful act of the defendant must be put in the position he would have been had he not suffered the wrong. See: ***Dr. Dennis Lwamafa v. Attorney General, Civ.Suit No. 79 of [1983 – 1992] KALR 21.***

In the instant case, the trial court found that since the allegations that led to the Respondent's suspension were never substantiated and the he was transferred to Nebbi to mark the end of his inconvenience and redundancy, and for that reason awarded him general damages of Shs.1,000,000/=. It is a well settled principle that an appellate court may only interfere with an award of damages when it is so inordinately high or low as to represent an entirely erroneous estimate, and that it must be shown that the court proceeded on a wrong principle or misapprehended the evidence in some material respect, and so arrive at a figure, which was either inordinately high or low. See: ***Matiya Byabarema & O'rs v. Uganda Transport Company (1975) Ltd. S.C.C.A. No. 10 of 1993 (Unreported).***

Since the Appellant has not demonstrated that the trial court proceeded on a wrong principle in awarding general damages, this court cannot interfere in the exercise of the discretion by the trial court. The trial court also based its award on sound reasoning and it would not be justified to criticize it as having based on guess work. Ground 5 of the appeal is accordingly dismissed.

Ground 6.

The Appellant in this ground faults the trial court for not dismissing the Respondent's suit because he had no cause of action and his claim was frivolous and devoid of merit.

Without belaboring this ground, it is sufficient to state that resolving it would be simply an academic exercise in futility; especially after the finding in the above grounds that the Respondent was a Civil Servant who should have been given a fair hearing before his suspension. Ground 6 lacks merit and it is dismissed.

BASHAIJA K. ANDREW
JUDGE
29/08/2013