

The plaintiff was later promoted by Masaka District Service Commission as a Principle Treasurer of Masaka Municipal Council.

He was later arrested, detained and prosecuted on Criminal charges of abuse of office, financial loss, and conspiracy to commit a felony Vide Criminal Case No. 978 Msk of 2009. at the Chief Magistrates Court of Masaka involving misappropriation of funds for the repair of Nyendo - Kitovu Road amounting to shs. 43,334,000/= (Forty three million three hundred thirty four thousand shillings only) belonging to Masaka Municipal Council.

The Deputy Town Clerk communicated to the CAO of Masaka District council about the criminal charges which had been initiated against the plaintiff and the Town Clerk. The CAO then communicated to the Deputy Town Clerk and directed that the Deputy Town Clerk immediately interdicts the plaintiff. The Plaintiff was interdicted by the Deputy Town Clerk by a letter dated 8th January, 2010.

The IGG carried an investigation into the miss-appropriating of funds amounting to shs. 5,428,000/= from the Public Health Council salary accounts by the plaintiff and three other employees of Masaka Municipal Council. In the course of the investigation the plaintiff and the 3 officers approached the IGG and requested to refund the said misappropriated funds. The said sum of shs.5,428,000/= was deposited by the plaintiff and 3 other staff on the Assets recovery Account of the IGG.

In spite of that, the IGG recommended the submission of the plaintiff to the Masaka District Service Commission (DSC) for appropriate

disciplinary action by the CAO Masaka District. On receiving the IGG report, the CAO of Masaka District made a submission to the District Service Commission recommending for a dismissal of the plaintiff.

The District Service Commission (DSC) allegedly invited the plaintiff to attend its sitting of 31st March, 2010 and read to him the CAO's letter and report and requested him to respond to the allegations and give verbal responses.

The plaintiff allegedly never heard from the CAO of District Service Commission until 12th April, 2010, when he received a letter from the Town Clerk Masaka Municipal Council dismissing him with immediate effect.

On 8th January 2010 the plaintiff was interdicted by the Town Clerk of Masaka Municipal Council following the advice and instructions of the Chief Administrative officer of Masaka District. The Town Clerk's letter of interdiction required the plaintiff to hand over office, not to step on the defendant's premises or offices and he was to receive half salary which was later terminated on 12th April, 2010.

The plaintiff being aggrieved brought a suit against both the Municipal Council and the Masaka District Council, but the case against Masaka District Council was dismissed on a preliminary objection, for failure to serve the Statutory Notice as required by Law. Thus the case proceeded against the 1st defendant, Masaka Municipal Council.

At the hearing, the plaintiff was represented by Mr. Kigundu and the defendant

by Mr. Kalemera. The Counsel for both parties agreed to file written submissions which i shall refer to later.

At the commencement of the hearing during scheduling ,the parties agreed on the following issues.

1. Whether the plaintiff's dismissal was done in accordance with the laid down procedure.
2. What remedies are available?

Issue No. 1

1. Whether the plaintiff's dismissal was done in accordance with the laid down procedure.

In proving his case, the plaintiff called one witness PW1 Mpagi Vicent, the plaintiff himself.

PW1 testified that he is 41 years old, and he joined the Public Service in February,

2001 as a Senior Internal Auditor on a U3 Salary Scale. He was first appointed to

work on Probation for 2 years subject to the Uganda constitution, Public Service Act and the Public Service Regulations made there under and the Public Service orders (See exhbt-P.1) on the court record.

The Plaintiff accepted the Post on 13th February, 2001 by writing to the Town Clerk Masaka Municipal Council accepting the post. (as evidenced by the acceptance letter exh. 'P2' on the court record).

He took up the post, worked in it for 4 years and later applied for the post of Principal Treasurer, which he got on 17th May, 2005 under U2 Scale, still under the same regulation, the Constitution, Public Service Regulations and Government Statutory Orders (as evidenced by exhibit. - P3 on court record) and he worked under this post for 5 years.

He testified further that, in 2008 the IGG initiated investigations against him and 3 colleagues, namely the Town Clerk, Senior Internal Auditor and Accountant.

That the IGG claimed that he and his colleagues had effected double payment of staff salaries which led council into financial loss of Ug. Shs. 5,428,500/= . That the money was collected and refunded by the parties depositing on the Assets Recovery Account of IGG.

That in October, 2009 the IGG submitted a report to CAO which report recommended the plaintiff and others to submit to Masaka District Service Commission for disciplinary action.

PW1 testified further that, he was charged with a Criminal Offence together with 7 other people and the charges were later withdrawn by the Director of Public Prosecution and the offence he was charged with was in connection with construction of a market in Nyendo/Ssenyange and this involved 46,000,000/= (Forty six million shillings).

That on 8th February, 2010 he was interdicted by the Town Clerk of the defendant following the advice of the Chief Administrative Officer of Masaka (as evidenced by the interdiction letter exhibit. P.4)

That whilst on interdiction, he was not allowed to step on the defendant's premises or offices and he was to receive half salary and not to travel outside the country.

That on 10th March, 2005 he received an invitation letter from Masaka District Service Commission (DSC) inviting him for interview and he was required to appear before the DSC on 31st March, 2010 at 10.30 a.m. with all his academic documents (as evidenced by exhibit. 'P5')

That the invitation letter didn't state what post he was to be interviewed for and that when he appeared, the CAO made a submission to the District Service Commission recommending his dismissal from service in fulfilment of the IGG's report. That he was asked verbally why he had not submitted his defence and he told the Commission that he was not aware of the CAO's submission to the District Service Commission because the CAO had not served him with a copy, neither was he aware of the IGG's report because it had not been availed to him and when asked about the money shs. 5,428,500/=, he reported that the money had been refunded to the IGG.

That he told the Commission orally that he had seen nothing necessitating interdiction and dismissal. Because there was no independent investigation carried out against him as the alleged shs, 5,428,500/= had been refunded to IGG.

That he was discharged but never heard from the DSC or CAO until 12th April, 2010 when he received a letter from the Town Clerk dismissing him with immediate effect and he was to forfeit all his benefits.

That he was given 7 days to leave the defendant's house, his properties were seized by the bank, because he had obtained a salary loan, which he could no longer service.

The defendant on its part called 3 witnesses including DWI, Mr. Boyatana Johnson the Town Clerk of the defendant, who stated that he did not know the plaintiff and he only came to know him when he received the statutory Notice as he knew the plaintiff's employment with the defendant as terminated and he was no longer an employee of the defendant as the available records showed he was dismissed by the acting Town Clerk of Masaka Municipal Council on the directive of the District Service Commission under Minute No. DSC/min. 07th April 2010.

DW1 testified further that, the IGG initiated investigations against the plaintiff and 7 others and when he was served with a statutory notice, he checked in the records and found the IGG's report indicated that the plaintiffs and his colleagues be submitted to the District Service Committee for disciplinary action. (As evidenced by IGG's report exhibit. D1).

That by the time the plaintiff was dismissed, he had already been on interdiction and he wasn't occupying his office. That it was because he was facing embezzlement charges which led the CAO to write to the acting Town Clerk of the defendant to interdict him and his colleagues (as evidenced by exhibit. D2).

That the CAO made submissions to the District Service Commission recommending dismissal of the plaintiff.

That the District Service Commission sat and recommended for the dismissal of the plaintiff. (as evidenced by exhibit. D3).

DW3 testified that on recording the CAO's submission, the District Service Commission recommended dismissal because the IGG had investigated the plaintiff and found he had embezzled money. That as a result he concluded that this conduct justified dismissal of the plaintiff.

Counsel submitted that, if the CAO had thought of commencing proceedings against the plaintiff, the plaintiff had to be charged, prepare a brief statement of the allegations serve a copy to the solicitor general and forward a copy to the plaintiff, giving him 14 days to respond.

That all this was not done, which was contrary to the Regulations. That at the time he was invited to appear before the District Service Commission he was required to take all his academic papers so he knew he was appearing for an interview and that is why he didn't give his written defence as evidenced by minute extra - exhibit. D.7. Counsel for the Respondent cited **Regulation 36(3)** which states that;

"if upon consideration of the responsible officer's report , the Commission is of the opinion that proceedings, for the dismissal of the officer should be continued, it shall appoint a committee, which shall consist of not less than 3 members who shall be Public Officers to inquire

into the matter. One member of the Committee shall be a judge, a magistrate or a Public Officer with legal qualifications, and all members shall be selected with due regard to the standing of the officer concerned. Neither the responsible officer nor any other officer serving in the accused officer's ministry or Department shall be a member of the committee".

He further cited **Regulation 36 (4)** which states as follows:-

The committee shall inform the accused officer, that on a specified day, the charges made against him or her will be investigated and that he or she will be allowed or, if the committee determines will be required to appear before it to defend himself or herself.

Regulation 36 (8) requires the committee to forward its report on the matter to the

Commission together with a detail of the Chairman, framed evidence Led, the defence and other proceedings referred to the inquiry.

That regulation 36 (10) Prohibits the committee from making any recommendation regarding the punishment of any form after the investigations.

Counsel for the applicant submitted that, the above Regulation is couched in mandatory terms and they ought to be adhered to by the responsible officer and District Service Commission before dismissing the plaintiff.

That DW3 testified that the District Service Commission constituted itself into a four member committee and none of the members had the qualifications of investigating the plaintiff. That the plaintiff appeared and was asked questions before the District Service Commission implemented what the committee recommended, all which is contrary to the regulations.

Counsel then cited the case of ***David Iyamuyemye :Vs: Attorney General Civil Appeal No. 81 of 2006 (unreported) where the court held that,*** “ it cannot be said that the appellant was afforded a hearing by the Public Service Commission at the time of his interdiction and subsequent dismissal in Public interest, the Regulation in force at the time required Commission to set up a committee to inquire into the allegations before making any decision . This was not done”.

Court therefore held that the appellant’s dismissal was unlawful as it contravened the laid down procedures. And cited the case of **Surinder Singh Kanda :Vs: Government of the Federation of Malaya (1962)2 W.L.R. 1153.** Where Inspector Kanda had been dismissed and he filed a suit against the Government claiming that the dismissal was made by an authority which had no power to dismiss him and was not given a reasonable opportunity to be heard. Court held that;

“The failure to supply the appellant with a copy of the report of the Board of inquiry, which contained matter which was highly prejudicial to him and which had been sent to and read by the adjudicating officer before he sat to inquire into the charge amounted to the failure to offer

the appellant a reasonable opportunity of being heard and amounted to denial of natural justice”

and **Lord Denning** ,...as he then was held that:-

“if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them”.

That the plaintiff was not given a fair opportunity when the commission had not set up a committee to inquire into the allegations against the applicant before making its decision, as the Regulations at the time in place required the Commission to set up a committee and failure was irregular and declared his dismissal unlawful. And in the case of **Bank Of Uganda Vs: Polly Tinkamanyire (Court Of Appeal Civil Appeal No. 49 Of 2005) At Page 12** (unreported), *court while refusing the appellant’s submission that the relationship between the appellant and the respondent was one of master/servant and therefore the appellant was at liberty to dismiss/to terminate the respondent’s services without any hearing is not entirely correct ,that the appellant had to follow the laid down procedures, accordingly the plaintiff’s employment was governed by statutes and therefore the accused’s dismissal had to follow the procedures.*

That by denying the plaintiff the mandatory time to make his submissions, failure by the District Service Commission to appoint a committee to investigate the matter, the plaintiff had not been convicted

of any offence or caused any financial loss, all was done by the District Service Commission directing the Town Clerk to dismiss the plaintiff never complied with the law and laid down procedures.

Counsel contended that all the Rules and laid down procedures were blatantly floated and that court should declare that the dismissal of the plaintiff was unlawful and improper.

In reply counsel for the defendant contended that in cross examination, DW1 stated that section 55 (4) of the Local Government Act, Cap 243 which was to the effect that, the District Service Commission shall in relation to its functions spelt out in sub section (1) of section 55 of Cap. 243, act only upon the request and submission of the relevant council. [(see extract marked 'A'.) that it was evident from exhibit D6(b)), which was to the effect that the power to exercise supervisory powers over persons holding any office in the service of a District or Urban Council was vested in the District Service Commission.

Counsel for the defendant submitted further that, section 55(4) was amended and there is no longer a requirement for the Council exclusively to submit a public officer to the District Service Commission for disciplinary action. That DW1 gave evidence which was not rebutted by the plaintiff to the effect that the CAO Masaka made a submission to the DSC Masaka recommending the disciplinary action against the plaintiff See page 4 of the plaintiff's submissions.

That current section **55(4) of Cap 243** provides that, *“the District Service Commission shall in relation to its functions spelt out in Subsection (1) Act only upon request and submission by the Accounting Officer”*. That from the exhibit D6 (b) it is evident that, the CAO made a submission, regard the Plaintiff to the DSC. For disciplinary action , as submitted by DW1, in his evidence, that at the time the plaintiff was dismissed, the town clerk was also on interdiction and the CAO Masaka was exercising supervisory powers over management of the Masaka Municipal Council under the provisions of **section 64 of the local Governments Act cap 243**.

Counsel for the defendant contended that, the plaintiff testified that in March 2010 he received an invitation from the Secretary Masaka District Service Commission inviting him for an interview and that he never knew what the invitation was about. That the invitation letter was tendered in evidence as exhibit. ‘P.5’.

That PW1 further testified that he appeared before Masaka District Service Commission on the 31st March, 2010 as required and he was told about the CAO’s submissions which he did not know about. That he was never served with the CAO’s submissions and that he didn’t know the contents. He stated that the CAO told him it was about the 5,420,500/= and that he told the CAO the money had been refunded to the Assets Recovery Account in Bank of Uganda.

Counsel for defendant contended that paragraph1 of. Exhibit P5 states that “The District Service Commission received a submission from the Chief Administrative Officer Masaka recommending that you be disciplined”, that the Plaintiff who holds an MBA from Uganda Marty’s University Nkozi did know that exhibit. P.5 was a notice to appear for

disciplinary proceedings and not a job interview as he was insinuating because it was also further stated in exhibits P5 that *'For purposes of a fair Judgement , you are invited to appear before the DSC on 31st March, 2010...'*.

Counsel for the defendant submitted that, DW3 (Sseremba Mark) gave evidence that he was the substantive secretary Masaka DSC from 2005 to 2011. That he testified that on 31st March, 2010, he was present at the Masaka District Service Commission sitting when the plaintiff appeared for the disciplinary proceedings. That he described how he ushered in the plaintiff into the room.

That after that the plaintiff was questioned by the Chairman of the DSC about his background, employment history and as to whether he knew why he was before the DSC. DW3 testified that the plaintiff said he knew why he was before the District Service Commission ,and for clarity, the Chairman readout the submissions of the CAO Masaka District regarding the plaintiffs disciplinary case. That after reading the submissions the Chairman District Service Commission asked plaintiff whether he had a defence to the submission of the CAO because the DSC hadn't received it.

DW3 further testified that the plaintiff submitted his defence and he apologised for the delay in submitting it. That it was a result of not having the IGG report. That after presenting the defence, the Chairman read it to members of the District Service Commission. The defence of plaintiff was tendered in evidence as exhibit D6." DW3 further stated that the plaintiff lied before this Court when he stated in his evidence that he did not submit exhibit D6 to the District Service Commission.

DW3 also stated that he took custody of exhibit D'6' after the plaintiff submitted it and that it was kept in the file and locked in the DSC safe.

Counsel for the defendant submitted that, Counsel for the plaintiff had falsely or erroneously stated in his submissions that exhibit D6 was never officially received by the Masaka District Service Commission because it doesn't bear their stamp or signature . Counsel for the defendant went on to contend that the mere fact that it does not bear their stamp or signature has no bearing on the chain of custody of exhibit D6 since it was presented by the plaintiff during the disciplinary hearing and it was not delivered at the reception/ records office prior to the proceedings as should have been the case.

Counsel for the defence submitted that DW3 clarified that the receipt of plaintiffs defence was acknowledged in the recordings of the District Service Commission of Masaka and he undertook to avail the court with a copy of the record of the proceedings of the DSC to court which he did .

The court was briefly adjourned after which extracts of the relevant proceedings of the District Service Commission minutes were tendered in evidence and marked as Exbt. D6 (b). According to the defence of the plaintiff, at (Page 129 of Exbt. D6 (b), it was stated that, "*the officer (plaintiff) presented his statement of defence at the time he appeared before the District Service Commission...*" And it was to the effect that, he didn't respond to the CAO's request for defence in time because he did not have a copy of the IGG's report.

That he signed the cheques, that withdrew the money and during that time, he was stressed and applied for leave without pay that had not

been granted to him. The plaintiff also admitted having initiated the refund of the money to the IGG which had been queried by the IGG.

The Plaintiff also admitted evidence that it was his signature on D6 (b) and the document contained the plaintiffs signature was presented before court. The Plaintiff falsely denied submitting Exbt.D6 to the Masaka District Service Commission but did not deny its contents. That he said in evidence that , he wrote a draft, but did not sign it and did not give a copy to anyone. That it was his letter.

That he stated that he gave a copy to the Secretary District Service Commission. That the plaintiff then went a head to give evidence stating the contents of Exbt. D6.

Counsel contended that, the plaintiff committed perjury when he falsely testified in this court that he did not submit Exh.D6 to the Masaka District Service Commission and he also stated in his re- examination that, he did not write a letter to the CAO.

That DW3 gave credible evidence regarding the receipt of Exh. D6. at the time the plaintiff was appearing before the District Service Commission for his disciplinary proceedings and the storage of the documents by the D.S.C. which documents were produced before court and this fact is reflected in the proceedings of the DSC tendered in evidence as exhibit D6 (b) and the contents of D6 are reflected in exhibit D6 (b).

When the plaintiff was asked as to how the defendant got a copy of exhibit D6, he claimed it must have been one of the documents left at his house.

Counsel for the defence submitted that the plaintiff admitted the contents of exhibit D6 and he admitted he authored it and he prayed that the Court finds that the plaintiff submitted exhibit D6 when he appeared before the Masaka District Service Commission on the 31st March, 2010 on the basis of the evidence of DW3 and the relevant circumstantial evidence .

Counsel for the defence contended that exhibit D6 is dated 26th March, 2010, and addressed to CAO of Masaka District with reference to the CAO's letter CR 251/1 and the IGG's report MSk /CF/08/2008, and in the letter he apologized for not having submitted his defence as directed as he received it on 3rd March, 2010 without a copy of the IGG report.

He stated that although the shs. 5,428,500/= was a double payment of P.H.C. staff salaries in December, 2007, that it was partly due to the fact that, at that particular time, he had numerous personal problems which prevented him from detecting such an error. That during investigations, it came to his notice that he had signed some vouchers - (that is 12/21, 12/59, and 12/60) which led to a net of 5, 428,500/= to be in favour of the Accountant.

That he took the lead in recovering and refunding the same funds after he discussed with Town Clerk and he decided to write to Director Legal Affairs in the IGG's Office to allow them pay back the money which he took back personally to IGG's Office to be deposited in the Assets Recovery Account and he apologized for what happened. He then implored that Disciplinary Action should not be taken against him.

Counsel contended that from exhibit D6, the plaintiff acknowledged that he was personally liable for the loss of public funds amounting to shs.

5,428,500/= (five million, four hundred and twenty eight thousand five hundred shillings.) though he claims he became personally aware of it during the investigations by the IGG. That it is clear that the plaintiff accepted he signed the money on behalf of Namaganda Josephine -the Accountant , yet the money was meant to pay the salaries for staff P.H.C. staff.

That Exhibit. D6 proves that the CAO of Masaka wrote to the plaintiff and informed him of the allegations in the IGG's report and the CAO directed the plaintiff to file his defence to the said allegations because it was intended that a disciplinary action was going to be taken against him.

That it is clear that the plaintiff received a copy of the IGG'S report and CAO's letter since he quoted the reference numbers of both documents in the first paragraph of exhibit D6. That as a result, the plaintiff committed perjury, when he stated that he didn't know why he was appearing before the District Service Commission on 31st March, 2010 and did not know about the CAO's submissions to District service commission.

Counsel contended that the case of **Surinder singh kanda Vs:Federation of Malaya** cited by Counsel for the plaintiff to assert that he was not given a fair hearing does not apply as he knew the case made out against him and was given an opportunity to contradict the evidence against him

That in the instant case, it is clear that the CAO Masaka district communicated to the plaintiff the allegations against him. And ordered

him to submit a written defence to the CAO but the plaintiff availed a copy of the defence to the Masaka District Service Commission when he appeared for the disciplinary hearing and he was also afforded an opportunity to give an oral defence to the charges against him at the hearing.

Counsel argued that the plaintiff was given a fair hearing by Masaka District Service Commission contrary to his allegations in the plaint.

That the plaintiff was duly informed of the charges against him by the CAO Masaka. That he prepared a written defense which he submitted when he appeared before the DSC in addition to giving an oral defence before the DSC.

Counsel cited the case of **Mutaasa Edirisa & 4 others :Vs: IGG and Lyantonde District Council Miscellaneous Cause No. 110 of 2010 at Pg. 5** Justice Chibita cited the case of **Onyati David Stephen Vs. Busia District Local Council**), *where it was held that, 'once one is afforded an opportunity to defend one self and a written statement is made, that is sufficient to constitute a fair hearing.'* and the same was held in the case of **Musinguzi Geoffrey :Vs: Kiruhura District Local Administration, Misc. Application No. 193 of 2011 at P.13** to support his contention.

Counsel for the defendant Mr. Kalemera contended that, on the applicability of Regulations 36 - 39 of the Public Service (Commission) Regulations to all Public Officers, including the plaintiff who had a pensionable appointment, Mr. Kalemera submitted that in cross examination, DW3 was questioned at length on this regulation 36.

Mr. Kalemera submitted that Regulation 36 of the public service Commission Regulations, 2009 provides for exceptions, that the provisions of R.36 shall not apply to officers in respect of whom the power of disciplinary control is vested in the Judicial Service Commission, Education Service Commission, Health Service Commission, Uganda police or Uganda prisons service and public officers in respect of whom the power of disciplinary control is vested in any public officer or class of officer or class of public officer by any law in Uganda.

Counsel Kalemera cited an order of the Public Service Commission Regulations, 2009 containing regulation 36 (See D1) on court record. Mr. Kalemera submitted that the provisions of Regulations 36 S.I 288-1 quoted by the plaintiff contained in his submissions as well as cross-examination of DW3, were repealed and are currently not part of the law of Uganda.

That Regulation 57 of the Public Service Commission Regulation 2009 provides for the revocation of SI-288-1 (See D2) on the court record. That the Public Service Commission Regulations 2009, were made on 5th December, 2008 (See D3) and therefore they were the regulations in force at the time the disciplinary proceedings were instituted against the plaintiff.

On the submissions by Plaintiffs' counsel that the district service commission failed to constitute a committee to inquire into the matter of his dismissal as provided under Regulations 36 (3), (4), (8) and (10) of SI 288-1 were repealed and under the Public Service Commission Regulations, 2009 there is no requirement whatsoever for the District Service Commission to constitute a committee to inquire into the matter of the dismissal of an accused Public Officer. And the case of **David**

Iyamuyeme Vs: Attorney General (Supra) is distinguishable. From the present case.

As regards the submission that no committee was instituted by the District Service Commission to investigate the plaintiff as required by the PSCR and Para. 5 (d) that the decision to as whether the plaintiff was effected without the necessary approval of the Solicitor General,

Mr. Kalemera argued that, under the current legislation that there is no requirement for the District Service Commission to constitute a committee to investigate the plaintiffs and there is no provision that expressly states that, the Solicitor General must give approval prior to disciplinary proceedings being instituted against the plaintiff.

Mr. Kalemera submitted that it should be specifically noted that while the plaintiff was under interdiction for the criminal charges relating to the misappropriation of funds amounting to Ushs. 43,334,000/- (forty three million three hundred thirty four thousand) relating to the road construction in Nyendo, he was dismissed after being given a fair hearing by the District Service Committee regarding the misappropriation of shs. 5,428,500/= following the CAO's report arising from the investigations by the IGG.

Mr. Kalemera submitted that, the plaintiff was afforded a just and fair hearing and he committed perjury before the court many times during his testimony and his evidence consists of several false hoods which have been pointed out in the submissions. That it is the principle of equity that *'he who seeks equity must come with clean hands'*.

That the plaintiffs hands are not clean due to his false evidence during his numerous appearances before the District Service Commission's

disciplinary proceeding as well as criminal prosecution as in exhibits. D4 & D5, and the defendant is not legally liable for the dismissal of the plaintiff.

As regards the first issue as to whether the dismissal of the plaintiff was done within the provisions of the laid down procedure?

I have reviewed pleadings of both parties and submissions of their counsel and the court finds as follows:

1. The plaintiff was employed by the District Service Commission to work as a Senior Auditor in Masaka Municipal Council, and was later promoted to Treasurer after working for 4 years. In 2008 the IGG commenced investigations against the plaintiff and three other officers and recommended that disciplinary action should be taken against him. The CAO Masaka made a representation to Masaka District Service Commission recommending for the dismissal of the Plaintiff. There is ample evidence, which has not been rebutted that the CAO Masaka directed the plaintiff to make his defence which he wrote.

The plaintiff as on 31st March 2010 was directed to appear before the District Service Commission for a hearing, whereupon the chairperson heard the submission of the CAO to him and requested for his written defence which he submitted and was also given a chance to make another defence orally.

All the above evidence was not rebutted by the plaintiff in re-examination. It is clear that the plaintiff was informed of the allegations against him by the time he appeared before the DSC for disciplinary proceedings. He was given a chance to submit his written defence which

the CAO had earlier directed him to file, but for reasons best known to himself, he didn't do so. (See D6 (b) on the court record). The plaintiff was also given the opportunity to give an oral defence during the hearing which he did but denies.

Basing on the authority of **Mutaasa Edirisa & 4 others :Vs: IGG and Lyantonde District Council (Supra)** and **Musinguzi Geoffrey :Vs: Kiruhura District Local Government (Supra)**, I find that the plaintiff was given an opportunity to defend himself since he wrote a statement of defence and was also given a chance to defend himself orally.

I am satisfied that there was strong and compelling evidence to show that the plaintiff was given an opportunity to be heard based on the question of following the procedure of the law.

It has been shown that, Regulations No.36 - 39, relied on by counsel for the plaintiff to argue that a committee should have been set up to investigate the plaintiff before a dismissal and that the solicitor General should have approved the proceedings has been replaced by Public Service Commission Regulations, 2009 which is now the law applicable and it does not require either the appointment of committee, or the approval of the solicitor general before dismissing an officer.

It is my considered opinion that the plaintiff was dismissed following the legally laid down procedure.

Issue 2. What are the remedies ordered before:

The plaintiff sought for the following remedies:-

- a) A declaration that the dismissal of the plaintiff is null and void

- b) An order that the Plaintiff resumes his employment
- c) An order for payment of appropriate dues i.e. Plaintiffs Salary arrears and other fringe benefits in accordance with the terms of his employment.
- d) Exemplary damages
- e) General damages
- f) Interest at commercial rate on a, g and e above from the date of judgment till payment in full.
- g) Costs of the suit.

Counsel for the plaintiff cited the case of **David Iyamulemye Vs. Attorney General C.A. No. 81 of 2006** where her Lordship **C. Byamugisha (RIP)** held that,

“The General rule with regard to the award of damages is that a person who has been wronged is entitled to be compensated for the injury suffered for which the defendant has been found liable”.

Counsel for the defendant Mr. Kalemera contended that the court dismisses the suit against the defendant on the basis of his submissions above which are to the effect that the defendant is not lawfully liable for the dismissal of the plaintiff from his service of employment and that the plaintiff should not be awarded any of the prayers and remedies sought for in his prayers.

In view of the above, my findings are that the plaintiff was given a fair hearing and his dismissal was according to the lawful procedures in the law;

I dismiss the plaintiff's suit against the defendant and find that, the plaintiff doesn't deserve the remedies prayed for.

However since the plaintiff has gone through a hard time, he lost a job in 2010, and his children have lost a live hood, awarding costs to the defendant in this case will be an added stress to the plaintiff. I therefore order that, each of the parties will bear their own costs to the suit.

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Margaret C. Oguli Oumo
Judge
4/4/2013

N.B: The Plaintiff committed perjury in many instances. i.e. denied the issue of the 46,000,000/-million for the repair of Nyendo - Kitovu Road and that he was never informed why he was appearing before the DSC for a hearing day before the he was not given a chance to defend himself.

It is courts view that all these were attempts to delay the course of justice and to stop the court from arriving at the truth.

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Margaret C. Oguli Oumo
Judge
4/4/2013

Present:

1. Mugerwa - For Town Clerk
2. Plaintiff - Present
3. Both Counsel - absent
4. Sarah - Court Clerk

