

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL SUIT NO.195 OF 2009**

**OKELLO NYMLORD ::: PLAINTIFF**

**VERSUS**

**RIFT VALLEY RAILWAYS (U) LTD ::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

The plaintiff Okello Nymlord, through his lawyers Barya Byamugisha & Co. Advocates filed this suit against Rift Valley Railways (U) Limited (RVR) who are represented by Kampala Associates Advocates.

The plaintiff's claim is outlined in the plaint and was properly summarized in the plaintiff's submissions and is as follows:-

The plaintiff was appointed on the 20<sup>th</sup> October 2006 as Principal Personnel Officer Grade RG6 by the defendant effective 1<sup>st</sup> November 2006. He was later promoted to human resource manager grade RG4 on 4<sup>th</sup> May 2008. In May the defendant decided to recruit and fill vacancies of a Regional Civil Engineer and Track Maintenance engineer in the Civil Engineering Department.

On 10<sup>th</sup> June 2008, the plaintiff directed his subordinate Personnel Officer to obtain quotations which were obtained from three recruitment firms by one Aisha Nabaggala which quotations were found expensive. The quotations are in exhibit P4.

The plaintiff was advised by the Chief Concessions Officer RVR, Rodney Boy to identify suitable candidates and inform Nairobi head office of the dates when interviews were scheduled to be held.

He indeed communicated to one Gerrie Scheepers Head of infrastructure RVR - Kenya and Rodney Boy. According to the plaintiff, interviews were conducted on 2<sup>nd</sup> July 2008 by a panel of three i.e Gerrie Scheepers, Rodney Boy and the plaintiff which recommended that Engineer Egwang Martin the best candidate be appointed as Track Maintenance Engineer for which the plaintiff issued the appointment letter in accordance with the RVR Human Resource Manual Sections 5.1. 1(b) (see Exh. P9). However, on 2<sup>nd</sup> October 2008, one Dick Smith wrote to Kevin Whiteway (MD) recommending Engineer Semakula Emmanuel to be appointed as Regional Civil Engineer as he had passed all three interviews. (see Exh. P8). In view of this development, the plaintiff was tasked to negotiate the salary payment for Engineer Semakula Emmanuel in consultation with Miss Christina Sigowa - Wadulo, the Operations General Manager Western Region (Uganda). The later recommended that the Engineer be paid shs 4,060,000= per month which would be reviewed after the probation period as per

endorsement of 28<sup>th</sup> October 2008 on Exh. P8. Thereafter the General Manager accused the plaintiff of carrying out interviews and unlawfully appointing the Regional Civil Engineer and the Track Maintenance Engineer without approval. On 11<sup>th</sup> May 2009, the General Manager required the plaintiff to explain why criminal action should not be taken against him. On 13<sup>th</sup> May 2009, the plaintiff wrote to the General Manager explaining the allegations/charges against him controverting them.

And on 21<sup>st</sup> May 2009, the plaintiff was verbally summoned by Brown Odengo Chairperson Board of Directors - RVR, Jacqueline Githingi (Head Human Resources) and Christina Sigowa Wadulo General Manager Western Region to answer to the charges of carrying out interviews and unlawfully appointing two Engineers. The plaintiff gave his defence. He was told that management would investigate the matter while he was on suspension. Later on 19<sup>th</sup> August 2009 in a letter dated 23<sup>rd</sup> July 2009, the defendant terminated the plaintiff's contract of employment without notice or payment in lieu thereof. The reason given for termination was that the plaintiff was guilty of issuing an appointment letter to the Track Maintenance Engineer without authority which was allegedly different from the charges preferred against the plaintiff when suspended. See Annex D.

On 4<sup>th</sup> August 2009, the plaintiff and Moses Twinomugisha wrote to the defendant complaining about the disciplinary procedure and subsequent suspension as being unlawful and requested reinstatement. No reply has ever been received by the plaintiff. At the

end of June 2009, the plaintiff's phones were disconnected and his salary was stopped. However, the email was left open and he used the same to communicate as well as using the company driver who knew his home.

The plaintiff's 21<sup>st</sup> August 2009 appeal against termination of his employment for being unlawful was rejected on 4<sup>th</sup> September 2009.

At the time of termination of his contract, the plaintiff was servicing a loan he had secured from Barclays Bank (U) Limited under a salary loan scheme and as at 27<sup>th</sup> September 2009, the balance was 43,410,972 shillings.

The plaintiff further alleges that the defendant never remitted the plaintiff's NSSF contributions for the months of March 2009 to August 2009 amounting to shs 2,436,000=. The plaintiff avers that the conduct of the defendant in unlawfully suspending him and terminating his contract of service was without regard to the law and his terms of employment. That the actions were unlawful. He further avers that due to the defendant's unlawful acts, he has incurred huge expenses for which he claims special and general damages. He lists the particulars of special damages as:-

- (i) salary arrears from July to August 2009 (4,060,000= pm) - 8,120,000=
- (ii) Payment in lieu of Notice that (3 months) - 12,180,300=
- (iii) Payment in lieu of leave accrued (22 days) - 4,060,000=
- (iv) Severance pay (2 months) - 8,120,200=

- (v) Compensatory Order (3 months) - 12,180,300=
  - (vi) Provident Fund payments - 6,300,000= plus interest
  - (vii) NSSF dues for March, May, July and August 2009 - 2,436,000=
- Total 54, 614,200=

The plaintiff further avers that due to the unlawful conduct and acts of the defendant, he has suffered inconvenience, psychological torture, trauma and anguish for which he claims general damages.

The plaintiff therefore prays that judgment be entered against the defendant for;

- a) A declaration that the defendant breached the plaintiff's contract of service.
- b) Special damages of shs 54,614,20=.
- c) Payment of monies owed to Barclays Bank with relevant interest.
- d) General damages for breach of contract.
- e) Interest on all claims at 20% per annum from 23<sup>rd</sup> July 2009 till payment in full.
- f) Costs of the suit.

In its defence, the defendant denied in total, the contents of paragraph 3 for breach of employment contract as claimed. It contended that;

1. The plaintiff took it upon himself to recruit and offer employment to Engineer Martin Egwang as Track Maintenance Engineer whereas he did not have authority to do so.
2. The General Manager by a letter dated 11<sup>th</sup> May 2009 wrote to the plaintiff asking him to explain why he carried out

- recruitment without authorization and the plaintiff wrote back to the General Manager on 13<sup>th</sup> May 2009 explaining his actions as per Annexures 'A' & 'B' to the WSD.
3. The plaintiff was given a hearing by the Chairman of Rift Valley Railways on 25<sup>th</sup> May 2009 and by a letter dated 26<sup>th</sup> May 2009, he was advised to take leave to pave way for further investigations in his conduct as per annexure 'C'.
  4. The plaintiff communicated by an e-mail as instructed that he was taking leave. It is therefore not true that the plaintiff was verbally summoned and suspended without a hearing. See annexure 'D'.
  5. The plaintiff was advised to ensure that while on leave the company phone was not switched off a fact he did not adhere to.
  6. All attempts to communicate to the plaintiff were futile because his company phone was switched off and by the end of June, the 22 days leave that the plaintiff was advised to take had expired and he had failed to report back to work. As a result his salary payments were stopped (see annexure 'E').
  7. That the plaintiff's contract was terminated in accordance with the employment law and the terms of his employment contract by being offered payment of three months in lieu of notice but the plaintiff chose not to receive the payment. See Annexure 'F'.
  8. The plaintiff has since been paid his provident funds in line with his termination letter and he acknowledges the same as per email Annexure 'G'.

9. The defendant could not have occasioned any loss or damage to the plaintiff as it had no obligation to pay the plaintiff for continuing to be out of office without leave or after termination.

Consequently, the defendant prayed that the suit be dismissed with costs.

At the scheduling conference, both Dr. Barya for the plaintiff and Jet Tumwebaze for the defendant produced their respective documents they each intended to rely on.

For the plaintiffs, the documents were marked as Exhibit P1 to Exhibit P23 inclusive and for the defendant they were marked Exhibits D1 to D6 inclusive.

Issues for determination were agreed upon as follows;

1. Whether the plaintiff was suspended by the defendant?
2. And if so whether the suspension was unlawful.
3. Whether the defendant's termination of the plaintiff's contract of employment was lawful.
4. Whether following termination of the plaintiff's contract, the defendant is liable for the plaintiff's salary loan.

5. Whether the defendant is liable for the unpaid NSSF contributions due to the plaintiff from March 2009 to August 2009.
6. What remedies available to either party.

At the hearing of the suit, only the plaintiff Okello Nymlord testified as Pw1 and the plaintiff's case was closed. And in his evidence, he reiterated the contents of his pleadings as outlined above. He identified all the exhibits tendered and marked during the scheduling conference. In cross examination, Pw1 testified that he was the one signing appointment letters because it was his duty in his capacity as Human Resource Manager.

That appointees he signed letters for are still working up to the time of his testimony. The witness denied receiving a three months notice in lieu of Notice, and the provident fund money but acknowledged receipt of exhibit D6 from Aisha showing that a cheque of shs 6,319,357 was banked in Barclays bank to offset the plaintiff's loan.

In re-examination, Pw1 testified that as Human Resource Manager, he had authority to write appointment letters and in case of the two Engineers he was authorized to write them.

That the ground of termination in paragraph two of Exh. P3 saying that there was no authority to recruit is false. This was the close of the plaintiff's case.



The defendant did not adduce evidence at the trial and court allowed parties to file written submissions in support of their respective cases. Although no evidence was adduced on its behalf, the defendants filed submissions.

I have considered the evidence adduced at the trial and the documentary evidence on both sides. I have related the same to the submissions by respective counsel. I will go ahead and resolve the issues raised for determination and on a balance of probabilities starting with issues 1 & 2.

1. Whether the plaintiff was suspended by the defendant.
2. If so whether the suspension was lawful.

In its submissions, learned counsel for the defendant contends that the plaintiff was never suspended but was sent on leave to pave way for investigations regarding the unauthorized recruitment that he carried out. That this is confirmed by the plaintiff's email dated 29<sup>th</sup> May 2009 (Exh. P4) in which he confirmed that he was going on leave. The defendant further submits that even if the contrary is true, the suspension would have been lawful in the circumstances. It quotes S. 63 (1) of the Employment Act which allows an employer to suspend an employee in the event the employer is conducting an inquiry into the

employee's misconduct. That such suspension does not exceed 4 weeks. That the 22 days given to the plaintiff were well within the law.

Dr. John Jean Barya learned counsel for the plaintiff submitted to the contrary and maintained that his client was sent on unlawful suspension. In order for one to properly resolve these two issues the background of the same has to be outlined. From the evidence adduced and the agreed facts, it is not in doubt that the plaintiff was appointed as per Exhibit P1. He was promoted as per Exhibit P2 and his services were terminated as per Exhibit P3. It has also been proved on a balance of probabilities that the plaintiff as a Human Resource Manager (HRM) participated in a series of meetings and performed certain acts on instructions and with agreement of his supervisors which led to the interview of a Track Maintenance Engineer and a Civil Engineer. There was a panel of three to interview a Track maintenance engineer. These included on G. Scheepers (Head Civil Engineering RVR Uganda-Kenya), Rodney Boy (Chief Concessions Officer/ General Manager RVR Uganda) and the plaintiff as Human Resource Manager.

There is also uncontroverted evidence that an applicant for the post of the Regional Civil Engineer, Emmanuel Semakula, was interviewed by the Human Resource Manager, Chief Concessions Officer and one John Dessus from Nairobi. Both Engineers were endorsed for appointment. Christina Wadulo the new Ag. General Manager endorsed their appointment and they began work on 4<sup>th</sup> May 2009. However, a few days later C. Wadulo sent a charge sheet to the plaintiff alleging that

the later had recruited a Regional Civil Engineer without approval and a Track Maintenance Engineer who had not done any interviews.

In response, the plaintiff responded to the charges explaining that the two were interviewed and approved by the relevant authorities as per Exhibit P7 (minutes of the interview conducted in RVR Kampala Board room on Wednesday 2<sup>nd</sup> July 2008 starting at 10am) and Exhibit P8 (a document signed by Dick Smith CIO acknowledging that the posts taken by Emmanuel Semakula was advertized both internally and externally and he was recommended when found with potential). Despite all this, the Board Chair instructed the plaintiff to take leave days while under suspension. The plaintiff objected to the suspension for it could not be combined with leave (see Exhibit P10). Although he went on 'leave' as instructed, he maintained that it was in reality a suspension.

With the above scenario, I am in agreement with the submission by Dr. Barya that the plaintiff was indeed sent on suspension pending investigations as per the requirement of the Human Resource Policies and Procedures Manual Exhibit P23 Clause 10.5.3(d) which requires an inquiry where serious breach of Company Rules has occurred. It is stipulated that after receiving notification of an inquiry, the employee shall be suspended on full pay and shall continue to be paid until the outcome of the inquiry.

In the instant case, no proper procedure was followed when investigations were started. Disciplinary procedures have to be

implemented after proper investigations have been completed. On 21<sup>st</sup> May 2009, the Chairman of the board (Brown Odengo), summoned the plaintiff to answer queries related to the charge. After responding to the questions raised, the Chairman of the board verbally suspended the plaintiff and demanded immediate hand over of office to the General Manager (Christina Wadulo). When investigations were started, the plaintiff was never called to respond to the findings of the alleged investigations. Instead after, three months his Human Resource Manager contract was terminated. This was the date the plaintiff received Exhibit P3, terminating his employment.

There was a problem with the dates on these communications for as per Exhibit P10, the plaintiff and Twinomugisha Moses wrote to the Chairman Board RVR on 4<sup>th</sup> August 2009 complaining of the flouting of the disciplinary procedures and the prolonged unlawful suspension beyond 4 weeks contrary to S.63 (2) of the employment Act 2006. In view of the above revelations, I am compelled to agree with the plaintiff that the so called leave was not a normal leave but a suspension, as no definite leaves days were given. It is common knowledge that employees are usually suspended as a disciplinary measure to pave way for investigations. Regarding whether the suspension was unlawful, I will agree with the submission by learned counsel for the plaintiff that the same was unlawful because it did not follow the defendants own Human Resource Policies and Procedures Manual, (Exhibit P23) as revised in June 2007 and the requirement of schedule one to the Employment Act of 2006 which requires written warnings before any employee is terminated or dismissed and that

disciplinary procedures should be implemented only after proper investigations have been completed. (See regulations 2(1) & 3(1)). The suspension also went on for more than three months before the plaintiff was finally terminated contrary to the provisions of S. 63(2) of the Employment Act despite the plaintiff a knowledgeable Human Resource Manager bringing it to the attention of the defendant vide Exhibit P10. The suspension was thus unlawful.

Section 63 provides that;

- 1. Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend the employee with half pay.***
- 2. Any suspension under subsection 1 shall not exceed four weeks or duration of the inquiry whichever is shorter.***

I will answer both issues 1 & 2 in the affirmative.

Issue 3: Whether the defendant's termination of the plaintiff's contract of employment was lawful.

In his submissions, learned counsel for the defendant states that the plaintiff's contract with the defendant was lawfully terminated in accordance with clause 14.1.2 of the Employment contract which provides for payment in lieu of notice. That the plaintiff was offered

three months payment in lieu of notice as per exhibit P3. Dr. Jean John Barya submitted to the contrary and urged this court to find that the plaintiff was unfairly, illegally and unlawfully terminated because the plaintiff followed all the recruitment process as shown in Exhibits P4, P8, P9, P21 & P22.

It was held in the case of **Robert Mukembo Vs Ecolab East Africa Uganda Limited HCCS No.54 of 2007** Bamwine J. (as then was) and I agree that:-

***“Where complaints of unfair dismissal are raised, courts resort to ..... written agreements as an embodiment of terms and conditions of the employment. Unlawful and lawful dismissal would in the contexts of such contract of employment relate to the manner of removing the employee from the employment for reasons which do not justify dismissal under the agreement and which is therefore in breach of the contract of employment or doing so in a manner that was in contravention of the contract of employment”.***

Whereas this is the correct position of the law, it is not correct as submitted by the learned counsel of the defendant that it followed the contract of employment to the letter.

As rightly submitted by learned counsel for the plaintiff, it is on record that on 25<sup>th</sup> October 2010, when scheduling was commenced and facts and issues were agreed, Mr. Jet Tumwebaze learned counsel for the defendant put it on record that the defendant conceded to and would pay the plaintiff. (i) Three months pay in lieu of notice as stated in termination letter Exhibit P3. (ii) All the plaintiff's unpaid NSSF monthly contributions of 15% of salary would be paid into his NSSF account.

This position was reiterated on 5<sup>th</sup> July 2012. What this depicted was that indeed the plaintiff had never been paid in lieu of notice *inter alia* which contravened the law.

By this concession, the defendant acknowledged that the plaintiff was entitled to notice but to date pay in lieu of notice has never been given despite of the demand notice. Failure to give notice or to pay in lieu of notice makes any termination unfair or unlawful.

It was held the Supreme Court in **Bank of Uganda Vs Betty Tinkamanyire S C C A No.12 of 2007** per Tseekoko JSC that:

***“In my opinion where any contract of employment like the present stipulates that a party may terminate it by giving notice of specified period, such a contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been***

***given depending on the nature and duration of employment..... Payment in lieu of notice can be viewed as an ordinary way of giving of notice..... The right of the employer to terminate the contract of service whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the court.”***

This however does not mean that an employer can unreasonably terminate an employee’s contract because there is a provision of payment in lieu of notice as was in the case under common law. This is because under S. 68 (1) of the Employment Act 2006, it is provided that:-

***“in any claim arising out of termination, the employer shall prove the reason or reasons for the dismissal and where an employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of S. 71”.***

I will note that in the instant case, the defendant never produced any witness to justify its actions despite being given opportunity to do so. This is the most important reason for this court to conclude that there was no justification for the termination and that it should be declared unlawful for having been based on false premises, without justifiable cause and was consequently malicious.



It was held in the case of ***Jabbi versus Mbale Municipal Council [1975]/ HCB 191***, *inter alia* that:-

***“It was generally accepted that the dismissal was wrongful if it was made without justifiable cause and without reasonable notice.”***

By breaching its own Human Resource Policies and Procedures Manual and the provisions of the Employment Act 2006, it follows that the plaintiff’s dismissal was wrongful and unlawful. The reason given for terminating the plaintiff was that he offered appointment to the Track Maintenance Engineer without authority was not proved by the defendant. This means that it was false because the Engineer as well as the Regional Civil Engineer were appointed after due process and interviews. Exhibit P22 dated 30<sup>th</sup> May 2008, Ref: *“Approval to recruit Track maintenance Engineer”* shows that not only that approval was given but also gave to the Human Resource Manager, the plaintiff, powers of appointment of the Track Maintenance Engineer.

Issue IV: Whether the defendant is liable for the plaintiff’s salary loan?

In his submission, learned counsel for the defendant contended that it is not liable for the plaintiff’s salary loan or any private contract engagement he may have entered with his salary in mind. That the defendant had no duty or obligation at all under the loan agreement

between the plaintiff and his Bankers. That the defendant was not a party to the said loan agreement.

On the other hand, learned counsel for the plaintiff submitted that the plaintiff has the duty to pay the loan because it was premised on the understanding that the plaintiff would continue to be employed by RVR and pay off the loan eventually.

In the case of **Forest Authority versus Sam Kiwanuka Civil Appeal No. 005 of 2009**, the Court of Appeal held that special or general damages may be awarded where a party contracts a loan obligation but as a result of unlawful or wrongful act of another making the loan contractor fail to pay the loan, the latter is entitled to special damages of an amount equivalent to the outstanding bank loan at the time of the unlawful act. The victim is also entitled to general damages for the inconvenience and embarrassment caused to him as a result of the unlawful acts of the defendant.

Whereas it is true as argued by the defendant that is not party to the contract engagement the plaintiff entered into with his salary in mind and not directly liable for the plaintiff's failure to service the loan, the defendant's unlawful act of terminating the plaintiff's employment contract thus causing him to fail to service the loan makes the defendant liable in damages for that unlawful act.

As per the plaint in paragraph 8 and exhibit P14, the Barclays Bank statement of loan account for the plaintiff, when the plaintiff was terminated he had a salary loan under the salary loan scheme for employees of RVR with Barclays Bank. The loan as at 27<sup>th</sup> September 2009 stood at UGX. 43,410,972=. The loan was being repaid at approximately UGX 2, 224,481= per month both principal and interest. The loan was premised on the understanding that the plaintiff would continue to be employed by RVR and pay off the loan eventually which was frustrated by the unlawful act of the defendant. In my considered view therefore, the plaintiff is entitled to the value of the outstanding loan as special damages equivalent to shs 43,410,972= less shs 6,319,357= (deposited by the defendant on the plaintiff's loan account) which is accordingly awarded.

Issue V: Whether the defendant is liable for the unpaid NSSF contribution for the plaintiff from March 2009 to August 2009.

Learned counsel for the defendant did not make submission on this issue, however, learned counsel for the plaintiff submitted that since learned counsel for the defendant conceded that the plaintiff is entitled to his NSSF contribution from March to August 2009, then the amount of 2,436,000 shillings be paid to him.

In my considered view, this submission and request is not correct in view of the legal framework governing contributions made to the NSSF

and claims made there from. Administration of the fund is a preserve of the management and only authorized staff of NSSF. It is the Minister responsible who appoints Officers, Inspectors and employees as he deems necessary for the administration of the fund under S. 42 of the Act.

Under S. 43 of the Act, the duties of an Inspector are outlined and these include *inter alia*, questioning the employer, the employee or any other person on any matter concerning the application of or compliance with any provisions of the Act. He may require production of any books, register, accounts, receipt or other documents relating to the contribution or to liability to register or contribute under the Act.

Failure to cooperate results into legal proceedings. Under S. 44(f) & (g) of the NSSF Act;

***“Any person who fails to pay at or within the time prescribed under or by this Act or the regulations any contributions or payment which he or she is liable under this Act to pay;***

***(g) contravenes in any way provision of this Act as a result of which there is a los to the fund or the members’ account cannot be credited with all the contributions or interest due commits an offence.....”.***

Under S. 46;

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

Section 48;

***“(1) All sums due to the fund shall be recoverable as debts due to the fund and without prejudice to any other remedy, may be recovered summarily as a civil debt”.***

From the above clear legal provisions, it is not the duty of the claimant to file a claim for the NSSF contributions from his or her employer in case of any default. It would appear that any claimant who has issues about his or her contribution with his or her employer has to report or lay a claim with NSSF who will take legal steps against any defaulting employer to ensure that the claimant’s account is updated and or legal action is taken before the money can be passed on to the claimant. In the instant case, although the defendant admits to defaulting in his obligation to pay the plaintiff’s contributions, the remedy lies in him fulfilling his promise to deposit the money with NSSF from where the defendant can claim it. The law does not allow and this court has no jurisdiction to order the outstanding dues to be paid directly to the plaintiff. The correct procedure should be followed.

I will consequently find that whereas the defendant is liable on admission for the unpaid contribution for the plaintiff from March 2009

to August 2009 amounting to 2, 436,000=, this money has to be paid to the NSSF from where the plaintiff shall claim for it.

Issue VI: Remedies available to the parties.

As a result of my above findings, the plaintiff has on a balance of probabilities ruled that he is entitled to the following remedies.

- (i) Pay in lieu of leave since he had 22 days due to him. This was uncontested and this payment is equivalent to one month pay i.e UGX 4,060,100=.
- (ii) The plaintiff was suspended in May 2009. His May and June 2009 salaries were paid. He received his letter of termination on 19<sup>th</sup> August 2009. He should therefore be paid for the July and August period, i.e 2 months, which is  $4,060,100 = \times 2 = \text{shs } 8,120,200 =$ .
- (iii) According to Exh. P20 Alexander Forbes Retirement Fund Rift Valley Railways (UGANDA) Limited Handbook P.15 thereof, the retirement benefits are not assignable nor can they be used as security to guarantee a loan from any source. The fund trustees cannot recognize any purported charge or assignment and cannot consider or guarantee loans under any circumstances. As rightly submitted by learned counsel for the plaintiff this position is reiterated under the Uganda Retirement Benefits Authority Act 15 of 2011 S. 68 (i)(e). Therefore provident fund of UGX 6,300,000= at the time of termination should be handed over to the plaintiff.

(iv) Under the Employment Act where an employer unlawfully terminates the services of an employee, the latter is entitled to compensatory orders and severance allowance/pay. Since the claims under these heads were uncontested, the plaintiff shall be awarded:-

(a) Two months' severance pay,  $4.060.100 \times 2 = 8,120,200=$ .

(b) Three months compensatory pay  $4.060.100 \times 3 = 12,180,300=$ .

(v) The plaintiff shall be paid three months pay in lieu of notice as stated in Exh. P3  $4.060.00= \times 3 = 12,180,300=$ .

(vi) The plaintiff is awarded special damages as allowed in issue IV amounting to shs 43,410,972 less 6,319,357=.

(vii) General damages

The general rule is that general damages are such as the law will presume to be the direct, natural and probable consequence of the act complained of. See: **Storm Vs Hutchinson [1905] AC 515.** Under the circumstances of this case, the plaintiff is entitled to general damages for unlawful suspension and unfair termination which led to loss of earnings and inconveniences suffered. As averred, at his age of 47 years he has found it difficult to find alternative employment. I will award the plaintiff a sum of UGX 20.000.000= as General damages.

All in all I will enter judgment for the plaintiff as outlined herein. All the awards shall carry interest at court rate from the date of judgment until payment in full.

The plaintiff shall get the taxed costs of this suit.

I so order

**Stephen Musota**

**Judge**

**02.04.2014**