

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 0133 OF 2012**

**EBIJU JAMES :::PLAINTIFF**

**VERSUS**

**UMEME LTD :::DEFENDANT**

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

**JUDGMENT**

The back ground to this suit is, briefly, as set out below;

The plaintiff was, through a written appointment letter dated 22<sup>nd</sup> January 2004, Exhibit P.1, employed by Uganda Electricity Distribution Company Ltd (UEDCL) as a Faults Assistant. The terms and conditions of employment were contained in Standing Instrument No. 21. On completion of probation, the plaintiff became a permanent employee. On 17<sup>th</sup> July 2006, during the process of transformation, the defendant took over the plaintiff's employment with UEDCL with its terms and conditions and appointed the plaintiff as a Technical Officer at their Soroti office. Pursuant to the appointment and terms of employment, the plaintiff worked for the defendant who later alleged that, the plaintiff was involved in vandalism of street light conductors and that he had constructed illegal electricity lines. The plaintiff was invited for a disciplinary hearing but he alleges that he was not afforded an opportunity to be heard. After the disciplinary hearing, the plaintiff was suspended from employment and thereafter, he was summarily dismissed. The plaintiff alleged that his dismissal was wrongful as he was not involved in vandalism of street light conductors, nor had he constructed illegal electricity lines.

It was the case for the defendant that the plaintiff was dismissed on the 23<sup>rd</sup> July 2010 for fundamental breach of his contractual obligations including, but not limited to, illegal construction and connection of electricity lines in Soroti Municipality. The defendant contended that the plaintiff was subjected to all procedures and policies entailed in the Employment Act and the defendant's employment manuals including, but not limited to; an opportunity to be heard before a disciplinary panel together with a representative of his choice. Further, he was given adequate time to prepare his defense and the right to an appeal in the event he was dissatisfied with the panel's decision.

At scheduling, two issues were agreed upon by the parties and these are;

1. Whether the summary dismissal of the plaintiff by the defendant was wrongful/unlawful.
2. Whether the plaintiff is entitled to the remedies sought.

The plaintiff seeks the following orders:

- a) Declaration that the dismissal of the plaintiff from employment by the defendant and termination of his employment contract was wrongful and/or unlawful.
- b) Salary, allowances and terminal benefits from the date of dismissal till the date which should have been the plaintiff's normal retirement date.
- c) In the alternative but without prejudice to (b) above, general damages for wrongful/ unlawful dismissal.
- d) Interest from either (b) or (c) whatever is granted by court from the date of dismissal at 40% per annum till payment in full.
- e) Punitive/ exemplary damages.

- f) Interest on (e) above at 20% per annum from the date of judgment till payment in full.
- g) Costs of the suit.

The plaintiff testified in person as PW1 and the defendant adduced no witness evidence.

**Issue 1; Whether the summary dismissal of the plaintiff by the defendant was wrongful/unlawful;**

It was the plaintiff's case that an employer can dismiss an employee summarily if the employee by his conduct indicates that he/she has fundamentally broken his/her contract of service and that courts have termed that as an act of gross misconduct. He relied on *Bank of Uganda Vs Betty Tinkamanyire, Supreme Court Civil Appeal No.12 of 2007* and *S. 69 of the Employment Act 2006* which are to the effect that an employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.

Counsel contended that it was the duty of court to find out whether the act complained of by the defendant amounted to gross misconduct to call for summary dismissal. According to the dismissal letter (**EXH P16**), the plaintiff was dismissed for allegedly operating a mill in the names of AMUSUNGUT PETER, which allegation had not been brought to the attention of the plaintiff during the disciplinary hearing (**EXH P12**). Further, there was no evidence adduced to show that the plaintiff was operating a mill. Counsel submitted that the act of the defendant dismissing the plaintiff on baseless allegations which had not been

brought to his attention during the disciplinary hearing was not only wrongful and unlawful but it was also high handed.

Counsel relied on *Jet Speed Air Services (U) Ltd Vs Joan Tumuhairwe, Supreme Court Civil Appeal No.17 of 2000* to state that there was no evidence which emerged at the trial which showed that the plaintiff breached the contract. Further still, the defendant had not brought any witnesses to court to testify. See, *Shell (U) Ltd Vs George Ndyahabwe [2006] HCB*.

In reply, Counsel for the defendant submitted that the summary dismissal was lawful. He relied on Section 2 of the Employment Act which defines dismissal from employment as the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct. Counsel Submitted that the plaintiff was made aware of the charges/reports concerning his involvement in the theft and vandalism of street light conductors as exhibited in **P12**. Counsel maintained that the plaintiff was informed of the charges as per **EXHIBIT P15** which spelt out the charges and informed him of the disciplinary hearing in addition to advising him to appear with a representative of his choice. Counsel contended that the plaintiff confirmed the fact that he was requested to respond to allegations against him as exhibited by **P13**, titled; **“Response to the subject addressed on vandalism and illegal lines in Soroti”**, and further, the plaintiff confirmed receipt of the invitation to a disciplinary hearing dated 29<sup>th</sup> June 2010 from which the disciplinary committee came up with a report **“D3”**.

Counsel relied on *Stanbic Bank Ltd Vs Kiyemba Mutale SCCA NO.02 OF 2010*, for the proposition that an employer may terminate the employees’ employment for a reason or for no reason at all; however, that an employer must do so according to

the terms of the contract otherwise he would suffer the consequences arising from failure to follow the right procedure of termination.

He further contended that the plaintiff was in employment with the defendant company for a period of 4 years and 5 months which entitled him to one month's payment in lieu of notice. (See Section 58 (3) of the Act). Further, he was given suspension with half pay in line with Section 63(1) of the Act.

It was the case for the defendant company that the disciplinary report "D3" dated 1<sup>st</sup> July 2010 showed that the plaintiff was given an opportunity to be heard by a competent disciplinary panel with adequate notification to prepare his defense and the right to attend with a representative of his choice. The letter dismissing the plaintiff "P16" informed him of his right to appeal to the Managing Director in the event that he was dissatisfied with the dismissal, which right he neglected to exercise.

Counsel concluded that the summary dismissal was lawful as the defendant accorded the plaintiff fairness and followed the procedures as set out in the Employment Act and the defendant's policies.

### **Resolution of issue 1.**

The applicant was summarily dismissed. Counsel for the respondents submitted that summary dismissal was in order because as the defendant had accorded the plaintiff a fair hearing, in accordance with the Act.

Under the Employment Act 2006, the law on summary dismissal is as follows:

- i) Summary dismissal means a dismissal without notice or with less notice than the employee is entitled to under the contract or under the Act.
- ii) Summary dismissal is justified when an employee, by his conduct shows that he has fundamentally broken the contract of service. See Section 69 of the Act.

The phrase fundamentally broken as used in Section 69 is not defined in the Act. However, under common law, which applies to this contract by reason of the provisions of the Judicature Act, the law on summary dismissal is, like in ***Barclays Bank Vs Mubiru (supra)*** a dismissal without notice (and without a hearing) and it is reserved for serious misconduct.

There is no exhaustive list of the misconduct that justifies summary dismissal, but according to ***Laws Vs London Chronicle [1959] 1 WLR 698*** one isolated act of misconduct is sufficient to justify summary dismissal. The test is stated in the above case to be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.

Be the above as it may, it is important to note that the post 2006 Employment Act position is that there is a mandatory right to be heard now reserved by Section 66 of the Act for every form of dismissal, a right not available in summary dismissals previously (***Godfrey Mubiru Vs Barclays Bank*** (supra)) otherwise, the rest of the common law meaning of summary dismissal as stated above was substantially left intact by the Act.

Therefore , even if the applicant's conduct (or misconduct) was regarded as one that amounted to disregarding the essential conditions of the contract of service such as to be regarded as having fundamentally broken the contract of service and

therefore justifying summary dismissal, the applicant had to be accorded the right to a hearing. The right to a hearing is guaranteed by the Constitution of the Republic of Uganda under Article 42 as follows:

***“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.”***

Article 44 (c) also provides that the right to a fair hearing cannot be derogated from.

The question here is whether the applicant was accorded such a right to a hearing as required by the law.

On the right to be heard, it is now trite that the defendant would have complied if the following was done.

- 1) Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.
- 2) The notice should set out clearly what the allegations against the plaintiff and his rights at the oral hearing were. Such rights would include the right to respond to the allegations against him orally and/or in writing, the right to be accompanied at the hearing, and the right to cross-examine the defendant’s witnesses or call witnesses of his own.
- 3) The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant.

The supreme court of Uganda has held in *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA NO.1 of 1998* that; (Kanyeihamba JSC, as he then was);

***“where a service contract is governed by a written agreement between the employer and the employee, as in this case, termination of employment or service to be rendered will depend both on the terms of the agreement and on the law applicable”.***

In the instant case, the employment contract between the plaintiff and defendant was governed by the Standing Instrument No.21 Section 25, which is to the effect that the plaintiff had to be given an opportunity to be heard on any allegations made against him.

The evidence of the plaintiff in his written witness statement uncontroverted by the defendant reads in part as follows;

- “10. That on 21/5/2010, vide a letter dated then, I received a letter from my District Manager requiring me to explain issues of vandalism of conductors and constructing of illegal lines in Soroti which the letter stated were alleged to have been carried out by myself using a company vehicle.***
- 11. That I did not know anything about these allegations and on 22/5/2010, I wrote my response and requested them to give me the particulars and evidence on the allegations since I did not know anything about them.***
- 12. That I did not get any particulars or evidence of the allegation and on 29<sup>th</sup> June 2010, vide a letter dated then, I received a letter inviting***



*me for a disciplinary hearing scheduled for 1/7/2010 at Jinja District office at 10:00a.m.*

13. *That I went for the disciplinary hearing at Jinja District office and was called to the board room where I found 4 members of the disciplinary committee...*
14. *That the committee read to me charges that I had vandalized electric conductors and constructed illegal lines in Soroti and I was requested to answer but since I did not know anything about these allegations, I denied the charges and it was not possible for me to answer the allegations I was not aware of and instead requested them to substantiate the charges and give me evidence on the allegations which they failed to do.*
15. *That there was no witness who came to the committee to testify against me.*
16. *That the allegations remained unexplained and no evidence was brought against me to prove the allegations and that was the end of the disciplinary hearing.*
19. *That on 23<sup>rd</sup> July 2010, vide a letter dated then, I was summarily dismissed from employment and the dismissal letter states that I was operating a mill in the name of Amusungut Peter, Account No. 200253772 with meter number 242156 in Soroti and that the said mill had been illegally using power for a long time”.*

On reading **EXHIBIT D3**, the committee in its recommendations stated that;

***“The committee based on the observations above, noted that further investigations should be carried out to obtain enough evidence ...”***

The above statement meant that the disciplinary committee did not have enough evidence to support the claims made against the plaintiff. It was therefore wrong for the same committee to dismiss the plaintiff basing on insufficient evidence.

It appears to me that under **EXHIBIT P14**, the particulars of allegations made against the plaintiff were not disclosed to him. All the defendant did was to inform him that he was supposed to attend a disciplinary hearing to answer issues in regard to vandalism of street light conductors and construction of illegal lines in Soroti. Specifics of the above were not availed to the plaintiff even after requesting for them as evidenced in **EXHIBIT P13**. This was in contravention of Article 43 of the Constitution (supra) and the principles of natural justice which call for a fair hearing.

Further, the summary dismissal letter addressed to the plaintiff exhibited as **P16**, reads in part as follows;

***“Investigative reports reaching this office indicate that you have been operating a mill in the names of Amusungut Peter...the said mill has been illegally using power...”***

***The above acts amount to gross misconduct attracting summary dismissal. Accordingly you are hereby summarily dismissed from Umeme employment forth with...”***

Page 3 of **EXHP17(A)**, the defendant’s Discipline and Performance at Work Policy and Procedure, states that before any decision to dismiss is taken by the

company, an interview will be held with the employee at which they will have every opportunity to deal with complaints against them.

Basing on the evidence adduced, it is court's finding that the termination of the employment of the plaintiff was done without affording him an opportunity to be heard as the plaintiff was dismissed on an allegation of operating an illegal mill which allegation was not put to him during the hearing with the disciplinary committee. He was thus not given a right to defend himself or comment on that allegation; nor was he given an opportunity to know the evidence brought against him.

Further, in *Shell Ltd Vs George Ndyabawe (supra)*, court held that an employer may dismiss the employee summarily if by his or her conduct the employee repudiates the terms of contract of employment or is in fundamental breach of the contract. See also Section 69 of the Employment Act.

To justify summary dismissal, the breach of duty by an employee must be a very serious one. In the instant case, the defendant failed to prove that the plaintiff was in fundamental breach of his contract. The allegations made against him were not sufficiently proved and required further evidence.

The summary dismissal was, therefore, wrongful and unlawful.

## **Issue 2; Whether the plaintiff is entitled to the remedies sought;**

The plaintiff claims Ug. Shs. 1,020,520/= as compensation in lieu of one month notice, allowances and terminal benefits from the date of dismissal till the date of which should have been the plaintiff's normal retirement date, interest, general damages for wrongful dismissal, punitive damages and costs of the suit.

Counsel for the plaintiff relied on *Bank of Uganda Vs Tinkamanyire* (supra) where it was held that;

***“...the party unlawfully dismissed was entitled to monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice and that party is also entitled to damages for breach of contract”.***

In regard to general damages, counsel relied on *Issa Baluku Vs SBI INT Holdings (U) Ltd HCCS NO.792 OF 2005*, where Justice Remmy Kasule held that;

***“However, another additional principle has been developed by courts overtime in cases of unlawful dismissal. This is the principle that courts, where appropriate in exercise of their discretion, may award damages which reflect the court’s disapproval of a wrongful dismissal of an employee. The sum that may be awarded under this principle is not confined to an amount equivalent to the employees’ wages”***

Counsel submitted that in the instant case, the plaintiff greatly suffered as a result of the defendant’s act of unlawfully terminating his contract. He was deprived of the right to work until his retirement age of 60 years. It became hard for him to look after his family and thus general damages of Ug. Shs. 200,000,000/= (Two Hundred Million Shillings) would be reasonable for wrongful termination of the plaintiff’s contract of employment.

In regard to interest, he relied on Section 26 of the Civil Procedure Act which empowers court to award any rate of interest it deems reasonable. In *Charles Lwanga Vs Centenary Rural Development Bank, CA NO. 30/1999*, it was held that interest in cases of wrongful dismissal runs from the date of dismissal.

He prayed that the plaintiff's damages be paid with interest of 30% per annum from the date of dismissal till payment in full.

In response, Counsel for the defendant submitted that they were willing to compensate the plaintiff with Ug. Shs. 7,080,000/= which was six month's salary and repatriation allowance. He stated that the amount prayed for by the plaintiff was exorbitant and without basis as the plaintiff has failed to show that the defendant's actions were high handed. Further, that the plaintiff perpetuated his own loss by; refusing any chance at reinstatement through appeal, failure to request for recommendation/certificate of employment, frustrating any meaningful discussion on settlement as evidenced by his failure to respond to the defendant's offer of Ug. Shs. 7,080,000/=.

It was the case for the defendant that although the plaintiff alleged that he was unlawfully terminated, he did not plead the special damages particularly and should not benefit from what has not been specifically pleaded. Counsel further submitted that the principle of mitigation of loss of damage resulting from the defendant's breach of contract applied to the instant case. He relied on ***Sutton & Shannon on Contract, 7<sup>th</sup> Edition at page 45*** to state that a party to a contract who suffers by reason of breach committed by another party must take reasonable steps to mitigate the loss. He should not sit back and make no attempt to repair it. If he believes in that way, he cannot hold the defendant responsible for more than the loss which he would have suffered if he had done his best to mitigate it.

Counsel further relied on ***Esso Standard (U) Ltd Vs Semi Amanu Opio Civil Appeal No.3 of 1993*** for the general principle that an employee wrongfully

dismissed is entitled to be compensated fully for the financial loss that may be suffered as a result of the dismissal, subject to the duty of the dismissed employee to mitigate loss.

He concluded that in the instant case, the plaintiff did not attempt to mitigate his loss after dismissal from employment. The letter of summary dismissal “P16” informs him of his right to appeal when dissatisfied with the decision but he decided not to exercise that right. Further, though the plaintiff in his witness statement stated that he was deeply aggrieved by the dismissal, in spite of the several options available to him to mitigate his loss, he did not attempt to do so. Counsel prayed that should court find that the plaintiff was unlawfully dismissed, he should only be awarded the statutory damages pleaded and proved and each party should bear its own costs.

### **Resolution of the issue.**

An employee who is unfairly or unlawfully dismissed as in this case should be compensated adequately in accordance with the law .In *Barclays Bank of Uganda Vs Godfrey Mubiru* (supra), it was held that;

*“In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such 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...”*

Thus, the plaintiff having been dismissed without notice is entitled to one month's gross pay wages in lieu of notice which is Ug. Shs. 1,020,520/=.

The plaintiff is not entitled to special damages as they were never proved by him. The principle in law underlying special damage is that they need to be specifically pleaded and strictly proved. See *Asuman Mutekanga Vs Equator Growers (U) Ltd SCCA NO.7 of 1995*.

As to whether the plaintiff is entitled to general damages for unlawful termination of his employment, it was held in *Issa Baluku* (supra) that;

*“an employee, whose contract of employment contains a provision of termination notice, is terminated prematurely or illegally, cannot maintain a claim to be compensated for the remainder of the years or period when he or she would have retired. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred, are merely speculative and thus not claimable in law.”*

So the plaintiff cannot claim to be compensated for the remainder of the years he would have continued working till retirement.

However, another additional principle has been developed by the courts over time in cases of unlawful dismissal. It is to the effect that courts where appropriate, in exercise of their discretion, may award damages which reflect the courts disapproval of a wrongful dismissal of an employee. The sum that may be awarded under this principle is not confined to an amount equivalent to the employees' wages. See, *Issa Baluku* (supra)

In *Bank of Uganda Vs Betty Tinkamanyire* (Supra), Tsekooko JSC, expounding on the above principle, considered the Supreme Court of Ghana case of *NORTEY-TOKOLI & OTHERS VS VOLTA ALUMINIUM CO. LTD (1990) LRCPAGES 579 and 599*, where the supreme court of Ghana justified the said principle on the ground that;

***“a Ghanaian who has suffered a wrong expects redress and our law of wrongful dismissal should reflect it”.***

It follows therefore that general damages are awarded to an employee, whose employment has been unlawfully terminated, if that employee proves facts that call upon courts disapproval of the employers conduct in terminating the services of the employee.

Taking the decisions referred to above in consideration and other factors relating to the case, that is to say, failure by the plaintiff to mitigate the loss by appealing or looking for alternative employment, court awards the plaintiff general damages of Ug. Shs. 20,000,000/= for the embarrassment of being portrayed as a fraudulent and incompetent person, as well as the resultant inconvenience and suffering meted out to the plaintiff by the defendant's actions.

The sum awarded as general damages shall carry interest at the rate of 15% per annum from the date of judgment till payment in full.

The plaintiff also sought punitive and exemplary damages. I have considered the prayer. I do not find this case to be a proper one for award of punitive damages and therefore none are awarded.



The plaintiff will have the costs of this suit.

In the final result, judgment is entered in favor of the plaintiff against the defendant. The following awards are made;

1. A declaration that the plaintiff's summary dismissal was wrongful.
2. Ug. Shs. 1,020,520/= (One Million Twenty Thousand Five Hundred Twenty only) as payment in lieu of notice.
3. Ug. Shs. 20,000,000/= (Twenty Million only) as general damages.
4. Interest on (2) above at the rate of 20% per annum from the date of dismissal till payment in full.
5. Interest on (3) above at 15% per annum from the date of judgment till payment in full.
6. Costs of this suit will go to the plaintiff.

Orders accordingly.

**Elizabeth Musoke**

**JUDGE**

**9/03/2015**