

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

CIVIL SUIT NO. 173 OF 2008

CHRIS HENRY MUKOOLI ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

THE NEW FOREST CO. LIMITED ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff, Chris Henry Mukooli through his lawyers M/s Bamwite & Co. Advocates filed this suit against The New Forest Company the defendant, for general and special damages arising out of wrongful termination of his services.

The facts giving rise to the cause of action are that the plaintiff was at all material times in gainful employment with the defendant as Financial Controller under a contract agreement executed by the two for a period of three years with effect from 15th August 2007. The employment contract is dated 2nd July 2007. The plaintiff avers that he was on duty on 28th February 2008 when Miss Ofelia Burton the Chief Financial Controller of the company summoned him at a hotel and informed him verbally that his services at the company had been terminated. That the plaintiff was not allowed even to go back to the office and hand over officially.

In its written statement of defence, the defendant denied liability and stated that they took action because the plaintiff failed to perform his duties as per his contractual obligations. That he was consequently offered an amicable exit of the contract of employment plus 8,928,571/- as discretionary payment to save him the shame of termination with disgrace as per the provisions of his contract of employment.

During the scheduling conference conducted on 2nd July 2009, the following issues were agreed upon:

1. Whether the termination of the plaintiff's employment was wrongful.
2. Whether the plaintiff is entitled to the relief sought.

In addition to the general damages claimed, the plaintiff claims special damages as follows;

- a) Salary for the rest of the contract period of three years from date of wrongful termination of services at the new salary scale of 4,260,000/- per month from February 2008 totaling 127,800,000/-
- b) Unpaid leave allowance of 4,260,000/-
- c) Transport of family and property from Kampala to Iganga after termination of 1,000,000/-
- d) Disturbance allowance of 4,260,000/-
- e) Terminal benefits (gratuity) of 10% of the salary of 12,780,000/-

At the hearing of the suit, only the plaintiff testified in his case and the defence had only one witness, Daniel Tugume, the Human Resource manager. When required to file written statements, only learned counsel for the defence complied.

I will now go ahead and resolve the issues as raised.

1. Whether the termination of the plaintiff's employment was wrongful.

In his submission, learned counsel for the defendant stated that the plaintiff was terminated from his employment under the terms of his contract clause 5.2 which provides that the board /management may terminate the employment at any time by written notice of not less than three months or by payment in lieu thereof unless the notification is within the probation period may be two weeks as shown in exhibit P1.

Learned defence counsel further submitted that the plaintiff in his evidence during re-examination confirmed receipt of his payment in lieu of notice in accordance with clause 5.2 and evidence of his acknowledgement is contained in exhibit P7. That this confirms that the employment contract was terminated in accordance with the terms of the plaintiff's employment contract.

I have considered the evidence adduced by both sides and submission by learned defence counsel. It is clear that the relationship between the defendant and the plaintiff was contractual governed by the contract of employment exhibit P1.

Clause 5 thereof provides for termination and it reads as follows;

“TERMINATION OF EMPLOYMENT”

5.2 The board or management may terminate herein under at any time by written notice of not less than three months or by payment in lieu thereof.”

This provision in the contract clearly indicates that the employer in this case had the right to terminate the contract with the plaintiff by either giving written notice of not less than three months or payment in lieu thereof. The defendant in this case chose payment in lieu of notice.

It was held by the Supreme Court in the case of **Bank of Uganda Vs Betty Tinkamanyire SCCA No. 12 of 2007** per Tsekoko JSC that:

***“In my opinion where any contract of employment like the present stipulates that a party may terminate by giving notice of a specified period, such a contract can be terminated by giving the specified notice for 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 of 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 the common law. This is because under section 68(1) of the employment Act 2006, it is provided that

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

In the instant case, the defendant produced one witness and documentary evidence to justify its actions. The Human Resource Manager of the defendant, Dw1 stated that he came across the record of the plaintiff. He read the file and found out that the plaintiff had difficulties in performing duties and failed to submit financial payments returns. He also failed to exercise internal control and budgetary controls. He failed to do bank reconciliation and/or account for the money spent. Exhibits D4, D5 and D6 showed that the plaintiff had difficulties in performing his duties.

Pw1 Mukooli faulted the defendants for not informing him of his employment offences and affording him a hearing. That he only saw an e-mail dated 8th January 2008 titled gross financial mismanagement.

These complaints would be considered if the plaintiff was not and did not accept payment in lieu of notice. Exhibit D8 shows that the plaintiff was paid in lieu of notice. He accepted the payment although he attempted to allege that he was forced to receive his payment by cheque. There is no proof of this force being used since the plaintiff received the cheque, cashed it and spent the money himself. Certainly the plaintiff could not have been coerced into cashing and spending that money. It is my considered finding that this allegation is an afterthought to try and buttress the plaintiff's legal standing in this case and it was not pleaded in his earlier pleadings.

The plaintiff in cross-examination confirmed that he received payment at termination. Therefore the allegation that he was not told what was being paid for cannot stand. Exhibit D8 clearly states that the payment was in lieu of notice of termination. I believe the plaintiff in his position and personal caliber ought to have read the acknowledgment/discharge note before proceeding to sign and receive what was offered to him.

Therefore it is my finding that the defendant exercised its option to terminate the plaintiff's contract in accordance with exhibit P1 Clause 5.2 of the Employment contract notwithstanding that there was an option to dismiss the plaintiff under Clause 5.3 of the employment contract for incompetence.

The plaintiff has not proved his claims against the defendant on a balance of probabilities. The defendant lawfully terminated the plaintiff's contract. I will answer issue one in the negative.

Issue two: Whether the plaintiff is entitled to the reliefs sought?

Having resolved issue 1 in favor of the defendant it follows that the plaintiff is not entitled to the remedies sought. Accordingly this suit is dismissed with costs.

Stephen Musota

J U D G E

24.03.2015