**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**CIVIL SUIT NO. 174 OF 2008**

**SOSPETER TATYABALA ::::::::::::::::::::::::::::: PLAINTIFF**

***VERSUS***

**1. SOC SMG**

**2. DRESHAK ENTERPRISES LTD ::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

The plaintiff Sospeter Tatyabala through M/s Ekirapa & Co. Advocates filed this suit against the defendants jointly and severally for compensation for injuries sustained during the performance of his duties, breach of his contract of employment, unfair termination, special, exemplary and general damages, interest and costs of the suit.

The facts constituting the plaintiff’s cause of action are that:

1. Sometime in November 2005 the plaintiff was recruited by the second defendant and underwent training in order to go and work in Iraq as a contract guard.
2. Subsequently the plaintiff was contracted by the first defendant on the 8th day of April 2006 to work as a non combatant security guard for twenty months and was posted to Iraq vide an overseas third country nationals contract.
3. The plaintiff carried on his work with due diligence and to the satisfaction of the defendants until the night of 17th February 2007 when he developed a painful swelling on the right side of his back which he reported to the platoon commander/leader.
4. On 19th February 2007 the plaintiff was informed that his services had been terminated and accordingly was deported to Uganda on 4th March 2007.
5. Upon arrival in Uganda, the plaintiff underwent medical treatment at Bambi Medical consultants and later went for surgery at Mulago hospital for chronic traumatic brustis of an adventitious bursa overlaying the inferior aspects of the scapula which is caused by repetitive strain/sheering injury.
6. As a result, the plaintiff was left permanently incapacitated to the tune of 17%

In their joint written statement of defence, the defendants averred that at the time of termination of his services as a guard, the plaintiff had been obstinate and had refused to execute his duties, actions that amounted to gross misconduct. That the plaintiff had rejected treatment for his ailments and had become verbally abusive and threatened the first defendant’s members of stuff. The defendants further denied that the plaintiff was unlawfully terminated and/or that he suffered any loss and/or damage as alleged.

At the scheduling conference the following issues were framed for court’s determination:

1. Whether the defendants breached a contract of employment between the plaintiff and first defendant.
2. Whether the plaintiff suffered any injury.
3. What remedies are available to the plaintiff?

When I perused Exhibit P2, it showed that the plaintiff was diagnosed with chronic traumatic bronchitis of an adventitious bursa overlaying the inferior aspect of the scapular which is a result of repetitive strain or shearing injury. In Exh. P6 it is indicated that the plaintiff underwent surgery and his current incapacity was assessed at 17%. The medical report was tendered in as Exhibit P6.

Learned counsel for the plaintiff submitted that according to clause G 51 of the contract of employment executed between the defendants and the plaintiff, one of the requirements was that the plaintiff was to be in appropriate physical and mental condition to perform the services and the first defendant reserved the right to request certification from a medical professional regarding the plaintiff’s fitness. To ensure this, the plaintiff and his colleagues were subjected to medical tests under the supervision of the defendants and were found to be free of any illness and they were physically fit.

In light of the above uncontroverted evidence in support of the plaintiff’s claim, I will find that the plaintiff suffered injury while performing his duties.

Learned counsel for the plaintiff prayed that the plaintiff be paid compensation for the permanent incapacity suffered amounting to US$10,200. He relied on S. 27 of the Workmens’ Compensation Act, Cap. 225 which provides that:

***“27. Where a medical practitioner grants a certificate stating that***

1. ***A worker is suffering from a scheduled disease causing disablement…………. and was contracted within the twenty four months immediately previous to the rate of this disablement……. the worker………… shall be entitled to claim and to receive compensation under this Act as if the disablement had been caused by an accident arising out of and in the course of his or her employment”.***

The disease suffered by the plaintiff i.e. bursitis is one of the scheduled diseases. Therefore under S. 29 of the Workmens’ Compensation Act the employer is liable to pay compensation to the employee for the disease so contracted. Compensation is arrived at by multiplying his salary for sixty months by the percentage of disability which in the instant case is 1000 X 60 X 17/100 which equals to US$10200. I will accordingly award that amount.

Regarding special damages the general principle is that special damages must be specifically pleaded. They are compensatory in nature. In this case the plaintiff pleaded for judgment in his favor for special damages amounting to 2,100,000/- for medical treatment. Exhibit P3 was admitted in favor of the plaintiff. I will accordingly allow the claim for special damages.

Regarding issue 1 of whether the defendants breached the contract of employment between the plaintiff and the first defendant, Mr. Ekirapa learned counsel for the plaintiff submitted that there is no evidence whatsoever that the plaintiff had been warned against any insubordination, breach of the plaintiff’s duties, grave misconduct or negligence that would enable the first defendant to terminate the contract under Clause E. He contended that the first defendant exhibited its arrogance by failing to issue a termination letter to the plaintiff.

From the scanty evidence on record, the fact that the plaintiff’s services with the first defendants were terminated has not been disputed. It is also not disputed that the plaintiff was employed by the defendant. The only contention is whether the manner of termination was in breach of his contract of employment with the defendant. The defendant contends that the termination was lawful.

It was held in the case of ***Robert Mukembo Vs Ecolab East Africa Uganda Limited HCCS 54 of 2007*** per Bamwine J (as he then was) that:

**“W*here complaints of unfair dismissal are raised, courts resort to the written agreements as an embodiment to the terms and conditions of employment. Unlawful dismissal would in the context of such contract of employment relate to the manner of removing the employee from 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.”***

The plaintiff alleged in his testimony that he worked until the 17th day of February 2007 when he fell sick and developed a swelling or pain on the right back side of his chest upon which he was given a sick leave and proceeded to a Doctor called Ronney Brosserds, the company Doctor. The plaintiff alleged further that the said doctor abused him instead of treating him. That the doctor tortured and instead punched him in the affected part. That thereafter he was terminated without a termination letter.

The fact that the plaintiff was terminated without a termination letter was not rebutted by the defence because it never produced any witness. Although the defendants claim that the plaintiff had been obstinate and had refused to execute his duties which amounted to gross misconduct, this remained unsubstantiated, and the reasons for termination would have been contained in the termination letter if it was ever issued. The plaintiff’s uncontroverted evidence confirms that he was never warned against any insubordination, breach of the plaintiff’s duties, grave misconduct or negligence that would entitle the first defendant to terminate the contract under Clause E. The duration of the contract of employment was for a period of 20 months. He was summoned and told that his service had been terminated summarily.

In the premises, I am inclined to agree with learned counsel for the plaintiff that because of the above omissions, the defendants were in breach of the contract of employment. According to the contract of employment exhibited as P1, the defendant was to terminate the contract of employment by giving 30 days severence which was not done.

Since in this case the plaintiff was earning US$1000 he was entitled to that amount in lieu of notice.

Because of the wrongful dismissal, loss of earnings and inconvenience suffered, the plaintiff is entitled to general damages. The general rule is that general damages are such as the law presumes to be direct or natural and probable consequence of the act complained of. In assessing the amount of damages, court has to take into account the current value of the money in terms of what goods and services can be purchased at the present time. In this case I will award general damages of 10,000,000/-.

All in all, I will enter judgment for the plaintiff as outlined herein. The awards I have given shall carry interest at court rate from the date of judgment until payment in full. The plaintiff shall also get the taxed costs of this suit.

**Stephen Musota**

**J U D G E**

**24.03.2015**