

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-CV-CS-0461 OF 2000**

**LWASA ISAIAH:.....:PLAINTIFF**

**VERSUS**

**THE NEW VISION PRINTING &**

**PUBLISHING CORPORATION:.....:DEFENDANT**

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

**JUDGMENT**

The plaintiff was employed as a printer by the defendant company. His services were terminated on 18<sup>th</sup> February 2005 on allegations of gross misconduct as a result of causing financial loss through the printing of extra 2026 copies of UMUSESO Newspaper.

On 30<sup>th</sup> January 2005, while the plaintiff and three others were on night duty, in charge and responsible for overnight printing, about 2026 excess copies of an order of UMUSESO Newspaper, Rwanda News line were printed. The following day, the plaintiff was interviewed/questioned about the overprint by the Internal Audit team prior to his being taken to the Police Station. As a result, the plaintiff was charged with causing financial loss to the defendant company contrary to Section 269(1) of the Penal Code Act. He was tried and acquitted by the Chief Magistrate's court at Nakawa in *Uganda Vs Isaiah Lwasa Criminal case No. 63 of 2005*. Subsequent to this, the defendant summarily dismissed the plaintiff, and the plaintiff being dissatisfied with the dismissal, filed this suit against the defendant

company contending that his services were wrongfully terminated. He seeks declaratory order that his services were wrongfully terminated, general damages for breach of contract, interest and costs of the suit.

At scheduling, the following facts were agreed upon by the parties:-

1. The plaintiff was appointed on probation by the defendant as a printer on 10<sup>th</sup> April 1995 and confirmed in employment on 3<sup>rd</sup> February 1998.
2. On 30<sup>th</sup> January 2005, while the plaintiff and three others were on night duty, and in charge and responsible for overnight printing, about 2026 excess copies of an order for a News paper, Rwanda News Line were printed.
3. The plaintiff was suspended and subsequently dismissed for gross misconduct on February 18<sup>th</sup> 2005 following the findings of an Internal Audit investigation that he was responsible of overprinting for personal gain resulting into loss.
4. A notice was published in the New Vision Newspaper on 24<sup>th</sup> April 2005 stating he was no longer an employee of the company.
5. The plaintiff was charged, tried and acquitted at the Chief Magistrates Court at Nakawa for causing financial loss to the defendant contrary to Section 269(1) of the Penal code Act.

Three issues were framed for determination by court, but one of them was subsequently struck out following a point of law that was raised by the defendant, leaving only the following two issues:

1. Whether the dismissal of the plaintiff was a breach of contract amounting to wrongful and unlawful termination.
2. Remedies available to the parties.

The plaintiff testified as **PW1**. The defendant adduced evidence of two witnesses; **DW1**, Mr. John Bosco Turyahebwa, the former Audit Manager of the defendant company and **DW2**, Mr. Charles Okellowange, the Printing Supervisor at the defendant company.

**Issue 1; Whether the plaintiff's services were unlawfully terminated;**

Relying on *Abbas Ssendagala Vs UCB HCCS NO.669/2001*, Counsel for the plaintiff submitted that where employment had been terminated in a manner contrary to the procedure set out in the terms and conditions of service, such termination was unlawful. Counsel contended that the plaintiff was not accorded a fair hearing before termination of his employment as he was dismissed while on remand in prison even before the criminal case was heard. He added that **DW1**, the former Audit Manager of the defendant testified that he prepared a report for the administration to make up their mind whether to call the plaintiff for disciplinary proceedings or not and that he later learnt that the plaintiff was not called to the disciplinary committee. It was counsel's submission that **DW1** confirmed during cross examination that the decision to dismiss the plaintiff was taken on the basis of an adverse report and further that, there was no proof that the plaintiff was solely responsible for the loss as **DW2** testified that the plaintiff could not act alone without a Supervisor who read the meter and the Parcelor (in packing department).

Counsel contended that the plaintiff was at all material times innocent of the allegations levied by the defendant company as he was acquitted by the criminal court of all charges of causing financial loss. He concluded that the dismissal of the plaintiff was done before disciplinary proceedings were carried out as required by the Employment Act and prayed that court finds that the plaintiff was dismissed in

breach of contract of service as the dismissal was unlawful and the plaintiff was not given a right to a fair hearing.

In reply, Counsel for the defendant submitted that the plaintiff's services were lawfully terminated for gross misconduct as a result of causing financial loss through the printing of 2026 excess copies of UMUSES0 News paper and he referred court to **EXH P4**, the dismissal letter. He added that prior to the dismissal; the plaintiff was among others interviewed by the New Vision Audit Department to establish his complicity in the overprint. Counsel contended that the plaintiff personally recorded a statement which he signed (**EXH D2**) in which he admitted signing the issues of the over print and dealing with the person caught with the excess copies. Counsel added that although the plaintiff claimed that the overprint could not lead to loss, if the defendant was not aware of the over print as in this case, it would lead to loss, especially if the customer had access to the over prints.

Counsel stated further that the plaintiff's contention that he was victimized as he could not be the only one fully responsible for the over print was vague since **DW2** in cross examination testified that the person in charge of the Parceling department was also terminated. He added that the plaintiff was aware of the allegations against him as they were put to him during the interview with the Internal Audit team as **DW1** testified that;

*“He admitted having received a call from Musenero but denied having received any money from him. He signed his statement to that effect. ...yes he was fully aware of the matters at hand. We disclosed to the plaintiff the reason why he was being interviewed...”.*

Counsel then relied on *E.A Paekyn Book of Law of Master and Servant Chapter 4* to state that a servant may be dismissed without notice under circumstances, such as

willful disobedience, grossly immoral conduct such as to seriously injure his masters business, incompetency and illness causing permanent incapacity at work.

He further relied on *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA 1 of 2008* for the proposition that;

*“when an employee is in breach of a fundamental term of his employment or guilty of sufficient misconduct, he or she may be dismissed summarily without notice...it follows of course that summary dismissal is dismissal without notice and dismissal without notice also implies dismissal without a right to be heard first...”*

Counsel concluded that the plaintiff fundamentally breached the terms of his employment by engaging in overprinting of newspapers and was informed of the allegations against him when he attended the interview with the audit team investigating the matter which he denied partially, though admitting that he received a telephone call from the person found in possession of the excess prints at midnight.

### **Resolution of issue 1**

I note that the main gist of the issue is whether the plaintiff was accorded a fair hearing to render his summary dismissal lawful.

The right to be heard before an administrative body is now constitutional. Article 42 of the 1995 Constitution of the Republic of Uganda provides:

*“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”.*

See also Article 44 (c) which is to the effect that the right to a fair hearing is non-derogable.

The above provisions call for re-consideration of the applicability in Uganda of the common law principle that an employer, under certain situations, has a right to terminate the services of an employee summarily. The Supreme Court of Uganda has held in *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA NO.1 of 1998* (Kanyeihamba JSC, as he then was) that;

*“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”.*

The evidence of the plaintiff in his written witness statement which he confirmed to during cross examination reads in part as follows;

*“...when they called me, they made me sit in the office. They brought police officers. By the time I went to police I did not know what happened. All the allegations were informed to me at police...I was remanded at Luzira that is where I got from the suspension letter from work when investigations were going on. I was surprised I was handed the termination letter, yet the investigations were still going on. I was interviewed by the Audit department before I went to police. I came to know of this matter from police. At the interview with the audit team, he asked me how the job was done the previous night and I told him. He then left...there should have been a disciplinary hearing which was not there. I never went to the disciplinary committee.”*

It was the evidence of **DW1**, John Bosco Turyahebwa the former Audit Manager of the defendant company that;

*“Work of an Auditor involves doing investigations; in that case I was requested to conduct one through interview, and recording any evidence relevant to the issue. I prepared the report. It is not my mandate to circulate the report. I did not give plaintiff*

*a copy of the report. The report was not favorable to the plaintiff...the plaintiff didn't have any opportunity to take on the things said about him. My work was to do audit and make a report. In this case we recommended disciplinary action. I cannot say that I heard anything about any disciplinary procedure. The plaintiff understood why I was interviewing him because he even signed a statement. He agreed he talked to Musenero but denied having received the bribe. As Auditor we are required to always explain the matter before obtaining evidence. We told the plaintiff the reasons he was being interviewed for purpose of our investigation. We did not go into matters of disciplinary procedures because we had not even made a report...”.*

The post-Employment Act (2006) provision is to be found in Section 66 of the Employment Act No. 6 of 2006 which provides:

*S. 66(1) notwithstanding any other provision of this part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.*

*(2) Notwithstanding any other provision of this part, an employer shall before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance and the person if any chosen by the employer under subsection (1) may make.*

*(3) The employer shall give the employee and the person if any chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).*

In *Jabi Vs Mbale Municipal Council*, (supra) it was held that it is a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving a breach of a disciplinary regulations or misconduct. It was perhaps a different case if the employee was on

temporary terms, but an employee on permanent terms is entitled to know the charges against him and to be given an opportunity to give any grounds on which he relied to exculpate himself. Where that was not done, it could properly be said that the dismissal was wrongful.

Further in *Ridge Vs Baldwin & Others [1964] A.C 40*, one of the leading authorities on termination of employment relationships, it was held, and I agree, that even if the respondents had power of dismissal without complying with the regulations, they were bound to observe the principles of natural justice. It was held in that case that a decision reached in violation of the principles of natural justice, especially the one relating to the right to be heard, is void and unlawful.

In **Eng. Pascal R. Gakyaro Vs Civil Aviation Authority CACA No. 60/2006**, Court of Appeal observed that the principles of natural justice demanded that he be given an opportunity to be heard in his defense for whatever worth it might be. That the overall effect of a denial of natural justice to an aggrieved party renders the decision taken void and of no effect.

Relating the same principles to the instant case, it is in my view immaterial that the defendant thought that the plaintiff was guilty of misbehavior amounting to misconduct justifying dismissal. The law as in the Employment Act had to be complied with. Since the defendant company saw it fit to give reasons for termination of the plaintiff's services as per the letter of dismissal dated 03<sup>rd</sup> February 2005, it is clear that the defendant considered the accusations against the plaintiff proved and yet he had not had the opportunity to defend himself before any properly constituted body. The implication is that he was condemned without



his matter being heard by an independent and impartial body, like a disciplinary committee.

Basing on the evidence adduced, I find that though the defendant informed the plaintiff of the allegations against him, he was not accorded a right to respond to them nor was he given a right to question the people who made the allegations. I hold that the termination of employment of the plaintiff was done without affording him an opportunity to be heard, or to defend himself or comment on the allegations against him, nor was he given an opportunity to know the evidence brought against him.

In these circumstances, I have come to the conclusion that the decision to terminate the plaintiff's services was null and void. Accordingly, the answer to the first issue is in the negative.

**Issue 2: Remedies available to the parties;**

It was the plaintiff's case that the plaintiff should be compensated in monetary terms what he expected to have earned, had the wrong not been committed against him given the suffering he underwent while in prison and given the fact that he was advertised in the News paper. The plaintiff's Counsel contended that the plaintiff was entitled to general damages of Ug. Shs. 150,000,000/=, and interest on general damages of 25% and costs.

The defendant's Counsel was of a different view. He submitted that the plaintiff was not entitled to damages as the termination of his employment was lawful. However, in the unlikely event that court fault the defendant on issue 1, then the plaintiff was not entitled to the claim of Ug. Shs. 150,000,000/=. Relying on

*Fulgensio Semako Vs Edirisa Ssebugwawo (1979) HCB 15*, Counsel contended that in an action for damages, one of the duties of counsel should be to put before the court material which would enable the court to arrive at a reasonable figure by way of damages. He concluded that in the event that court finds that the termination was unlawful, Ug. Shs. 5,000,000/= which is more than 3 months' salary in lieu of notice, would suffice.

I have already found that the plaintiff's employment was unlawfully terminated. It has been trite law that an employee who was unlawfully terminated would be redressed through the payment of money in lieu of notice for the period of notice he was entitled to. However, it is also true that a 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. In regard to general damages, Kasule J, in *Issa Baluku Vs SBI INT Holdings (U) Ltd HCCS NO.792 OF 2005*, 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 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”.*

In *Bank of Uganda Vs Betty Tinkamanyire SCCA No. 12 of 2007*, Tsekooko JSC, expounding on the above principle, cited with approval the principle in the Supreme Court of Ghana case of *NORTEY-TOKOLI & OTHERS VS VOLTA ALUMINIUM CO. LTD (1990) LRCPAGES 579 and 599*, where that court justified the 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 may be awarded to an employee, whose employment has been unlawfully terminated, if that employee proves facts that result in court’s disapproval of the employer’s conduct in terminating the services of the employee. In this present case the plaintiff was treated in a very embarrassing manner and suspended and terminated while still on remand; without ever granting him his rights under the laws already cited above. His name was advertised in the papers, yet he had not been subjected to anyone process by his employer.

Taking the decisions referred to above in consideration and other factors relating to the case, I believe that the plaintiff is entitled to damages for the wrongs he suffered. I award the plaintiff general damages of Ug. Shs. 20,000,000/= for the embarrassment and the resultant inconvenience and sufferings. The sum awarded as general damages shall carry interest at the rate of 20% per annum from the date of judgment till payment in full.

In conclusion, the court makes the following orders:

- 1) A declaration that the plaintiff’s dismissal was unlawful.
- 2) General damages of Shs. 20,000,000= (Twenty Million only) are awarded.
- 3) Interest on (2) above at 20% per annum from the date of judgment till payment in full.
- 4) Costs of the suit go to the plaintiff.

Orders accordingly.

**Elizabeth Musoke**

**JUDGE**

**8/05/2015**