

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.063 OF 2012

MRS. MARY PAMELA SOZI :::::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

**THE PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY::::::::::::::::::::::::::::: DEFENDANT**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The plaintiff was by written contract dated 2nd August,2001 [EXH P1], employed by the Central Tender Board under the Ministry of Finance and Economic Planning, as Head Finance. In 2003, the defendant was established by an Act of Parliament as successor to the Central Tender Board; and the plaintiff was by written appointment [EXH P2], employed as Director of Finance and Administration.

On 28th February, 2012, the defendant terminated the plaintiff's employment and the plaintiff was paid two months' salary in lieu of notice; and gratuity calculated from 2003 to 2012.

The plaintiff brought this suit against the defendant for unfair dismissal, compensation in lieu of notice, gratuity, unpaid leave, severance allowance, a certificate of service, general damages, aggravated damages for unfair termination and costs of the suit.

On the other hand, the defendant contended in their written statement of defence that the plaintiff's contract was terminated by the Board of the defendant in exercise of the defendant's contractual right to terminate the contract, and in accordance with the law; that the plaintiff's allegations of bad faith, failure to be given a fair hearing, humiliation and high handedness were misconceived; and the defendant's board in any event had good reason for termination of the contract.

At the scheduling conference, the following were the agreed facts;

1. The plaintiff was employed by the Central Tender Board on 1st September, 2001 as Head Finance.
2. In 2003, the plaintiff was appointed by the defendant as Director of Finance and Administration, and she served in the same position until her services were terminated on the 28th February, 2012.
3. Upon her termination, the defendant paid the plaintiff two months' salary in lieu of notice and gratuity calculated from 2003 to 2012.

The following were the agreed issues set down for resolution;

1. Whether the dismissal of the plaintiff from employment was lawful.
2. Whether the plaintiff was employed by the defendant for a period of 10 years or less.
3. Whether the plaintiff is entitled to the remedies sought.

Issue 1

Whether the dismissal of the plaintiff from employment was lawful.

It was the plaintiff's testimony that on 29th September, 2011, she wrote to the Executive Director of the defendant, requesting for her annual leave application to be approved so that she could accompany her husband to the United States of America for medical attention. On 7th December, 2011, the Executive Director wrote a letter [EXH P4], informing the plaintiff that she had been granted leave for a total number of 58 working days instead of the 30 working days that she had applied for. Upon her return, she found a letter from the defendant terminating her services with effect from 28th February, 2012. It was the plaintiff's evidence that the defendant did not follow the proper procedure while terminating the services of an employee for misconduct or poor performance as laid out under the provisions of Section 66 of the Employment Act, 2006; which rendered the termination wrongful and unfair.

It was the plaintiff's further testimony that the defendant's allegation that she made it impossible for a complete handover to be effected by the former Executive Director due to her failure to prepare an updated financial report by 31st March, 2011 was not true, as all departments had failed to meet the deadline; and the incoming Executive Director had expressly directed her to first send the report to internal audit before forwarding it to the former Executive Director, which process was completed on 19th May, 2011. Further, that the warning letter [EXH P8], was issued to the plaintiff in error as the board had been misinformed by the Executive Director about the real status of the report.

The plaintiff also testified that she had on several occasions brought to the attention of the defendant the level of under staffing in the Finance department, but this had been continuously ignored. She made reference to a correspondence [EXH P9], where it was indicated that the Finance and Administration Department had staffing gaps, which was affecting the smooth running of the activities. She also

made reference to the internal Audit report dated 30th September, 2011 [EXH P15], which indicated that the manpower gap in the Finance Department was directly affecting the departmental outputs for financial transactions and operations, and the external Audit report of November, 2011 [EXH P14], which also pointed to the staffing gaps in the department, that impacted on proper segregation of duties. Further, that the delay in settling supplier accounts was due to demand invoices not having support documentation from the end users and delayed release of funds from Ministry of Finance and that the long outstanding tax liabilities were as a result of Board sitting allowances, advances to the then Director Legal and compliance, who for two years failed to account for the advances.

The plaintiff further testified that the financial report for the first quarter (July-September 2011) was completed and submitted to the Executive Director for onward submission to the Board, but the Executive Director refused to submit it because she was not comfortable with the staff balances that included her as a staff debtor and on 8th November, 2001, the plaintiff advised the Executive Director to retain the quarterly report on the Board agenda, but she declined to do so as seen from the Executive Director's Communication to the plaintiff, [EXH P10].

The defendant on the other hand led the evidence of two witnesses to show that the termination of the plaintiff's employment was done in accordance with the law, and was, therefore, lawful.

DW1; Cornelia K. Sabiiti, testified that she was the Executive Director and Board member of the defendant. It was her testimony that a decision to terminate the plaintiff's employment was made on 8th December, 2011, while the plaintiff was on her leave and her last known address was her residence to which the letter of termination was delivered, in strict accordance with the law.

It was DW1's testimony that the plaintiff made it impossible for the former Executive Director of the defendant to carry out a comprehensive handover, and eventually it was done without the inclusion of a financial report, owing to the incompetence of the plaintiff. Further, that following an internal audit report [EXH D9], presented to the Board on 7th June, 2011, in which a number of anomalies were noted arising from wrong and un posted transactions in the financial system, a deadline was given by the board to the plaintiff, but by the next date of the Board meeting, the financial report was still not ready; and at the next meeting of the board, the plaintiff submitted an incomplete report. The plaintiff was then issued with a warning letter. It was DW1's further testimony that the plaintiff's allegation that her request for additional staff was not dealt with is false, because interim measures as recruitments were underway were put in place. A Financial systems consultant and an intern were hired to assist the department in carrying out their duties, and the vacant positions were eventually filled during the period between September and October 2011.

During cross examination, DW1 testified that the decision of the Board to terminate the plaintiff's contract was made on 8th December, 2011, and the reason the Board gave was her failure to meet deadlines for submission of financial reports as well as weaknesses in the financial system of the authority from internal audit reports. It was her further testimony that the reason why no reason was indicated in the termination letter [EXH P5], is because under all the contracts signed between staff and the authority, either party has a right to opt for termination on condition that notice was given. That the Employment Act provides for a hearing before dismissal where there are unresolved issues before dismissal where one side has to explain their case to another side. Further, that the Board interacted with the plaintiff with regard to concerns about her incompetence; two

meetings were held between the Board and the plaintiff where both sides had adequate opportunity to discuss the issues regarding the concerns about the incompetence of the plaintiff, and the decision to terminate the employment was as a result of a series of events and persistent failure by the plaintiff.

DW2; Agnes A. Ojambo, testified that she was the Manager Internal Audit of the defendant. She testified that in the course of her duties with the defendant, she had carried out 11 audits on the department of Finance and Administration during the tenure of the plaintiff as the Director of the said department. Extracts from the audit reports were tendered in evidence as Exhibits D2 to D12. While making reference to the audit reports, she testified that for the period July to September, 2006; there was no adherence to the policy on granting staff salary advances by authorizing additional advances before clearance of previous advances, from October to December, 2006; the financial reports for the first and second quarter were not prepared, July to September, 2007; there were over payments to providers, January to June, 2008; there were long outstanding accountable advances for 2006/2007, July to September,2008; there were assets that were not recorded in the register and some assets were not engraved, March to June,2009; there was no leave roster for all staff for the year, July to June,2010; there were differences in accountable advances between general ledger, aged listing by staff debtors and aged listing of creditors among other anomalies including wrongly posted and coded transactions, no timely preparation of bank reconciliations, July 2010 to June 2011; un posted receipts on the register of providers account, expenditure understated, differences in the bank reconciliation statement, existence of un posted payments to the general ledger, among other anomalies, October to December, 2011; there were long outstanding staff advances, double posting of accountable advances, mis-posting of telephone over-usage recoveries,

unrecovered advances from ex-staff, existence of long outstanding unremitted PAYE, WHT, LST.

Further, that the special audit of the Auditor General of November 2011 [EXH D13], revealed that there were skills gaps in the use of the Solomon accounting system, lack of business continuity plan, and the annual audit by the Auditor General [EXH D14] for the year ended 30th June, 2010 reported outstanding unremitted taxes, unrecognized credits and debits on the bank statements.

Counsel for the plaintiff and the defendant filed written submissions in support of and against the claim respectively.

Counsel for the plaintiff made reference to the evidence adduced by DW1 and the pleadings of the defendant, and submitted that two arguments emerge there from, to wit:

1. That the requirement for a hearing under Section 66 of the Employment Act, 2006, only applies to dismissals under the Act and not to terminations.
2. That the two Meetings the plaintiff had with the defendant's Board in July and September, 2011 where the Board expressed their concerns about repeated failures by the plaintiff to submit financial reports amounted to a hearing under the provisions of Section 66 of the Employment Act.

It was Counsels contention that the first argument went against the spirit of Section 66 of the Employment Act, 2006, which created a mandatory right of hearing for every form of dismissal; whether it be a dismissal or a termination and there is no provision in the Employment Act, 2006, limiting the application of Section 66 to only one form of dismissal. That the second argument does not comply with Section 66 of the Employment Act, considering that the two meetings were not for

disciplinary purposes with a view to a dismissal and were so apart in time from the date of termination as to qualify as a hearing for purposes of Section 66. Counsel relied on the authority of *Maudah Atuzarirwe Vs Uganda Registration Services Bureau and 3 others, Misc Cause No. 249 of 2013* to support the above contention. It was Counsels submission that the plaintiff was not accorded a hearing in accordance with Section 66 of the Employment Act.

It was the further submission of Counsel for the plaintiff that the defendant's unilateral amendment of the plaintiff's contract of employment was unlawful. Counsel made reference to the plaintiff's contract of employment [EXH P18], which entitled the plaintiff to a three months' period of notice or payment in lieu of notice. However, the defendant's new Human Resource Manual [EXH D1] differed from the old manual [EXH P16] in the following aspects:

1. Clause 1.6 of the new Manual [EXH D1] states that it has precedence over the contract of employment.
2. Clause 10.4 introduces new periods of notice for termination of contracts, depending on an employee's length of service.

Counsel submitted that an employer cannot unilaterally amend a significant term of an employment contract, without an employee's consent and without furnishing the employee with fresh consideration for the said amendment. He relied on *Hobbs Vs TDI Canada Ltd 2004 Can II 44783 (ON CA)* and *Francis Vs Canadian Imperial Bank of Commer 1994 Can LII 1578 (ON CA)* to support the above averments.

Counsel contended that the above being the position of the law, the termination of the plaintiff's employment was supposed to be three months payment in lieu of notice and not the two months payment in lieu of notice that the defendant

advanced to her. That a termination of employment becomes unlawful, if the period of notice or payment in lieu of notice given by the employer is less than that set out under the contract of employment.

Counsel for the defendant did not agree. He submitted that the plaintiff's services were terminated and she was not dismissed from the employment of the defendant; since her employment was terminated after payment in lieu of notice, it was lawful.

Counsel made reference to the witness statement of DW1 and DW2 that the plaintiff had failed in her duties as the Director of Finance and Administration due to various inadequacies and inconsistencies on her part. It was his contention that the plaintiff having failed to execute her duties, she was summoned by the Board to explain her position where she was heard and granted more time to complete her overdue assignments, but still failed to have them completed.

It was the further submission of Counsel for the defendant that the Plaintiff's Lawyers erroneously relied on the authority of *Maudah Atuzarirwe Vs Uganda Registration Services Bureau Misc Cause No. 249 of 2013*, which is distinguishable from the present case. In the present case, the plaintiff was summoned by the Board to explain her failure to successfully undertake her assignments. She was later issued with a warning letter which the plaintiff did not heed, and it was after this that the plaintiff's services were lawfully terminated.

I have carefully considered the submissions of counsel on either side, the evidence, law and authorities relied upon and I find that the primary question to be determined by this court is whether the plaintiff was entitled to a hearing before the termination of her employment, in accordance with Section 66 of the Employment Act, 2006.

Clause 4(D) of the plaintiff's contract of employment [EXH P2] provides that the contract may be terminated by either party issuing notice to the other party in writing, or payment in lieu of notice; and **Section 65(1) (a)** of the **Employment Act, 2006**, provides that termination shall be deemed to have taken place where the contract of service is ended by the employer with notice. It is not in contention that the plaintiff's contract in the present case was ended by paying her two months in lieu of notice. Whether the 2 months payment in lieu of notice was sufficient / lawful shall be dealt with at a later stage.

It is my view that termination of an employment contract does not mean dismissal from employment. **Section 2 of the Employment Act, 2006** 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, and **Termination of employment** is defined as the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement, etc. In the present case, the plaintiff was not dismissed but her contract was terminated by the defendant by paying her two months in lieu of notice. The plaintiff's letter of termination of the employment [EXH P5], did not state any reasons for the termination. It partly reads as follows;

“RE: TERMINATION OF CONTRACT OF EMPLOYMENT

Reference is made to the above subject.

I have been directed by the PPDA board of Directors to inform you that your contract of employment with PPDA as Director of Finance and Administration is terminated with effect from 28th February 2012.

You will be paid your salary for two months in lieu of notice in accordance with the Human Resource Manual and Employment Act. You will receive your accrued gratuity on confirmation of handover of any PPDA property in your possession/ custody.”

It was the evidence of DW1 that no reasons were given in the termination letter because under the contract signed between the plaintiff and the defendant [EXH P2], either party had a right to terminate the contract, on condition that notice was given. I find that the clause as to termination in the plaintiff's contract of employment was agreed upon by the parties.

However, an employer cannot unreasonably, and without justification terminate the contract of the employee simply because there is a clause in the employment contract that allows for payment in lieu of notice. (See *Chris Henry Mukooli Vs The New Forest Co. Limited Civil Suit No. 173 of 2009*). In the present case, from the evidence of DW1, as well as the plaintiff, the plaintiff's employment was terminated for various reasons that included incompetence, attributed to alleged failure in the performance of her duties as a Director of Finance and Administration while in the employment of the defendant. It was the testimony of DW1 that the decision to terminate the plaintiff's employment was reached by the board; and the reason given by the board for the termination was the plaintiff's failure to meet deadlines for submission of financial reports as well as weaknesses in the financial system of the authority from the Internal Audit reports. If such reasons were there before the termination, the defendant ought not to have hidden under the cover of the clause in the contract of employment to deny the plaintiff the right to a hearing. The plaintiff was a very senior officer who ought not to have been dismissed without any due process.

I find that it would have been fair if the defendant had given the plaintiff an opportunity to defend herself before an independent disciplinary committee of the defendant before the termination since there were unresolved issues between the plaintiff and the defendant, which eventually resulted into the termination of the plaintiff's contract of employment.

I do not agree with the contention of counsel for the defendant that the two board meetings, allegedly attended by the plaintiff legally afforded the plaintiff a right to be heard in accordance with the principles of natural justice and the law. The board meetings allegedly attended by the plaintiff had not been convened for the purpose of carrying out a disciplinary hearing for the plaintiff. As to what amounts to a fair hearing, the defendant would have complied if the following was done;

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

(See Ebiju James Vs UMEME Ltd Civil Suit No.0133 of 2012)

In courts view, although it was classified as a termination, it amounted to a dismissal because poor performance has been cited as a reason for dismissal. The provisions of Section 66 of the Employment Act therefore do apply to the

plaintiff's termination/dismissal. The court cannot let employers hide under cover of clauses in the contract to deny an employee his/her rights under the law.

The right to **first** and fair treatment is now constitutional. **Article 42** of the Constitution of the Republic of Uganda states;

“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.”

And Article 44 (c) states;

“Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-

(c) the right to a fair hearing;”

It is settled that the right to be heard is a fundamental procedure that any administrative body or tribunal is expected to observe and uphold. This right flows from the rules of natural justice that require that a person cannot be condemned unheard. As such, a decision reached in breach of this rule is void. (*See Kyamanywa Vs IGG, HCMA No.143/2008*)

I find that the plaintiff was not afforded a right to a hearing in order to justify the termination. Even if the defendant had the right to exercise its right to terminate the plaintiff's employment by paying her in lieu of notice, in the circumstances of this case the invocation of the clause was unjustified and marred with bad faith. The plaintiff should have been accorded a right to a fair hearing before basing her termination of employment on grounds of poor performance and incompetence.

It is therefore my finding that the defendant's termination of the plaintiff's employment was unlawful / unjustified.

I now turn to the question as to whether the two months payment in lieu of notice was sufficient / lawful.

It is trite law that when complaints of unlawful / unfair dismissal are raised, courts resort to the conditions and terms of such employment to determine its justification. In *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA NO. 9 OF 1998*, court held that;

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

In the present case, the terms and conditions in the plaintiff's contract of employment [EXH P2], as well as the defendant's Human Resource Manual were binding on both the plaintiff and the defendant.

It is uncontroverted that the defendant put in place a new Human Resource Manual [EXH D1] that differed and was stated to take precedence over the employee's contracts of employment including the plaintiff's contract of employment. In addition, it changed the periods of notice for termination of contracts, depending on an employee's length of service. Apparently, the plaintiff was paid two months in lieu of notice as opposed to the three months included in her contract of employment, because the new Human Resource Manual [EXH D1], had changed the terms in relation to the contract. It also appears to me that the plaintiff had not given her consent to the said changes in relation to her employment contract.

I agree with the contention of counsel for the plaintiff that an employer cannot unilaterally amend a significant term of an employment contract, without an employee's consent and without furnishing an employee with fresh consideration. In *Francis Vs Canadian Imperial Bank of Commerce 1994 Can LII 1578 (ON CA)*, it was held that;

“...the law does not permit employers to present employees with changed terms of employment, threaten to fire them if they do not agree to them, and then rely on the continued employment relationship as the consideration for the new terms.”

Therefore, in as far as the terms in the plaintiff's contract of employment were more favorable to her than the new terms that were introduced by the defendant, so as to match with the ones in the Employment Act, 2006, it was a requirement that her consent was to be obtained before the new terms could be enforceable against her.

Accordingly, I find that the plaintiff was not given sufficient notice, in accordance with her employment terms with the defendant. She was entitled to be paid three months in lieu of notice upon the termination of her employment. On this aspect, I find that the plaintiff's contract of employment was unlawfully terminated without sufficient notice.

ISSUE 2.

Whether the plaintiff was employed by the defendant for a period of 10 years or less.

It is an agreed fact that the plaintiff was employed by the Central Tender Board on 1st September, 2001. [EXH P1] and in 2003, she was appointed by the defendant as Director of Finance and Administration [EXH P2]. It was the plaintiff's case that

the defendant was established by the Public Procurement and Disposal of Public Assets Act, No.1 of 2003, as a successor to the Central Tender Board. It was her testimony that her employment with the Central Tender Board was transferred to the defendant and consequently, in accordance with Section 28(3) of the Employment Act, the date of commencement of her employment with the defendant was 1st September, 2001.

Counsel for the plaintiff relied on **Section 98(2)** of the **Public Procurement and Disposal of Public Assets Act, No.1 of 2003**, which provides as follow;

“All legal obligations, proceedings and claims pending in respect of the Central Tender Board shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.”

It was the further submission of Counsel for the plaintiff that this provision had the effect of transferring the plaintiff’s employment from the Central Tender Board to the defendant so that in reckoning the length of the plaintiff’s service with the defendant, date of commencement of the plaintiff’s contract is September 2001.

On the other hand, Counsel for the defendant submitted that the plaintiff’s contract was not automatically transferred to the defendant and that is why a new contract of service was entered into with the plaintiff.

From the reading of Section 98(2) of the Public Procurement and Disposal of Public Assets Act, it appears to me that the above provision was only intended to apply to pending legal obligations and proceedings or claims. Ordinarily, employment contracts would be legal obligations that would have been undertaken by the defendant as successor of the Central Tender Board. However, the plaintiff

and the defendant entered into a new contract, separate from the former contract the plaintiff had with the Central Tender Board. From her own testimony in cross examination, the plaintiff testified that her employment with the Central Tender board ended when the name of the organization changed, and she was given a new contract.

Accordingly, it is my finding that the plaintiff was employed by the defendant from 1st July, 2003 and not 1st September, 2001.

ISSUE 3.

Whether the plaintiff is entitled to the remedies sought.

The plaintiff claims for compensation in lieu of notice, gratuity, unpaid leave, severance allowance, a certificate of service, general and aggravated damages for unfair termination, four weeks net pay under Section 66(4) of the Employment Act, repatriation at the expense of the defendant, interest on all the above and costs of the suit.

Payment in lieu of notice.

It was the submission of Counsel for the plaintiff that the plaintiff was entitled to compensation in lieu of notice for a period of one month and that under the plaintiff's contract of employment, the plaintiff was upon termination of her services entitled to a notice period of three months or payment in lieu of three months notice, but the plaintiff was only paid two months' in lieu of notice.

Counsel for the defendant contended that the claim by the plaintiff for compensation in lieu of notice for one month was not justified as the plaintiff was aware of the Human Resource Manual of 2012, where it is provided that where an employee has worked for a period of more than 5 years, but less than 10 years, he/she shall be entitled to two months notice, or 2 months payment in lieu of notice.

As stated above, the plaintiff was entitled to be paid three months, and not two months in lieu of notice as per the written employment contract [EXH P2].

Therefore, the plaintiff is entitled to the one month's payment in lieu of notice amounting to **UGX 7,800,000/=** that was not paid to her.

Gratuity and unpaid leave.

It was the plaintiff's claim that she was entitled to gratuity for the period for the months of March, April and May, 2012 which period constituted her period of notice.

The plaintiff also claimed for 17 ½ (Seventeen and a half) days of leave that were not paid by the defendant for the months of January to May, 2012.

It was the submission of counsel for the defendant that the plaintiff was not entitled to claim for gratuity and leave because these claims were speculative. He cited *Bank of Uganda Vs Betty Tinkamanyire SCCA No.12 of 2007*, where court stated that;

“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 cannot be justified in law.”

In *Maudah Atuzarirwe Vs Uganda Registration Services Bureau and 3 others Misc. Cause No.249 of 2013*, it was held that;

“It is therefore trite that where a contract of employment has been terminated, the employee has no right to claim payment under the contract...the applicant can only claim for salary and gratuity up to the point when she was terminated.”

It is my view that the claims made by the plaintiff for gratuity and unpaid leave in the present case were not speculative as alleged by counsel for the defendant. The period stated by the plaintiff is the time when she was entitled to notice, or payment in lieu of notice and during that period, the plaintiff was entitled to receive all the benefits as if she was still in the employment of the defendant.

I therefore award the plaintiff **UGX 6,578,313/=** as payment for the untaken paid leave for the plaintiff, and **UGX 5,850,000/=** as gratuity.

General Damages;

It was the submission by counsel for the plaintiff that owing to the defendant’s violation of the plaintiff’s right to a fair hearing, general damages should be awarded to the plaintiff. Counsel prayed for an award of UGX 100,000,000/= as general damages against the defendant.

Counsel for the defendant submitted that the plaintiff would only have been entitled to general damages in the event that her services had been wrongly terminated and that in the event that this court finds that she is entitled to general damages, she would only be entitled to two months pay in lieu of the notice period or serve the remaining part of her contract period.

In *Patel Vs Madhvani International Ltd [1992-93] HCB 189*, court held that a servant was not entitled to damages for breach of contract service by the employer as the employer retains the right to terminate his service at any time; that the employee could only recover arrears of salary for completed service and accumulated leave, if any. However, in *Kiyingi Vs National Insurance Corporation [1985] HCB 41* and in *Bank of Uganda Vs Betty Tinkamanyire SCCA No.12 of 2007*, where a senior member of staff's services were wrongly terminated, the court awarded general damages for embarrassment and inconvenience. This is a clear illustration that every case must be decided on its own facts and circumstances. As I stated earlier, the plaintiff's contract was wrongly and unlawfully terminated and therefore, she is entitled to an award of general damages.

The decision in *Bank of Uganda Vs Betty Tinkamanyire SCCA No.12 of 2007*, is instructive on the award/assessment of general damages for wrongful termination. It was stated that;

“...the reasoning of the court of Appeal in Agbettah Versus Ghana Cocoa Marketing board (1984-86) GLRD 16 should be followed so that the courts were able to award damages which reflected the courts disapproval of a wrongful dismissal and the sum was not confined to an amount equivalent to the worker's wages.”

Further, in *Issa Bakulu Vs SBI INT Holdings (U) Ltd HCCS No.792 of 2005*, it was held that;

“However, another additional principle has been developed by courts overtime in cases of unlawful dismissal. This is 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 employee's wages.”

As stated earlier, the plaintiff's contract was wrongly and unlawfully terminated. In all fairness, considering that the plaintiff had worked for the defendant in a very senior position and for a long period of time, I agree that it was such an embarrassment for the defendant to have terminated her employment without a hearing.

Taking the above into account, I shall award **UGX 60,000,000/=** as general damages to the plaintiff for the embarrassment and great inconvenience the unlawful termination caused her.

Aggravated Damages;

Counsel for the plaintiff submitted that the plaintiff was entitled to aggravated damages for the very shabby treatment that was allegedly meted out on her by the defendant upon her termination. Counsel relied on *Bank of Uganda Vs Betty Tinkamanyire Civil Appeal No.12 of 2007*, where it was held that;

“The illegalities and wrongs of the appellant were compounded further by its lack of compassion, callousness and indifference to the good and devoted services the respondent had rendered to the bank...in my opinion, the acts of the appellant were not only unlawful, but were degrading and callous. In my view, a good case has been shown for the respondent to be eligible for the award of aggravated damages.”

Counsel submitted that taking into account the plaintiff's length of service with the defendant, the position she held, the mistreatment meted out by the defendant, the difficulty the plaintiff will encounter to get employment at that position, that the plaintiff is eligible for the award of aggravated damages in the sum of **UGX 500,000,000/=**.

On the other hand, Counsel for the defendant relied on *Uganda Revenue Authority Vs David Kitamirike CACA No. 43 of 2010*, where court defined aggravated damages in the context of an employment contract as follows;

“Aggravated damages are, like general damages, compensatory in nature, but they are enhanced as damages because of the aggravating conduct of the defendant. They reflect the exceptional harm done to the plaintiff by reason of the defendant’s actions / omissions.”

Counsel submitted that the decision of *Bank of Uganda Vs Betty Tinkamanyire SCCA No.12 of 2007*, where the respondent was awarded aggravated damages is distinguishable from the instant case as it had been proved that the appellant had exhibited unlawful, degrading and callous actions towards the respondent. That the defendant’s actions were lawful and arrived at after giving the plaintiff numerous opportunities to execute her duties and upon her failure to do so, summoned her, gave her warnings and upon failing to perform, terminated her services after giving her payment in lieu of notice required under the law.

However, I do not find that this is a proper case for award of aggravated damages. Ordinarily, the defendant had the right to terminate the plaintiff’s contract by notice or payment in lieu of notice, although it was carried out in an improper manner. The defendant endeavored to pay the plaintiff in lieu of notice and it appears that the plaintiff actually accepted the payment even if the payment was not sufficient. I do not find any aggravating circumstances that justify this award, and therefore it is denied.

Repatriation to California, USA.

Counsel for the plaintiff submitted that the plaintiff was also entitled to be repatriated by the defendant to California, USA which is her place of abode.

It was the submission of Counsel for the defendant that the plaintiff had not led any evidence to show that she was recruited from a different location other than from Kampala.

Section 39 of the Employment Act, 2006, stipulates that an employee recruited for employment at a place which is more than one hundred Kilometers from his/her home shall have the right to be repatriated at the expense of the employer.

I find that the plaintiff has not given any evidence in order to justify the award of this claim. The above provision implies that the repatriation is to be paid basing on the employee's location at the time of recruitment, and not the location after the termination of employment. In the present case, the plaintiff was recruited by the defendant immediately after her employment with the Central Tender Board, which was obviously situate in Kampala. She cannot therefore say that she was recruited from California. This claim is therefore denied.

Certificate of Service.

Section 61(1) of the Employment Act, 2006, provides that on termination of a contract of service, an employer, if so requested shall provide the employee with a certificate. This claim is not contested by the defendant, and I therefore find that the defendant shall avail the plaintiff with a certificate of service.

Four weeks net pay in accordance with Section 66(4) of the Employment Act, 2006.

Counsel for the plaintiff submitted that the plaintiff was also entitled to the above payment in accordance with Section 66(4) of the Employment Act, since the defendant failed to accord her a hearing. As indicated above, the defendant should have accorded the plaintiff an opportunity to be heard before terminating her employment basing on grounds of non performance. I therefore award the plaintiff four weeks net pay amounting to **UGX 7,800,000/=**.

Refund of monies deducted from the plaintiff's terminal benefits.

It is not in contention that the defendant deducted the sum of UGX 1,156,374/= from the plaintiff's terminal benefits as money owed to the defendant by former employees as seen in Exhibit P17.

-

I agree with Counsel for the plaintiff that this deduction was indeed illegal and arbitrary. The defendant had no right to make this deduction, regardless of the possible justification or excuse it had for the deduction. In any case the plaintiff was not given an opportunity to explain and be heard before the deduction. I therefore grant this claim of UGX **1,156,374/=**.

In conclusion, the following claims of the plaintiff are hereby granted;

- a) Payment in lieu of I months notice - UGX 7,800,000/=
- b) Payment for un taken leave - UGX 6,578,313/=
- c) Gratuity - UGX 5,850,000/=
- d) Four weeks net pay - UGX 7,800,000/=
- e) General damages - UGX 60,000,000/=
- f) Refund of monies deducted from terminal benefits-UGX 1,156,374/=
- g) Certificate of service
- h) Interest on items (a), (b), (c), (d), and (f) at 15% p.a. from the date of filing till payment in full.
- i) Interest on item (e) above at court rate from the date of Judgment till payment in full.
- j) Costs of the suit.

Orders accordingly.

Elizabeth Musoke

JUDGE

27/08/2015