

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 67 OF 2011

ROSEMARY NALWADDA ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

UGANDA AIDS COMMISSION ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Mrs. Rosemary Nalwadda instituted this suit against the defendant for assessment and for recovery of special, general, exemplary and punitive damages, interest and costs of the suit.

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

1. The plaintiff was employed by the defendant as a Director of Planning and Monitoring on the basis of renewable contract for three years effective September 2007 to September 2009.
2. The plaintiff was eventually interdicted and dismissed by the defendant.
3. The plaintiff then sought for the prerogative order of certiorari quashing the defendant's orders by way of Judicial Review which was granted to her in Miscellaneous Cause No. 45 of 2010.
4. The decision to quash the defendant's decision was granted because the defendant did not follow the rules of natural justice.
5. During the period of the impugned interdiction, the plaintiff received half of her salary.

In its written statement of defence, the defendant averred that the plaintiff's dismissal was justified and was done within the confines of the Uganda Aids Commission Human Resource Manual and Policy 2010. The defendant further contended that the plaintiff is not entitled to the claims sought.

At the hearing of the suit Mr. Mugenyi learned counsel for the defendant showed court that the defendant had intentions of settling this matter out of court but despite several adjournments this was not done. Consequently on 9th July 2014 learned counsel for the defendant did not appear despite being served. Learned counsel for the plaintiff applied and was allowed to proceed *ex parte*.

The plaintiff gave evidence in proof of her claim as the only witness and closed her case.

From the outset, I must point out that the issue of unlawful termination was long determined in the Judicial Review matter. For all intents and purposes my duty in this suit is to assess damages and its recovery.

In his submission, Mr. Muganwa learned counsel for the plaintiff said that damages are compensation in money terms through a process of law for loss or injury sustained by the plaintiff at the instance of the defendant. Damages are compensatory in nature in that they should offer some satisfaction to the injured plaintiff: **Uganda Revenue Authority Vs Wanume David Kitamirike CA 43 of 2010.**

Learned counsel further submitted that the general principle is that an employee wrongly dismissed is entitled to be compensated fully for the financial loss that may be suffered as a

result of the dismissal. He also argued that the plaintiff's contract with the defendant was one that made no provision for termination prior to expiry of a fixed period. This was evidenced by the plaintiff's appointment letter which was further renewed for three years in September 2007.

The principles governing award of damages were outlined in the Supreme Court case of **Ahmed Bhaku Vs Car and General Ltd SCCA 12 of 2002** where Mulenga JSC (as he then was) made a distinction between a contract which makes no provision for termination prior to expiry of a fixed period and one in which there is a provision enabling either party to terminate the employment. It was held that:

“In the event of wrongful termination, by the employer, the employee in the former contract would be entitled to recover as damages the equivalent of remuneration for the balance of the contract period whereas in the later case the wronged employee would be entitled to recover as damages the equivalent of remuneration for the period stipulated in the contract for notice.”

Regarding assessment of damages awardable in the event of breach of contract of employment, Mulenga JSC then, stated the law distinctly in **Gullabhai Ushilingi Vs Kampala pharmaceuticals Ltd SCCA 6 of 1999** thus:

“In deciding the issue of damages, the court of appeal appreciated that the employment in the instant case was for a fixed period. The court made a distinction between a contract which makes no provision for termination prior to expiry of the fixed period, and one in which there is a provision enabling either party to terminate employment.

The learned justices stated the law to be that in the event of wrongful termination by the employer, the employee in the former contract would be entitled to recover as damages the equivalent of remuneration for the balance of the contract period whereas in the latter case, the wronged employee would be entitled to recover damages, the equivalent of remuneration for the period stipulated in the contract for notice. I respectively agree that this is a correct statement of the law. I would add that it is

premised in the principle of restitution in integrum. Damages are intended to restore the wronged party into the position he would have been in if there had been no breach of contract thus in the case of employment contract for a fixed period which is not terminable if there is no wrongful termination, the employee would serve the full period and receive the full remuneration for it. And in the case of the contract terminable on notice if the termination provision is complied with, the employee would serve the stipulated period and receive remuneration for that period or would be paid in lieu of notice”.

In light of the above legal position and if related to the present case, I find that the plaintiff's employment was contractual for a period of three years with no termination clause. The plaintiff is therefore entitled to damages equivalent to the then remaining period of her employment contract. Her contract was to lapse in September 2010 but was prematurely terminated by the defendant on 3rd March 2010. Owing to the said termination the plaintiff was unable to earn 8,696,922/- being salary for six months from March to August 2010 at a monthly salary rate of 1,449,487/-. I will therefore award the plaintiff damages of Shs 8,696,922/-. She will also be awarded an additional 1,449, 487/- as balance of the two months when she was on interdiction which preceded dismissal as well as annual gratuity for the years 2008/2009 and 200/2010 totaling 4,432,575/-. Therefore the prayer for UGX 200.000.000/= made by learned counsel as general damages would not arise.

In paragraph 7 of the plaint, the plaintiff claimed for special damages as follows;

- a) Monthly medical allowance totaling 6,624,000/- for the period of September 2009 to 2010.
- b) Monthly IGAD allowances totaling 18,775,575/- for thirteen months.
- c) The defendant's National Social Security Fund (NSSF) contribution for the period July 2009 to September 2010.

The principle governing the award of general damages is well settled. A claim for special damages must specifically be pleaded and strictly proved. A plaintiff had the duty to prove their damage. It is not enough to write down particulars, throw them to the court and say *“this is what I have lost I ask you to give me these damages”*. They have to be proved. This does not mean that proof of special damages have to be proved by documentary evidence in all cases.

The plaintiff’s appointment letter stipulated that the plaintiff was to earn a consolidated package of sh. 1,861,546/- subject to tax, gratuity of 25% of the consolidated monthly salary given at the end of the year of service. The plaintiff testified that during her interdiction which lasted two months she received half pay of her salary. This amount as special damages has already been awarded.

Regarding the IGAD allowance the plaintiff testified that in July 2008 she was nominated by Dr. David Kihumuro Apuli the then Director General Aids Commission for IGAD REGIONAL HIV AND AIDS PARTNERSHIP PROGRAM in Uganda and she was earning USD 1000 per month. That she last received the allowance in August 2009. Since upon interdiction and termination she never received the allowance. She therefore asked this court to award her IGAD allowance for thirteen months from September 2009 to September 2010 when her contract was to expire.

In view of the principles of law regarding award of special damages I am hesitant to award the claim for IGAD allowance. This is because the letter that appointed her to the project was not adduced in court. She did not tell court how long the project would run. To award such a claim would be assuming that the project was to run throughout her entire contract period which would be wrong.

Regarding medical allowance the same was not provided for anywhere in the employment contract. Neither did the plaintiff adduce the Human Resource Manual to enable court to ascertain the same.

Consequently I will find that there is no basis to award the claim for medical allowance.

Regarding exemplary damages, although they are exceptional awards, the circumstances of this case will not warrant award of such damages. In any case no evidence was led to warrant this award. I will therefore not award aggravated damages.

As regards the claim for the plaintiff's contribution to NSSF I will find that she has no locus standi to claim for it in this suit. Any NSSF claim has to be made to the fund directly.

All in all, I will enter judgment for the plaintiff against the defendants in the following terms:

1. Monthly salary for the period March 2010 to August 2010 of 8,696,922/- (Eight million six hundred ninety six thousand nine hundred twenty two only).
2. Annual gratuity for the years 2008/2009 and 2009/2010 of 4,432,575/- (Four million four hundred thirty two thousand five hundred seventy five).
3. A balance of the plaintiff's salary for two months interdiction of 1,449,487/- (One million four hundred forty nine thousand four hundred eighty seven only).
4. The awards shall carry interest at court rate from the date of judgment until payment in full.
5. The plaintiff shall get the taxed costs of this suit.

I so order.

Stephen Musota

J U D G E

05.05.2015