

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 218 OF 2014

1. OKELLO OKELLO LIVINGSTONE

2. TOOLIT SIMON AKECHA :::::::::::::::::::: PLAINTIFFS

(For and on behalf of 39 others)

VERSUS

PARLIAMENTARY COMMISSION :::::::::::::::::::: DEFENDANT

BEFORE: HON.JUSTICE STEPHEN MUSOTA

JUDGMENT

Through M/s Mwere & Co. Advocates and BKA Advocates, the plaintiffs filed this suit against the Parliamentary Commission. The plaintiffs were all duly elected Members of Parliament in the February 2006 Parliamentary Elections. They were part of the 8th parliament.

They filed this suit for a declaration and the following reliefs:

1. That they are entitled to full pay for the month of May 2011.
2. That the half pay for the month of May 2011 was illegal and unconstitutional.
3. That payment of interest at a rate of 21% per annum from 19th May 2011 until payment in full be ordered.
4. An order be made for payment of general damages and
5. Costs of the suit.

The brief background to this suit is that the plaintiffs were duly elected members of the 8th parliament of Uganda. Their term in parliament commenced on 28th May 2006 and ended on 18th May 2011. During that term they received all their payments except for the month of May 2011 wherein they were paid a sum less than what they had been receiving monthly. The plaintiffs were dissatisfied with the payments hence this suit. According to the plaintiffs' pleadings they allege that they were entitled to be paid their full emoluments for the last month of their term regardless of the number of the days worked. Further that the payment of an amount less than the standard monthly pay was illegal.

In its statement of defence the defendant denied in total the claim by the plaintiffs and promised to put them to strict proof of their claim. The defendant contended that their actions were justified as a term of parliament has sixty months of which the plaintiffs were paid sixty times which represents full payment. That the payment for the month of May was a mistake and that on that basis the suit must fail and be dismissed with costs to the defendant.

At the scheduling conference the agreed facts were that:

- (i) The term of the 8th parliament commenced on 18th May 2006.
- (ii) The term ended on 18th May 2011.
- (iii) The term of parliament is 5years.
- (iv) Members of the 8th parliament were paid full salary for the month of May 2006.
- (v) Members of parliament were paid half emoluments or salary for the month of May 2011.

The parties agreed on the following issues:

- (a) Whether the plaintiffs received their full salaries and emoluments for their entire period of their mandate as members of the 8th parliament.
- (b) Whether the plaintiff is entitled to the relief sought.

During the trial, the plaintiffs were represented by Mr. Alunga while the defendants were represented by Mr. Akena Moses together with Tabitha Kawudha, then Ms. Cherotich.

Both the plaintiffs and defendant produced one witness each.

PW1 was Hon. Okello Okello who testified by way of a witness statement. When he was cross examined, he testified that he started serving parliament in May 2006. That parliament commenced on 19th August 2006 and the MPs were fully paid from June 2006 through to April 2011 which were only fifty nine months. That his constitutional mandate was for sixty months. However, in May 2011, he was paid half salary and emoluments. That they were fully paid from May 2006. That from May 2006 to April 2011 did not make a total of sixty months paid.

In re-examination PW1 testified that each parliamentary term is separate and distinct and sixty months apply to all terms of parliament. Further in re-examination PW1 testified that public servants are paid on a monthly basis whether they work for a day or a week. That as MPs, they are entitled to receive full pay because at the beginning PW1 worked for thirteen days in the first month of that parliament although full emoluments were paid for he was a public servant. That there is nothing like a part payment in the constitution. PW1 did not get any explanation why he was not fully paid.

DW1 was Patrick Henry Kunobwa, the Director Finance although he has been Chief Accountant since 2004. He testified by witness statement.

In cross examination, DW1 testified that the 8th parliament commenced on 19th May 2006 and ended on 18th May 2011. That the term of the 9th parliament commenced on 19th May 2011 although it could have commenced on 18th May. That sixty months of the 8th parliament ended on

30th April 2011. The sixty months are counted from 19th May 2006 to 18th May 2011 which constitutes five years of parliament as provided for in the Constitution. DW1 confirmed that MPs must be paid for the sixty months and they were fully paid using the formula of $\frac{18}{31} \times \text{month's pay} = \text{what was received by the MPs}$. DW1 was not aware if MPs are paid as civil servants. That the period 19th May 2006 to 18th May 2011 is sixty months and that although they did not pay fully in April 2011, when Parliament began at the beginning the MPs got two payments in the month of June.

In re-examination, DW1 clarified that the payments for the 18th parliaments were more than the number of months i.e sixty months and eighteen days respectively.

Court allowed respective counsel to file respective submissions.

After a careful consideration of the evidence on record and the respective submissions by learned counsel as well as the law applicable and the authorities cited for court's assistance, I will go ahead and resolve the issues framed starting with Issue I

Issue I: Whether the plaintiffs received their full salaries and emoluments for their entire period of their mandate as members of the 8th parliament.

It is not in contention that the term of parliament in Uganda is five years which amounts to sixty months.

As rightly contended by learned counsel for the defendants this is in accordance with Article 77(3) of the Constitution of the Republic of Uganda. Under Article 96 thereof, upon the expiry of that period, parliament stands dissolved.

In the instant case, the sixty months of the 8th parliament ended on 18th May 2011. It is not in contention that the plaintiff members of the 8th parliament were fully paid for sixty months. However, what is in contention is that since the MPs worked for the eighteen days in May 2011, it was wrong for them to be paid for only the eighteen days because in public service full salary is paid whether one has worked for a full month or not.

I do not agree with this assertion. Members of parliament are not Public Officers in public service. Article 257(1)(w),(x) and (y) of the Constitution define public office, public officer and public service respectively as follows:

‘Public Office’ means the office in public service.

‘Public Officer’ means a person holding or acting in public office.

‘Public Service’ means a service in civil capacity of the government or of the local government.

These definitions have to be read together with Article 257(2)(b) which states that;

“(b) a reference to an office in the Public Service does not include a reference to the office of the President, the Vice President, the Speaker or Deputy Speaker, a Minister, the Attorney General, a Member of Parliament or a Member of any Commission, Authority, Council or Committee established by the Constitution.”

Therefore the practices of employment in public service cannot be applicable to members of parliament.

As I have already stated, both the plaintiffs and the defense witnesses admitted that the MPs of the 8th parliament received sixty payments and what is being termed as half payment. They were paid in full from the month of May 2006 which was their first month in the 8th parliament up to April 2011. Parliamentarians then received a pro-rata payment for eighteen days for the month of May 2011 as can be seen from exhibit D4, the pay slips of the selected members of the 8th parliament.

As rightly submitted by learned counsel for the defendant, it was justifiable to make a pro-rata payment for outgoing MPs in the month of May 2011 considering that the term of the incoming 9th parliament commenced on 19th May 2011. This was to avoid double payment if the full payment was made to both members of the outgoing 8th parliament and the incoming 9th parliament. That is why even members of the 9th parliament received a pro-rata payment for the period they served in the month of May 2011 which was about thirteen days. The pro-rata payment meant that the MPs of the 8th parliament were fully paid for sixty months.

Consequently I will answer issue 1 in the affirmative.

Issue 2: Remedies available.

The defence has established that members of the 8th parliament were fully paid their emoluments and salaries for sixty months since they received pro-rata payment for eighteen days for the month of May 2011. They could not be paid for a full month of May 2011 since the 9th parliament was due to start work and they are not civil servants. Had they been paid for a full month of May 2011 yet the next parliament was starting work, it would amount to double payment which is contrary to the law. It therefore follows that the plaintiffs are not entitled to

any remedies sought in this suit. Deciding otherwise would result into unjust enrichment at the expense of the tax payers.

The plaintiffs are therefore not entitled to any damages.

Consequently I will order that this suit be dismissed with costs.

I so order.

Stephen Musota

J U D G E

05.04.2016