

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 19 OF 2011

AKELLO BEATRICE OCITI ::::::::::::::::::::::::::: PLAINTIFF

VERSUS

THE ATTORNEY GENERAL ::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON.JUSTICE STEPHEN MUSOTA

JUDGMENT

Through M/s Byamugisha Gabriel & Co. Advocates the plaintiff Akello Beatrice Ociti, a Nursing Officer Grade I in the Public Service attached to Mulago Referral Hospital filed this suit against the Attorney General represented by Ms. Maureen Ijang (SA) for:

1. A declaration that the plaintiff is an employee of the defendants.
2. Reinstatement on government payroll and deployment.
3. Salary arrears from January 2005 to date.
4. General damages.
5. Exemplary damages.
6. Costs of the suit.

The brief background to the suit is that the plaintiff joined the Public Service as a Nursing Officer Grade II in Kitgum Hospital. In 1994 she was transferred to Mulago Hospital. In 1997 she was promoted to a Nursing Officer Grade I. She then enrolled for a Bachelor of Science in Nursing at Makerere University which she successfully completed and obtained in the year 2000. In August 2002 the plaintiff went on annual leave and failed to return to work upon completion

of the leave period. In November 2002 the plaintiff applied for a one year leave without pay on grounds that she had some social problems as per annexure “D1” to DW1’s witness statement. Then in 2004, she applied for resumption of duty after eighteen months. In May 2004, the management of Mulago Referral Hospital reinstated her on the payroll. In June 2004, the plaintiff was warned that failure to follow public service procedures would result to her removal from the public service. In June 2004, the plaintiff was redeployed at Mulago by the Assistant Commissioner Personnel. On 21st July 2004, the plaintiff did not report for duty and a letter was written to her after she failed to give an explanation as to why she could not report for duty. In September 2004, the plaintiff applied for sponsorship and study leave to the Training and Human Resource Development Committee (THRDC) which was rejected as revealed in paragraph 11 of DW1’s witness statement. Nevertheless, the plaintiff did not report for duty and in November 2004, the Nurses’ Disciplinary Committee forwarded her case to the Assistant Commissioner Personnel for further action. In the same month of November 2004, the plaintiff sought study leave directly from the Director which was granted. The plaintiff also appealed to the committee which rejected her appeal for study leave to be granted. Subsequently she was warned to stop abscondment from duty but did not stop. Her explanation was that she was away lawfully because the Executive Director had allowed her to go on study leave.

In September 2005, the plaintiff was deleted from the payroll in a payroll cleaning exercise. In 2006 she successfully obtained a Masters in Public Health from Makerere University. After three years of absence, she returned to work for redeployment in 2007. In 2008 February, the plaintiff was informed of the decision of the Director to forward her case to the Health Service Commission to be considered for absconding from duty. On 10th March 2009, the Executive Director, wrote to the Health Service Commission recommending that the plaintiff be considered as having absconded from duty. As a result, the Permanent Secretary Ministry of Public Service requested for a detailed report from the Executive Director about the plaintiff case.

In the meantime, the plaintiff complained to the IGG and in July 2010, after carrying out an investigation, the IGG concluded that it did not have powers to intervene and the Health Service Commission is the proper body to handle the plaintiff's case.

As requested, in October 2010, the Executive Director wrote to the Health Service Commission a detailed history of the plaintiff's conduct. Thereafter, in 2011, this suit was filed claiming that the plaintiff was wrongly deleted from the payroll because she had got study leave. However, the defendant maintains that the request for study leave was rejected and even her appeal against the decision was also rejected. Further that her purported leave was not regular since she bypassed the committee that was supposed to handle her case. The plaintiff prayed for judgment to be entered against the defendant.

In its statement of defense, the defendant denied in total the claim by the plaintiff and promised to put the plaintiff to strict proof thereof. The defence contends that the plaintiff had been given many chances to remedy the situation and explain herself but to no avail. That the plaintiff was lawfully deleted from the payroll because she absconded from duty without explanation and forcefully took study leave even after she was denied the same. It is the defendant's case that the plaintiff's issue has already been referred to the Health Service Commission for further action. Therefore the suit should be dismissed with costs to the defendants.

During the scheduling conference, the agreed facts were that:

1. The plaintiff has been an employee of the defendant ever since 1997 in the department of nursing at Mulago Hospital.
2. The plaintiff studied on the job and obtained a Bachelor of Science in Nursing in 2002 and a Masters of Public health in 2004.
3. The plaintiff was deleted from payroll in 2004 while she was still away on studies.
4. The defendant has refused to deploy and to pay salary to the plaintiff ever since the deletion.

5. The plaintiff is not deployed up to now.

The agreed issues are as follows:

- a) Whether the plaintiff was lawfully deleted from the payroll.
- b) Whether the refusal by the defendant to deploy and pay the plaintiff as an employee are justified.
- c) Whether the plaintiff is entitled to the reliefs sought.

During the trial, the plaintiff produced two witnesses including herself and PW1 Dr. Gideon Kikampikaho while the defendant produced one witness in the names of J.B Semakula the Assistant Commissioner Human Resource at Mulago Referral Hospital. The case proceeded by witness statements.

In his statement PW1 Dr. Kikampikaho Gideon testified that the plaintiff is an employee of Mulago Referral Hospital. That PW1 was Deputy Executive Director and Head Clinical Services and the Training and Human Resource Development department fell under his supervision. He would act in the absence of the Director. That he authorized the plaintiff to go on study leave in January 2005 as per annexure “A” a letter dated 10th January 2005. That later that year the plaintiff approached him complaining that her salary had been stopped and she was being chased from her house. PW1 then directed that her salary be processed as it was being withheld without authority as per (annexture “B”). PW1 retired from Mulago in June 2005 and left. That in September 2005, PW1 was informed that the plaintiff was still not receiving salary, he then wrote a letter on 27th September 2005 (annexture “C”) addressed to the director Mulago Hospital on the status of the plaintiff.

In cross-examination, PW1 testified that he was appointed Deputy Executive Director in 1991 and retired in June 2005 and was in charge of clinical services and day today management of the

hospital. That he could approve leave and study leave for employees. He approved the plaintiff's study leave in January 2005 for a course. That the plaintiff was a graduate Nurse and the first to apply for the course in Public Health. So PW1 felt that it was a good challenge for the Nurses. He therefore encouraged the plaintiff to do the course but told her they would not finance the course. The course was for duration of two years leading to Masters in Public health. PW1, advised the plaintiff to fill the relevant forms for approval by the Training Committee of the Hospital. The Assistant Commissioner Nursing did not object.

PW2 was the plaintiff herself, she stated that she was admitted for a Bachelor of Science in Nursing Makerere University and obtained a Bachelor of Science in Nursing in 2000. She also did a Masters Degree and obtained a Masters of Public Health of Makerere University in 2006. While attending the Masters program she was wrongly deleted from the payroll in 2005. That the deletion was wrong because she had got permission from the director of the hospital to go for studies and even had permission from the Training and Human Resource Development Committee. That despite express orders from the Director and Dr. Kikampikaho to reinstate her and pay her salary arrears, the hospital authorities have refused to reinstate her on the payroll and deploy her as per annexure "A". That despite advise from the Health Service Commission, Ministry of Public Service and Ministry of Health to reinstate her, Mulago Hospital has refused to comply.

When cross-examined PW2 testified in support of the claim in the plaint.

The defence produced only one witness (DW1) J.B. Semakula the Assistant Commissioner, Human Resource at Mulago Referral Hospital who testified in justification of the actions of Mulago Hospital management. This witness filed an elaborate witness statement outlining the sequence of events that led to the suit. I particularly refer to annexures "D1", "D2", "D3", "D4", "D5", "D6", "D7", "D8", "D9", "D10", "D11", "D12", "D13", "D14", "D15", D16, D17, D18,

D19, D20, D21 and D22). That the management of Mulago Hospital did all it could to give the plaintiff several opportunities to explain her absence from duty to no avail.

Court allowed respective counsel to file written submissions in support of their respective cases.

I have considered the evidence on record and the submissions by respective counsel as well as the law applicable. I have also considered the case authorities cited for my assistance. I will go ahead and resolve issues as framed starting with issue I.

Issue I: Whether the plaintiff was lawfully deleted from the payroll.

In his submission, learned counsel for the plaintiff said that the plaintiff was unlawfully deleted from the payroll. The defence submitted to the contrary.

From the evidence and facts on record it is undisputed that the plaintiff was a government employee attached to Mulago Referral Hospital. She was deleted from the payroll. It is also not disputed that the plaintiff was away from duty for close to four years while on purported study leave between 2004 and 2008. The justification put forward by the defendant for deleting the plaintiff from the payroll and not deploying her is that she absconded from duty.

However, the plaintiff relies on the letter that the Executive Director wrote to her allowing her to go on study leave as sufficient authority and permission for her to go on the study leave. In the circumstances, resolution of who is right depends on the determination of the issue of whether or not the plaintiff properly took her study leave.

The procedure for a civil servant to go on study is provided for under the Public Service Standing Orders especially under paragraph c-d thereof. The officer applying for study leave must apply to the responsible officer who then approves a study leave and the responsible officer is guided by the Service Commission Regulations. Upon approval, the responsible officer is enjoined to forward a recommendation to the responsible Service Commission for granting of the study leave and in this case, it should have been the Health Service Commission. In the instant case, the plaintiff claims she got the study leave from the Executive Director of Mulago Referral Hospital which was contrary to Public Service Standing Orders. The argument that the procedure of filling in forms and getting approval from the Commissioner are mere formalities is not correct. All public servants must be obedient to the rules and regulations that govern their employment. In the instant case therefore, although the intentions of the Executive Director were very good, it was incumbent upon the plaintiff to ensure that she does not leave duty without following due process.

In the circumstances of this case, I am inclined to agree with the defence and find that the plaintiff did not properly take study leave. For all intents and purposes it means she absconded from duty within the meaning of Section A-n para 17-19 of the Public Service Standing Orders. It is the responsibility of a public officer to inform in writing the responsible officer about his or her absence from duty. A responsible officer shall require a public officer who is absent from duty for fourteen days to resume duty immediately with a written explanation for his/her absence. In the absence of communication from the officer or failure to resume duty within thirty days, the officer shall be deemed to have abandoned duty. The responsible officer is then enjoined in mandatory terms to stop the salary immediately and submit to the appointing authority for a formal directive of his or her removal from public service on abandonment of duty. If an officer abandons duty then he/she shall forfeit all rights and privileges attached to his/her office with effect from the date of abandonment.

Consequently I will uphold the submission by learned counsel for the defendant that the plaintiff absconded duty and was therefore properly deleted from the payroll, however noble her objective was in acquiring additional skills. Issue 1 is resolved in the negative.

Issue 2: Whether refusal by the defendant to deploy and pay the plaintiff as an employee is justified.

On this issue, I agree with the submissions by learned counsel for the defendant that by abandoning duty and willfully taking herself out of the control of Mulago referral Hospital, her non deployment and refusal to pay her is justified. The defendant made deliberate efforts to recall the plaintiff to work including her appearance before the Nurses Disciplinary Committee as per exhibit P5. The defendant (Hospital authorities) formerly communicated to the plaintiff that it was preparing a submission to the Health Service Commission regarding her abscondment from duty as per exhibit D25. Even the IGG found that the complainant's study leave was irregular and advised that a submission be made to the Health Service Commission regarding the same. Mulago Referral Hospital indeed made a submission to the Health Service Commission as can be deduced from exhibit D20, D23, D24 and D25 in line with Rule 17-18 and 19 of Section A-n of the Public Service Standing orders. All this evidence proves that the plaintiff abandoned or absconded duty and her salary was lawfully stopped as provided by the law. The decision not to reinstate the plaintiff on the payroll by Mulago Referral Hospital is lawful as dictated by Rule 19.

The fate of the plaintiff now lies with the Health Service Commission and not in this suit. She should submit to that authority and present her case.

Just as I have resolved issue 1, issue 2 must as a result fail. What was done to the plaintiff was within the law. The plaintiff forfeited all rights and privileges attached to her office.

Issue 3: Whether the plaintiff is entitled to the reliefs sought.

Having resolved both issues 1 and 2 in the negative, it follows that the plaintiff is not entitled to any of the reliefs sought. She did not prove on the balance of probabilities that she followed the proper procedure in obtaining and taking her study leave.

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

Stephen Musota

J U D G E

31.03.2016