

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
HCT-00-CV-CS-0202-2013

SAM AKANKWASA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

- VERSUS -

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

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT:

The plaintiff **SAM AKANKWASA** a public officer in the employment of Wakiso District Administration filed this suit by way of a plaint against the defendant Attorney General for:

- 1. *A declaration that the plaintiff's dismissal, arrest and detention without charge was unconstitutional and unlawful and in contempt of court and the resultant dismissal is void ab initio;***
- 2. *A declaration that the dismissal of the plaintiff without any notice or hearing and when there were injunctions restraining the defendant from doing so was illegal, null and void;***
- 3. *An order of reinstatement of the plaintiff;***
- 4. *An order that the defendant pays a fine of shs.200,000,000/= for contempt of court;***

5. *A declaration that the plaintiff is entitled to compensation for his unlawful and unconstitutional arrest and detention without charge and in contempt of court injunction;*
6. *An order for payment of compensation to the plaintiff for his unlawful and unconstitutional arrest and detention without charge;*
7. *Damages of defamation of UGX100,000,000/=;*
8. *Special damages;*
9. *Exemplary damages and punitive damages;*
10. *General damages;*
11. *Interest at the rate of 32% from the date of the unlawful arrest and detention till payment in full;*
12. *Costs of the suit;*
13. *Any further or alternative relief that this honourable court may deem fit.*

The Attorney General did not file a Written Statement of Defence and the suit proceeded ex-parte for formal proof.

Briefly the background of this suit is that the plaintiff was a public servant employed in the Wakiso District Local Government as a Procurement Officer. He was dissatisfied by the way he was being treated at work by the officials at the District and instituted a suit in the High Court of Uganda in Miscellaneous Cause No. 8 of 2010. He was then interdicted. However he had also made an application for a temporary injunction which stopped the Wakiso District Administration from interdicting him which order was granted (*See Annexure SI and S2 to*

plaint). While the injunction was still in place he was thrown out of his office and all his property taken away. The Wakiso District Council engaged IGG and dismissed the plaintiff. Again the plaintiff went to court and obtained an order stopping the implementation of the IGG's order. (**See Annexure S3**). He was nevertheless removed from office by police officers. He showed the police officers copies of the court order but they said they did not care about court orders and that they had to implement the directive of the CAO to implement the interdiction. The plaintiff resisted the actions of the police officer and he was arrested and taken to Wakiso Police Station. He wrote complaining about the way he was being handled and dismissed from office to not avail (**see Annexure S5**). Court ordered that the plaintiff be paid his salary and be restored but they did not do so. The plaintiff has never been paid his salary, emoluments and allowances to date. It is because of this course of events that he filed this suit.

At the hearing of the case the plaintiff was represented by Dr. Akampumuza. The defendant was unrepresented. In order to prove the claim of damages the plaintiff presented himself as witness and made a witness statement.

This case is here for formal proof. I have considered the evidence, submissions and pleadings. The law is that where a plaint is drawn with a claim for pecuniary damages only or a claim for detention of goods with or without a claim for pecuniary damages and the defendants fail to file a defence, an interlocutory judgment will be entered and the suit set down for assessment of the value of the goods and damages. See **Order 9 rule 8 of the Civil Procedure Rules and Sekito Vs Nsambu [1987] HCB 50**. This was done in this case and the effect of this is that once the interlocutory judgment was entered the issue of liability was settled and cannot be reopened at this stage of formal proof per **Asumani Mutekanga Vs Equator Growers (U) Limited SCCA No. 7 of 1995**. In that case the Supreme Court agreed with counsel that "formal proof" meant that the plaintiff must prove that which he claims from the defendant. An interlocutory judgment does not entitle the plaintiff, in whose favour it has been entered to sit across legged and wait to be fed on a silver plate. He has a duty to show on the balance of probability that he is entitled to the relief claimed in the plaint.

This court agree with the positions of the law as stated above. I shall therefore determine whether the plaintiff is entitled to the reliefs sought. The plaintiff claims several prayers in the plaint as outlined at the beginning of this judgment. I shall consider one by one for convenience.

1. A declaration that the plaintiff's dismissal, arrest and detention without charge was unconstitutional and unlawful and in contempt of court and the resultant dismissal is void ab initio:

The prayer goes to liability and therefore was settled at the stage of the interlocutory judgment. The declaration is accordingly made.

2. A declaration that the dismissal of the plaintiff without any notice or hearing and when there were injunctions restraining the defendant from doing so was illegal, null and void:

This prayer goes to liability and therefore was settled at the stage of the interlocutory judgment. The same is granted.

3. An order of reinstatement of the plaintiff:

I am unable to grant this particular order since this court has not decided any labour dispute. Even the circumstances at the place of employment are not clearly disclosed to this court. This prayer is rejected accordingly.

4. An order that the defendant pays a fine of shs.200,000,000/= for contempt of court:

Under the circumstances of this case I find shs.200,000,000/= to be on the high side. This court finds that an award of 20,000,000/= is sufficient to compensate the plaintiff for any damage suffered as a result of contempt of court order.

5. A declaration that the plaintiff is entitled to compensation for his unlawful and unconstitutional arrest and detention without charge and in contempt of court injunction:

The prayer goes to liability and therefore was settled at the stage of the interlocutory judgment. The plaintiff is entitled to compensation as prayed.

6. An order for payment of compensation to the plaintiff for his unlawful and unconstitutional arrest and detention without charge:

I find that shs.10,000,000/= is sufficient to compensate the plaintiff.

Before I deal with the prayers on damages I must observe that to achieve the ends of justice, there are well established rules and principles that govern the award of damages in civil cases. These rules and principles are firmly rooted in the common law and doctrines of equity which are part of the law applicable in Uganda under **S. 14(2) of the Judicature Act, Cap. 13.**

Damages are usually incapable of precise assessment. This court is aware that it cannot by any arithmetical calculation establish the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of the actions of another. However, as long as, the plaintiff has proved facts on which an approximation can be based, the court must award a reasonable sum as damages unless, of course, there is a public policy consideration which prevents such a plaintiff from claiming damages on the facts of that particular case. Damages must not be too high or too low with regard to the circumstances of a particular case. Damages should not be awarded from sentimental considerations. Damages are, in their fundamental character, compensatory, and not a punishment. In certain circumstances, the court may award more than the normal measure of damages, by taking into account the defendant's motives or conduct, and in this case the damages may be "aggravated damages" which are compensatory or "exemplary damages"

which are punitive. Whenever an injury is done to a right, the law will presume damage. Thus, as a general rule, proof of actual damage is not essential to entitle a plaintiff to an award of damages.

I shall take into account these principles in deciding this case.

7. Damages of defamation of UGX100,000,000/=:

On this prayer this court finds that the plaintiff did not prove sufficiently how he suffered. No pleadings to found a cause of action in defamation were brought by the plaintiff. This claim is accordingly disallowed.

8. Special damages:

Special damages are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and, therefore, they must be claimed specially and proved strictly. "Special damages" relate to past pecuniary loss calculable at the date of trial.

The uncontroverted evidence by the plaintiff is that he lost income in the form of salaries and allowances among others as at 25th April 2013. His appointment letter is annexed as "S7". This court will award the plaintiff his:

(a) Monthly salary of UGX769,516/= for 38 months= 29,241,516/=

(b) Top up of UGX180,000/= for 38 months = 6,840,000/=

I am unable to award the plaintiff the claim for monthly mileage and monthly fuel allowance and telephone expenses since he has been out of employment.

9. Exemplary damages and punitive damages:

The case of *McCardie J Butterworth Vs Butterworth & Englefield [1920] P. 126* is as helpful today as it was in the past century –

“Simply put, the expression exemplary damages means damages for ‘example’ sake’. These kinds of damages are clearly punitive or exemplary in nature. They represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary or physical and mental suffering.”

Award of exemplary damages was considered by the House of Lords in the Landmark case of *Rookees Vs Barnard [1964] ALL ER 367 at 410, 411.*

Lord Devlin stated that in his view there are only three categories of cases in which exemplary damages are awarded, namely:

- 1. Where there has been oppressive, arbitrary, or unconstitutional actions by the servants of government;***

- 2. Where the defendant's conduct was calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; or***

- 3. Where some law for the time being in force authorises the award of exemplary damages.***

Furthermore, according to Lord Devlin in *Rookees Vs Barnard*, above, when considering the making of an award of exemplary damages, three matters should be borne in mind:

- (a) The plaintiff cannot recover exemplary damages unless he or she is the victim of punishable behavior;***

- (b) The power to award exemplary damages should be used with restraint; and***

(c) The means of the parties are material in the assessment of exemplary damages.

It has been held in two cases, ***Kiwanuka Vs Attorney General (Uganda) EACA No. 19 of 1965 (C.A) and Visram & Karsan Vs Bhatt [1965] EA 789*** by the Court of Appeal for Eastern Africa that the dicta of the House of Lords in ***Rookees Vs Barnard***, above, accurately stated the law of East Africa with respect to exemplary damages. The principles formulated in ***Rookees Vs Barnard***, above, were also endorsed by Spry VP of the East African Court of Appeal in the often cited case of ***Obongo Vs Municipal Council of Kisumu [1971] EA 91***; by the High Court of Uganda in following cases:

Ongom & Another Vs Attorney General [1979] HCB 267; Kyambadde Vs Mpigi District Administration [1983] HCB 44; Nsaba Buturo Vs Munansi Newspaper [1982] HCB 134; Ntagoba Vs Editor-in-chief of the New Vision & Another [2004] 2 EA 234; Bhadelia Habib Ltd. v. Commissioner General, URA [1997-2001] UCL202; and most recently by the Supreme Court of Uganda in the Landmark case of ***Fredrick J. K. Zaabwe Vs Orient Bank & Others Supreme Court Civil Appeal No. 4 of 2006 (unreported)***.

In all the cases I have just referred to, the court was firmly aware of the nature of exemplary damages and when they should be awarded. By way of emphasis, however, I shall restate here the rationale behind the award of exemplary damages: exemplary damages should not be used to enrich the plaintiff, but to punish the defendant and deter him from repeating his conduct.

It is my considered view that in an action where an outrage has been committed against the plaintiff by the defendant and the court forms the opinion that it should give punitive damages to register its disapproval of the wanton and willful disregard of the law, it is entirely proper to award exemplary damages in addition to general damages and special damages, if any. See ***London Vs Ryder [1953] ALL ER 741***, where the court utilized the award of exemplary damages to teach a defendant who had acted with a cynical disregard of the plaintiff's rights a lesson that "a tort does not pay."

An award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal. Per Spry V.P. in *Obongo Vs Municipal Council of Kisumu [1971] EA 91*. All circumstances of the case must be taken into account, including the behaviour of the plaintiff and whether the defendant had been provoked. See *O'Connor Vs Hewiston [1979] Crim. LR 46, CA; Archer Brown [1985] QB 401*.

Baring those principles in mind I find that an award of UGX5,000,000/= sufficient as exemplary damages for the unconstitutional and oppressive treatment of the plaintiff by the defendant.

10. General damages:

According to Lord Macnaghten in the often cited case of *Stroms Vs Hutchinson [1905] AC 515*, general damages are such as the law will presume to be the direct, natural or probable consequence of the act complained of. 'General damages' relate to all other items of damage whether pecuniary or non-pecuniary. This court finds that an award of UGX10,000,000/= as sufficient general damages.

11. Interest at the rate of 32% from the date of the unlawful arrest and detention till payment in full:

This court finds that 32% interest is on the high side. This court therefore awards 8% interest from the date of this judgment until payment in full on all the awards given.

12. Costs of the suit:

Costs follow the event unless circumstances exist to deny a party such costs. In this case none of such circumstances exist. Costs are awarded to the plaintiff.

13. Any further or alternative relief that this honourable court may deem fit.

This court finds that no other remedies are necessary. This court also condemns the practice of lawyers adding such prayers in pleadings. Counsel must know exactly what they seek from court unless the law gives court wide discretion to decide on an appropriate remedy.

I so order.

Stephen Musota

J U D G E

15.06.2016.