

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
CIVIL SUIT NO.303 OF 2015**

**GEOFREY MUKURU .....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....DEFENDANT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT.**

The Plaintiff filed a suit against the defendant pursuant to Article 119(4) of the Constitution of the Republic of Uganda claiming for damages arising out of an injury at war front in Mogadishu acting for AMISOM (African Union Mission in Somalia), breach of contract by UPDF for terminating his contract without cause, an Order for the plaintiff be paid salary for the remaining contract period and damages for refusal by the UPDF to return his passport.

The background of the suit is that the Plaintiff applied for, was selected to join a military unit serving in Somalia under the Uganda Contingent to African Union Mission in Somalia (AMISOM) and was awarded a one year contract to serve in Somalia starting from June 2014 to June 2015.

On 14/12/2014 while on duty, he sustained an injury by a hand grenade which resulted into a soft tissue injury following which he was treated in a Field Hospital in Mogadishu and was transferred for further treatment in Bombo Military Hospital on 28/01/2015, he was given a sick leave up to 01/03/2015, obtained a Return to Unit clearance from the AMISOM Co-ordinator on 12/03/2015 , he there after reported back for deployment at Entebbe Military Airbase on 01/03/2015, obtained a Return to Unit clearance from the AMISOM Co-ordinator and on 13/03/2015 he was informed that his name had been removed from the Contingent.

The Plaintiff continues to suffer neural pain and contends that he has so far spent twenty million Uganda shillings on treatment and his salary of US\$1028 dollars per month was paid up to February 2015 instead of the twelve months agreed period hence the suit.

The defendant in their defence denied the facts of the case contending that the suit is misconceived and devoid of merit.

The plaintiff was represented by *Counsel Stellah Nakamya* while the defendant was represented by *Tusubira Sam (State Attorney)*

The parties filed a joint scheduling memorandum and agreed to the following issues.

#### **AGREED ISSUES.**

1. *Whether the Plaintiff has a cause of action against the defendant?*
2. *Whether the defendant is liable for breach of contract by the UPDF for terminating the Plaintiff's contract without cause?*
3. *Whether the Plaintiff is entitled to payment of the salary for the remainder of his contract?*
4. *Whether the Plaintiff is entitled to the remedies sought?*

The following facts can be discerned from the pleadings as the true reflection of the summary of real facts although they were never agreed.

- *The Plaintiff applied, selected to join a military unit serving in Somalia under the Uganda and was awarded a one year contract to serve in Somalia starting from June 2014 to June 2015.*
- *While on duty, he sustained an injury which resulted into a soft tissue injury following which he was treated in a Field Hospital in Mogadishu and was transferred for further treatment in Bombo Military Hospital on 28/01/2015.*
- *His passport was retained at the Entebbe Military Airbase by the Administration Airbase in obedience to the operational rule that passports are retained till after the expiry of the contract.*

- *The AMISOM Co-ordinator Officer at Bombo confirmed the thirty days sick leave that was recommended to the Plaintiff by Dr. Natasha from the 30th day of January 2015 to the 1st day of March 2015.*
- *On 01/03/2015,obtained a Return to Unit clearance from the AMISOM Co-ordinator and was informed that he needed a clearance from the AMISOM Co-ordinator Bombo which he obtained on 12/03/2015 from Dr. Natasha of Bombo Military Hospital.*
- *On 13/03/2015 he was informed that his name had been removed from the Contingent.*
- *The Plaintiff continues to suffer neural pain and contends that he has so far spent twenty million Uganda shillings on treatment and his salary of US1028 dollars per month was paid up to February 2015 instead of the twelve months agreed period.*

The plaintiff lead evidence of two witnesses (himself) and a one Wadda while the defendant led evidence through Major Paul Lusiiba Kasoma deployed as a Staff Officer-Medical Services in the UPDF.

### **Determination.**

#### ***Whether the Plaintiff has a cause of action against the defendant?***

The Plaintiff counsel submitted that the plaintiff enjoyed a legal right that was violated which resulted into a cause of action. Under **S.101** of the **Evidence Act Cap 6** stipulates that for court to make a judgement in regards to a legal right or liability dependent on the existence of facts he/she asserts must prove that those facts exist. In the case of **Auto garage & Anor vs Motokov No. 3 [1971]EA 514** states the principles that would enable court to determine a cause of action as that the plaintiff enjoyed a right, right had been violated and that the defendant is liable.

#### ***That the plaintiff enjoyed a right.***

Paragraphs 4(c),(d),(e)of the Plaintiff & paragraphs 11,12,and 13 of the Plaintiff's witness statement identified as PW1 ,he pleaded and testified he was among the 1400soldiers in the Military unit that fled off to Somalia flagged off by Gen.Katumba Wamala who informed them that

their contract was to last for one year and signed a contract with UPDF in June 2014 deployed as a rifleman/first wider or medic, started working from June 2014 to January 2015 and was paid only for a period of eight months .He secured an identification card showing his service number which was expiring in June 2015.

Paragraph 14 of the second witness's statement identified as PW2 testified that he was working with the plaintiff up to the Brigadier Headquarters at Serenjari. Basing on the facts above, the Plaintiff claims that he enjoyed a legal right and he's entitled to his salary as an employee of UPDF and has to be taken care of in case of an injury occasioned in the course of employment.

#### ***Violation of the right.***

Paragraphs 4,5 and 6 of the Plaintiff & paragraph 18 of the Plaintiff's witness statement PW1 where he pleaded and testified that while on duty in Somalia he and other 5 soldiers were injured by a hand grenade which resulted into a soft tissue injury on his thigh, after recovery he was cut off from the AMISOM Strength , his contract was terminated and that he continues to suffer neural pain without any assistance and has spent over twenty million on treatment.

#### **Liability of the defendant.**

The Plaintiff was a member of the UPDF which makes him an employee of the Government which implies that any actions done by them or any sickness /illness / accidents that happen during their course of employment makes the Attorney General vicariously liable.

Where as the Defendant contends that the Plaintiff has no cause of action and that there is nothing to show that he enjoyed a legal right that was violated by the Defendant. The Defendant prays that this Honorable Court rejects the Plaintiff under **Ord.7, r.11(a)**

In the Plaintiff's submissions in rejoinder in response to the defendant's submissions that the Plaintiff has no right that was violated, it was testified in paragraph 24 of the Plaintiff's witness statement that he was

a member of the Uganda People Defence Forces and that he sustained the injury while on duty in Somalia.

### *Analysis*

In my opinion in regards to whether the Plaintiff enjoyed a legal right or not, in line with the facts at hand, he was an employee that had signed a contract of one year and he was able to work for eight months due to the injury he sustained while on duty. According to the witness Statements, he testified that he was paid for the period of time he was in active service in Somalia and the fact that he still suffers neural pain shows that he was not fit to return to work as he alleged.

The plaintiff's employment was subject to being healthy and fit to be able to execute his duties in AMISOM and it was not merely a mode of rewarding him with good salary and allowances as he seems to make his case. The plaintiff was injured and sustained a soft tissue injury to the thigh as a result of a bomb blast at Marka Somalia.

The mission had terms and conditions which must be fulfilled by the members and the AMISOM SOPs clearly provided; *"that any soldier that sustains an injury and is out of the mission area for more than 27 days is automatically struck off the strength (SOS) of AMISOM and a replacement is made in order to maintain the SOPs.*

By the time the plaintiff was cleared for redeployment he had already spent more than 3 months out of the mission against the mandated 27 days as per AMISOM SOPs and he was struck off the strength.

It therefore clear that there was no basis for the plaintiff to claim for the payment of the balance of the contract period when he is fully aware that he was injured and returned to Uganda for treatment. The plaintiff seems to be more interested in the big allowances oblivious of the AMISOM SOPs which required him to be present on duty continuously. Allowances are not given as a gift but rather as a way to facilitate your

work. When he was in Uganda for treatment, he was not working then no allowances could accrue to him.

The plaintiff has no cause of action against the defendant for not redeploying him back to Somalia or AMISOM mission. The plaintiff ought to have been rejected as such since no right accrued to the plaintiff to be redeployed after he was injured and stayed away from the mission for more than 3 months contrary to the 27 days maximum.

*Whether the defendant is liable for breach of contract by the UPDF for terminating the Plaintiff's contract without cause?*

The plaintiff's counsel submitted that under paragraphs 1 to 14 of the Plaintiff's witness statement it was testified that he underwent training and qualified to become a member of the military unit called UGABAG XXII+ and was given an identification card showing his service number in AMISOM as AX006903 which confirms that he was employed by the Government of Uganda.

Furthermore, in paragraphs 18 to 22 of the Plaintiff's witness statement it was testified that he sustained an injury which resulted into a soft tissue that led to an operation of which the doctor made a report that his neural vein had been affected and a copy was attached as annexure "B".

This is corroborated with paragraphs 15, 17, 18 & 19 of the second witness's Statement confirming that the Plaintiff sustained the injury while at war front in the course of his employment.

The Plaintiff was given sick leave after which he received a Return to Unit Clearance from Dr. Natasha of Bombo Military Hospital though he was not allowed to go back to Somalia .

Where as the Defendant argues that the Plaintiff's contract was terminated with a justifiable cause. The Defendant's defense is that any soldier that sustains an injury and is out of the mission area for more than 27 days is automatically struck off the Strength of AMISOM and a

replacement is made in order to maintain the Standard Operating Procedures. That the idea of the Plaintiff that he would be waited for to heal and join the mission would be counterproductive as the force would increasingly lack man power.

### *Analysis*

It is not disputed that the plaintiff suffered neural pain it automatically indicates that he was not fit to join the mission, therefore his contract was terminated for a reasonable cause.

This court agrees with the defence submission that the force manpower must be maintained at the same rate or level at all times. In case a member is injured or unable to perform their duties, it is only fair that he or she is replaced in a timely manner to match the number of the enemy.

The plaintiff was away from the mission for more than 3 months and the maximum days expected to be away was 27 days. This is an undisputed fact and the plaintiff cannot claim breach of contract when he is fully aware he was nursing his injuries and could not be redeployed after the lapse of 27 days and was nursing the unhealed injuries.

### **Issue 3 .**

*Whether the Plaintiff is entitled to payment of the salary for the remainder of his contract?*

According to paragraph 38 of the Plaintiff's witness statement it was testified that his salary of USD\$ 1028 per month was only up to January 2015 instead of the 12 months agreed period and Counsel for the Plaintiff prayed that the Plaintiff be paid the salary for the remainder of his contract since he was supposed to work for one year , sustained an injury during the course of employment, obtained sick leave and upon recovery he tried to go back to work but his employment contract was terminated without reason.

Where as the Defendant under paragraph 13 of their witness statement it was testified that the Plaintiff was paid his mission allowances for the duration he served in AMISOM.

Further contends that the Plaintiff's claim for salary for the alleged remainder of his contract period is untenable since he spent more than twenty seven days upon which he was automatically struck off the Strength and a replacement was made in order to maintain the Standard Operating Procedures.

### *Analysis*

The Plaintiff was paid for the period of time he was in active service in AMISOM which he testified in his witness statement,he was replaced upon sustaining the injury therefore he cannot paid for the time he was not in service. That would be unjust enrichment and unfair to the objectives of the mission.

### **Issue 4 .**

*Whether the Plaintiff is entitled to the remedies sought?*

The plaintiff is not entitled to any of the reliefs sought and this suit is dismissed with costs to the defendant.

I so Order

*Ssekaana Musa*

*Judge*

*31<sup>st</sup> May 2023*