

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01- CV-CS NO. 0028 OF 2014

HAWUMBA MUSOKE NAOME

**(Suing as the Administratrix
of the estate of the late**

Solomon Kalikwany Musoke) ::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS

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

BEFORE: HON. JUSTICE VINCENT EMMY MUGABO

JUDGMENT

Introduction

The Plaintiff is the Administratrix of the estate of the late Solomon Kalikwany Musoke who was the original plaintiff who filed this suit against the defendant in its representative capacity for acts of the Ministry of Local Government for a declaration and orders that the termination of his service as a Chief Administrative Officer by the Ministry of Local Government was wrongful, illegal, unconstitutional, high handed and arbitrary. He seeks Special damages of Ug. Shs. 99,781,864/=, General and Aggravated damages to the tune of Ug. Shs. 100,000,000/= Interest on the damages at court rate from the date of filing the suit till payment in full and costs of the suit.

Brief Facts/Background

The facts as gathered from the pleadings of the parties are that the plaintiff was employed by Public Service Commission and that in 2007 he was Chief Administrative Officer under the District Local Government and served in Kabarole and Mpigi Districts. That while working in Kabarole he received complaints from the Permanent Secretary, Ministry of Local Government implicating him in financial impropriety,

mismanagement of the disposal of the District's assets, lack of supervision and failure to take action on internal audit findings. That he defended himself from the allegations by letter in 2009 and was issued a warning by the Permanent secretary. That the Inspector General of Government instituted criminal proceedings against the plaintiff and his subordinates which led to his interdiction on 5th March 2010. That the said criminal charges were eventually withdrawn and the plaintiff requested the Permanent Secretary Ministry of Local Government to lift his interdiction. Instead he was terminated on 3rd February 2011 with no entitlement or claim to any retirement or other terminal benefits. The plaintiff then filed this suit pleading breach of contract and illegalities on the part of the defendant and sought orders and declarations as stated above.

The defendant in his written statement of defence denied all the allegations by the plaintiff as false and stated that the plaintiff is not entitled to the reliefs and prayers sought. The defendant stated that the plaintiff's probationary appointment was legal and that its termination was lawful and constitutional.

On the 16th of June 2015 when the matter came up for hearing, there were efforts to have the matter settled out of court and the parties hoped to have an amicable settlement but however the settlement stalled and yielded no results during mediation so the matter was set down for hearing.

Issues

During scheduling, the following issues were agreed upon by the parties for determination by this court;

1. *Whether the defendant's Public Service Commission's refusal to waive the probation appointment and period was lawful.*

2. *Whether the defendant's termination of the plaintiff's appointment was lawful.*
3. *Whether the parties are entitled to the remedies sought.*

Representation and hearing

The plaintiff was represented by Mr Richard Bwiruka and Mr Muhumuza Kaahwa while the defendant was represented by Mr. Isaac Singura. Counsel for the defendant filed his trial bundle for Courts consideration. Court directed that each party file witness statements and final submissions which they did. Counsel for the plaintiff led evidence of only the plaintiff, Solomon Kalibwanyi Musoke as PW1. The plaintiff unfortunately died on 30th April 2019. The parties by consent substituted him with his widow/administratrix of his estate Mrs Hawumba Musoke Naume.

The defence led evidence of one witness Perez Kunya as DW1. I will consider all the evidence presented by both parties in resolving this case.

Burden and standard of proof

This being a civil suit, the burden of proof lies with the plaintiff. To decide in his favour, the court has to be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the plaintiff contends, since the standard of proof is on the balance of probabilities / preponderance of evidence (**see *Lancaster v. Blackwell Colliery Co. Ltd 1918 WC Rep 345 and Sebuliba v. Cooperative Bank Ltd [1982] HCB 130***).

Resolution of issues

Issue 1: *Whether the defendant's Public Service Commission's refusal to waive the probation appointment and period was lawful.*

Submissions

Counsel for the plaintiff conceded that the Public Service Commission was within its right not to waive his probationary period of two years. He asked court to strike out issue 1 for being wrongly framed.

I find no need to delve into the merits of issue one given that the plaintiff concedes to the issue. It is no longer in contention. Counsel for the plaintiff asked court to strike out issue one as provided for in Order 15 r 5 (2) of the Civil Procedure Rules.

Order 15 r 5(2) provides that:- the court may also at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced. Issue 1 does not fall in this category. It was rightly framed. The plaintiff only chose to concede and abandon contesting the issue. Issues arise when a material proposition of law or fact is affirmed by the one party and denied by the other. When both parties affirm the proposition of law or fact then in my view the issue collapses. Issue one therefore collapses.

I now turn to issue 2.

Issue 2: *Whether the defendant's termination of the plaintiff's appointment was lawful.*

Counsel for the plaintiff argued that the plaintiff's probationary appointment was for two years starting 17th May 2007. That the probationary period ended on 17th May 2009 and that the plaintiff remained in service for a period of 1 year and 8 months until he was terminated on 3rd February 2011. That he received no communication either extending his probation or stating he had failed the probation and his services not required any more. To counsel, this implied that upon the expiration of his probationary period, he was confirmed and admitted to the permanent and pensionable scheme in Public Service.

He referred court to the Public Service Standing Orders of 1991 which require the officer to complete Staff Performance Appraisal Forms every 6 months and send copies to the responsible Permanent Secretary and also that under Regulation 22 of the Public Service Regulations, an officer who holds a probationary appointment shall consider being confirmed on expiration of the period or the same be extended for justified cause or he does not remain in Public Service which was not done in the plaintiff's case. To counsel, the plaintiff was confirmed and continued working for an additional 1 year and 8 months and a fact the defendant cannot deny. He referred to **Section 114 of the Evidence Act** which is to the effect that where a person through his declaration act or omission caused another to believe a thing to be true and to act upon such belief then he cannot deny the same.

Additionally, counsel for the plaintiff submitted that the plaintiff was not accorded a fair hearing contrary to Article 28 of the Constitution which makes his termination unlawful and unconstitutional. He stated that the plaintiff was not subjected to any disciplinary hearing that resulted into his termination and no witness was called to explain the circumstances of his termination. He submitted that based on the above anomalies, the plaintiff cannot be victimized and or removed from office. He relied on **Article 173 of the Constitution, Regulation 36 of the Public Service [Commission] Regulations and Sections 58,66,67(2) 7 (3) of the Employment Act of 2006.**

Counsel for the defendant in response submitted that no employee can be terminated unless there is a valid reason connected with such employee's conduct or work based on the operation standards required of him under the contract. He referred to the Termination of Employment Convention No. 58 of the International Labour Organization.

Counsel also submitted that appointment on probation does not in itself confer a right of admission to the pensionable office see (section A-d of the Public Service Standing Orders). It was his submission that probation is intended to censure those suitable and those not for permanent retention and that the conduct of the plaintiff during probation proved that he wasn't suitable for permanent retention. He referred to the allegations against the plaintiff while in office that attracted disciplinary action against him where the IGG commenced investigations against the plaintiff and the plaintiff wrote a defence as stated in his plaint in paragraph 4(d), annexures A6-A8. That he also made an assurance statement (Annexure A8 to plaint) promising to keep away from such acts in the future. That he was interdicted (Annexure A11 to plaint) following charges preferred against him and that his probationary appointment was eventually terminated.

Counsel submitted that the plaintiff's appeal against his interdiction was rejected. He also referred to letter dated 5/8/2011 by the Permanent Secretary to Public Service referring to the omissions and commissions of the plaintiff for which he was to be held accountable.

On appraisal forms, counsel for the defendant pointed out that Performance Appraisal forms are supposed to be filled by officers on probation every 6 months and submitted to the responsible officer for the probation period which he did not do. He also referred to the staff Performance appraisal report form to be filled and submitted to the responsible Permanent Secretary every 3 months, which also was not done by the plaintiff or not produced in evidence to support assessment of his performance. Counsel made reference to **Section A-n (12), and 17 of the Uganda Public Service Standing Orders.**

Counsel on legality of the termination submitted that an employer has a right to terminate an employee as long as it is in accordance with the

Act, rules and regulations governing employment in Uganda and terms in a contract. He referred to **Section 66, 67 of the Employment Act**, the case of ***Hilda Musinguzi vs Stanbic Bank (u) Ltd, SCCA 05/2016*** which are to the same effect.

Counsel also submitted that the termination of the plaintiff was lawful having followed the principle of natural justice according the plaintiff a fair hearing.

Resolution

The Plaintiff's Appointment

The plaintiff in his evidence informed court that he was first appointed to the Public Service as a Tax officer in 1987 on temporary basis and was confirmed and admitted to the pensionable terms in 1989. He also testified that he worked as an Assistant Treasurer, Ag Finance Officer, Principal Internal Auditor KCC, Deputy City Treasury, Assistant Commissioner Urban Inspection, Director Finance and Administration NEMA and was appointed Chief Administrative Officer under the Ministry of Local Government in 2007 on probation appointment for two years. That he served as such in Kabarole and Mpigi Districts.

DW1 Perez Kunya, a Human Resource Officer, Ministry of Local Government told court that he knew the plaintiff Solomon K. Musoke who once worked with Public Service. He confirmed the positions that the plaintiff served in which included tax officer, Senior Accountant, Principal Internal auditor KCC and Assistant Commissioner Urban Inspection.

It was DW1's further evidence that the plaintiff in 2001 resigned from Public service and went to work with NEMA as Director of Finance and Administration. That from NEMA he reapplied to join Public Service, as

a Chief Administrative Officer, a position he was appointed to in 2007 on probation basis.

Defence Exhibits D1, D2, D3, D4, D5 and D6 are in respect to the plaintiff's appointments and positions held. The plaintiff attached his appointment letter for the position of Chief Administrative Officer as Annexure A4 to his plaint which is headed "**APPOINTMENT ON PROBATION**" dated 17th May 2007. He accepted the said appointment on 22nd May 2008. His appointment was a Pensionable appointment on confirmation following a period of probation.

The plaintiff's appointment was governed by the Public Service Standing Orders. The said orders have been revised, the old version was revised by the 2010 edition which was also later revised by the 2021 edition. The probation period is currently 6 months. The old period was however 2 years which was applicable to the plaintiff at the time of his appointment.

The purpose for the probationary period is provided for under sections A-d of the said orders. It provides that during the probationary period, a public officer is on trial, with a view to learning his or her work and being tested so as to ascertain his or her suitability for retention in the public service; is under continuous observation, coaching, counselling and mentoring and helped to improve performance; is given all possible facilities for acquiring experience; and is placed and rotated as far as may be practicable, in such a way that he/she can master the basic elements of the job. Probation is a reality and it must be used to secure, in public interest, officers that are suitable for public service career and eliminate at an early stage those not suitable for permanent retention. See (**Sections A-d 5,6**).

Upon fulfillment of the requirements prescribed for the probation period, the officer is either confirmed, probation period extended for justifiable

cause or not allowed to stay in Public Service. **See section 30(2) of the Public Service Commission Regulations)**

Counsel for the plaintiff contended that the plaintiff's probation period started on the 17th of May 2007 and ended on the 17th of May 2009. He submitted that it was the responsibility of the Appointing Officer and Responsible officer to ensure that an officer on probation is confirmed which was not done and as a result the plaintiff continued to serve for an extra 1 year and 8 months before being confirmed.

Section A-e 4 provides that a public officer on probation has a right to inquire from his or her supervisor about his or her prospects for timely confirmation. Where confirmation is not effected on the due date, the officer shall upon the lapse of one month from the due date of his or her confirmation, appeal in writing to the Responsible Officer through the immediate supervisor. The Supervisor shall be required to make objective comments giving reasons why confirmation of the officer has been delayed.

Regulation -9 of the said regulations provides that where the responsible officer fails to forward to the Secretary his or her recommendation on a public officer holding a probationary appointment and who has served the mandatory period of probation without adverse reports, such an officer shall be free to appeal to the Commission for confirmation in appointment.

The plaintiff had a right to follow up on his confirmation and/or appeal against any infringement in that respect which he didn't do. There no evidence led of the plaintiff's inquiries or appeals in respect to his confirmation. What is on record is his application to have the probation period waived which was denied.

The confirmation in public service is not merely presumed or implied. The directive of the Appointing Authority to confirm a Public officer is

contained in the Minutes of the relevant Service Commission and when received, a Responsible Officer informs the public officer in writing. Notification of confirmation in a pensionable office is given to the officer in writing by the Responsible Officer (see Appendix A – 15).

The plaintiff upon expiration of his probationary period was not entitled to being confirmed. Appointment on probation to a pensionable office does not in itself confer any right of admission to the pensionable office see Section A-d (3) of the Standing Orders.

A public officer is eligible for confirmation in appointment at the end of a probationary period, subject to satisfactory performance, conduct and to any other prescribed conditions, which may include the following: -

- (a) Passing of departmental examinations or tests;
- (b) Completing prescribed courses of Instruction; and
- (c) Any other prerequisites laid down for any particular appointment.

See Section A-e of the 2010 standing orders.

Satisfactory performance is through the appraisal forms. During the probation period, the officer is expected to complete Staff Performance Appraisal forms every 6 months for assessment of his or her performance by the supervisor who submits them to the Responsible Officer. (Section A-d 7). No evidence was led as to whether the plaintiff filled any appraisal forms neither was there any evidence of the plaintiff sitting any departmental examinations or similar courses in preparation for confirmation.

His conduct, his ability to perform his duties and suitability for the job were all under scrutiny and would vouch for his confirmation. Evidence on record in respect to the plaintiff's good performance of his duties and conduct during his probation period was in his own evidence.

The plaintiff stated that during his time of service as CAO in Mpigi, allegations came up against him concerning his time of service in Kabarole District as CAO. That the Ministry of Local Government carried out investigations on the same and made a report. The plaintiff received a copy of the report which is attached to his plaint as A6.

The report was dated 19th October 2009 from the Permanent Secretary addressed to the plaintiff. It was headed “**Report on the special investigation into alleged mismanagement of Government programmes in Kabarole District Local Government**”.

The allegations were in respect to the irregular manner in which Government programmes were implemented and general service delivery while the plaintiff served in Kabarole District Local Government. These included;-

“ 1) Mr Masaba Samuel, A Senior Accountant drew shs. 19,000,000/= from the UNICEF account which was meant for activities on Education. Water and CBS departments that no work was done and funds were embezzled. It was further alleged that Mr, Masaba confessed to members of the District Executive Committee on 24th March 2009 to have drawn the money and that regardless of this confession you took no action.

2) It was alleged that the boarding off of the district vehicles was hurriedly done and that the exercise was totally abused according to the eye witness who was present during the auctioning, the whole exercise fetched shs. 62 million while according to the auctioneers report only shs 37,535,000/= was realised.

3) It was alleged that there was diversion of shs. 30 million from water conditional grant under the pretext that they are lending the funds to UNICEF to conduct training of water source committees in Ruteete Sub-county during the Christmas season last year.

- 4) *It was also alleged that there was gross lack of supervision by the engineering department on the ongoing district headquarters construction.*
- 5) *It was still alleged that the District Service Commission and the Chief Administrative Officer had disregarded all instructions from the relevant organs of Government including the Public Service Commission, Parliamentary Accounts Committee and the Inspector General of Government directing them to rescind the appointment of Mr. Charles Rwabuhoro Ndibalema as District Internal Auditor.*

On 19th May 2009, vide letter MC 22, the Ministry demanded for an explanation to exculpate yourself of the allegations. On 28th May 2009, a team of Inspectors was sent to the district to carry out a special investigation to ascertain the facts on the ground in light of the complaint and your response letter dated 28th May 2009. Below are the findings of the investigation and inspection team.

- 1) *Through negligence of duties on your part as accounting officer Mr. Samuel Masaba a Senior Accountant withdrew Shs. 19.9 million from Kabarole District UNICEF bank Account however the money was not passed onto Ms. Stella Kabongoro the Inspector of Schools as was expected. This act amounts to the embezzlement.*
- 2) *Out of 32 sewing machines only 8 complete sets of sewing machines were delivered. This tantamount to defrauding your employer.*
- 3) *You exhibited laxity at your Monitoring and Evaluation responsibility which caused the District to fail to meet the minimum conditions of performance thus being penalised.*
- 4) *Due to weak supervision by your office, anomalies occurred in the Procurement and Disposal Unit where by boarding of district Vehicles was poorly done. The auctioneer deviated from the price at the auctioning time and accepted lower prices contrary to the local*

Government Procurement Regulations 2006. This amounts to conspiracy to defraud Government.

- 5) You gave approval to staff to borrow auction proceeds from the Auctioneer when it ought to have been banked. This is an irregular conduct which amounts to abuse of office.*
- 6) It was established that on 23rd December 2008 shs 30 million was not deposited on UNICEF Bank Account to pay Rural Growth Initiatives for training of water users committee. Instead a cash cheque was written in the names of Mr. Pius Mugabe as Senior Water Officer and uncashed. This amounts to defrauding of the employees.*

Based on the foregoing, we hold you responsible for the following omissions and commissions:-

- 1) Your office is responsible for the missing 18 sewing machines which is attributed to weak supervision.*
- 2) Failure to adhere to procedures on Procurement and Disposal of Assets Act and Regulations which amounts to highhandedness and flaunting of laws for selfish interest.*
- 3) Negligence of duty leading to loss of shs 16.9 million drawn from the District Health Department Account by Mr. Samuel Masaba a Senior Accountant.*
- 4) Authorising diversion of shs. 30 m from UNICEF programme activities contrary to Treasury Accounting Instructions and Local Governments Financial and Accounting Regulations.*

These are serious omissions and commission and attract serious disciplinary action. They portray you as a negligent officer who is unable to manage staff contrary to Chapter 1, F-a of the Uganda Government Standing orders which require public officers to perform their duties with high standard of discipline and integrity.

In light of the above and the serious nature of the allegations against you, I am asking you to submit a statement of defence against the above charges. The response should reach my office before 20th November 2009.

On the 19th of November 2009 the plaintiff made a statement of defence in respect to the allegations levied against him. In response, the Permanent secretary by letter dated 27th January 2010 made the following observations from the plaintiffs defence statement:-

“1) you admitted the omission of allowing staff to draw funds from the sale of old vehicles and assets. This however is flouting of financial laws for self-interest. In addition you also alleged that council resolved to board off vehicles under Min. 079/07 of 25th and 26th April 2007. It was established that the minute quoted did not authorize the boarding off of vehicles. The District Chairperson only requested council to mandate the District Executive Committee and Works Standing Committee to study the proposal for disposing off the old and absolute assets in accordance with the laid down procedures and report to the next council meeting. This was not done because the committees mandated did not report back to the council for authority to board off the vehicles in addition the Board of Survey Report was only signed by some members not even the chairperson. The Local Government Procurement and Disposal Regulations were also flouted.

2) On authorizing diversion of shs 30 million from UNICEF you admitted the omission and apologized for the decision. We appreciate your honest response with regard to this matter. Your response is satisfactory.

3) On negligence of duty leading to the loss of shs 16.9 million drawn from the District Health Department Account by Mr. Samuel Basaba, A Senior accountant, we find your response not satisfactory, you indicated that the District Executive Committee was hurriedly convened and was not attended by you and the District Chairperson. Note that section 13 (3) of the Local Government Act mandates the functions of Chairperson to be exercised by the Chairperson directly or through elected or appointed officials subordinate to the chairperson. In this case the members of the District Executive are subordinate to the District Chairperson and the Office of the CAO is secretariat.

In addition by 6th April 2009 when Mr. Nyankana complained, no action was taken on Mr. Masaba by your office although the report of the Internal Audit was availed to your office on 19th March 2009, action was taken much later after Mr. Nyakana's complaint. The Officer was thereafter interdicted and directed to refund the money. The first refund of shs. 2,000,000/= was made on the date of investigations on 11th June 2009. This shows negligence of duty by your office, though the officer apologized to the district executive committee and promised to refund the money one week from 27th March 2009.

4) On the missing 18 sewing machines which we attributed to weak supervision, we have noted that the sewing machines were received at the end of 2006 before you became the CAO of Kabarole District Local Government. Efforts and actions taken by your office in learning of the allegation are satisfactory however you should have taken disciplinary action in officers implicated in the loss of the sewing machines who are mandated with custody and control of stores and other assets as stipulated in part VIII to the Local Governments Financial and Accounting Regulations 2007.

The purpose of this letter is, therefore, to issue you with a stern warning, to desist from practices that result into financial mismanagement. In future the ministry would like to see you in control of situations especially with regard to the handling of the finances. Your attention is drawn to chapter 1, F-a of the Uganda Government Standing Orders which requires Public Officers to perform their duties with a high standard of discipline and integrity.

Pursuant to Article 188 of the Constitution, I ask you to submit an assurance statement to the effect that you will not allow a re-occurrence of such conduct in the course of your work as a Chief Administrative Officer.

The plaintiff submitted the said assurance.

On 22nd February 2010, the IGG preferred charges of Embezzlement and Abuse of Office against the plaintiff and two of his subordinate staff. The plaintiff and his co-accused were arrested. The plaintiff on 5th March 2010 was interdicted from duty in line with **Regulation 38 of the Public Service Commission Regulations**. The charges were however later withdrawn and the plaintiff discharged.

The Permanent Secretary Ministry of Local Government wrote to the Secretary Public Service recommending that the plaintiff's interdiction be lifted. It was recommended that the allegations previously leveled against the plaintiff by the Ministry were explained away the plaintiff satisfactory defence and that the officer should be released to return to work and serve as CAO.

The Permanent Secretary Ministry of Public Service wrote to the plaintiff on 3rd February 2011 terminating his Probationary Appointment.

The position of the law as was rightly stated by counsel for the defendant referring to the Termination of Employment Convention No. 58 of the International Labour Organisation which is that; *no employee should be*

terminated unless there is a valid reason connected with such employee's conduct or work based on the operation standards required of him under the contract.

Section 66 of the Employment act provides that:-

“An employee shall before reaching a decision to dismiss an employee on grounds of misconduct or poor performance explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal.”

The conduct of the plaintiff as observed above was contrary to that required for an officer on probation suitable for retention on permanent employment. His omissions and commissions resulted into financial loss and misappropriation of funds which all occurred under his watch for which he was found accountable by his employers. His conduct was the very opposite of an employee deserving to be confirmed. He presented no evidence to show that his performance was tested to with Staff Performance Appraisal Forms. It is only obvious he failed to fulfill the necessary requirements for confirmation.

A public officer who fails to fulfil the requirements for probation (with or without extension) such as failure on the part of the officer to master his or her official duties or responsibilities within the probationary period or failure to sit or pass the examination required for confirmation shall have the appointment terminated by the Appointing Authority on the recommendation of the Responsible Officer. **See (Section A-e)**

Regulation 30(5) (2) of the Public Service Regulations provides that:-

If after consideration of the matters referred to in sub-regulation (2), the responsible officer is of the opinion that the work or conduct of a public officer in a probationary appointment has not been in all respects satisfactory, he or she shall so inform the officer in writing

and indicate whether he or she proposes to recommend that the officer's probationary appointment should be terminated.

The appointment of the plaintiff on probation was terminated for none compliance with the requirements of the probation.

It was counsel's further submission that the plaintiff was not accorded a fair hearing and that the principles of natural justice were not fulfilled.

The principles of natural justice, accords an employee a right to a fair hearing and the right to a just and fair treatment in administrative decisions guaranteed by **Article 28 and 42 of the Constitution of the Republic of Uganda**. According to **Article 44(c)** the right to a fair hearing cannot be derogated from. A dismissal which flouts the above provisions is considered a nullity.

In the plaintiff's assurance letter addressed to Ministry of Local Government concerning the allegations and complaints against him he stated that:-

"...First and foremost I wish to reiterate my earlier appreciation (now formally) for the opportunity accorded to me to respond to the allegations through yours of 19th October 2009, Ref, LG/P.7027 I accordingly made a response to all the concerns brought to my attention regarding the alleged mismanagement of Government programs in Kabarole District.

I further appreciate the fact that my response was objectively reviewed in conformity with the principle of natural justice. Indeed many of my responses and/or pleas have been considered while others are still considered as omissions on my part as the then Chief Administrative Officer Kabarole District...."

In his own words, the plaintiff states that he was accorded a fair hearing and given a chance to respond to all the allegations levelled against him. The principles of natural justice were observed.

The other complaint by counsel for the plaintiff was that he was being punished twice for the same crime which had earlier been resolved and he was issued a stern warning and therefore his interdiction and termination was double jeopardy. It was alleged that the IGG re-investigated issues that had been earlier investigated and acted on by the Ministry of Local Government.

The charges preferred by the IGG are in the charge sheet of 22nd February 2010. The IGG preferred charges of Embezzlement and Abuse of Office against the plaintiff and two of his subordinate staff. These charges were in respect to alleged embezzlement of 27,600,000/= between the 18th and 23rd of December 2008 from the Kabarole District Local Government Account. The plaintiff's interdiction was as a result of these charges.

The complaints and allegations investigated by the Local Government were in respect to; 32 sewing machines, 19.9 million shillings withdrawn in respect to the UNICEF account, 30 million not deposited on the UNICEF account and allowing staff to borrow money from the proceeds of the sale of the disposed of vehicles among others. These are totally different allegations which called for different investigations by bodies entitled independently to conduct investigations in such cases. The plaintiff is not being tried twice for the same offence.

The fact that the plaintiff was issued a stern warning did not bar any further allegations from being preferred against him nor did it shield him from being penalized for non-fulfillment of the requirements of his probation and confirmation. The Public Service Commission was within

its right to terminate the plaintiff's probationary appointment for reasons stated above.

Issue 3: what remedies are available to the parties?

Having found as above, the plaintiff is not entitled to any of the remedies sought. His suit is therefore dismissed with no order as to costs.

It is so ordered

Dated at Fort Portal this 31st day of May 2023. .



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the judgment to the parties



Vincent Emmy Mugabo

Judge

31st May 2023.