

5

The Republic of Uganda
In The High Court of Uganda at Soroti
Civil Suit No. 0002 of 2019

Akurut Betty ===== Plaintiff

10

Versus

Amuria District Local Government ===== Defendant

15

Before: Hon. Justice Dr Henry Peter Adonyo

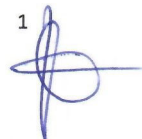
Judgement

1. Background:

20 The plaintiff filed this suit against the defendant for unlawful termination and breach of contract wherein she sought payment of salary arrears, a declaration that her termination was unlawful, payment of special and general damages, recovery of interest and costs of the suit.

She claims that at all material times she was an employee of the defendant
25 from the time she got appointed as a nursing officer on the 13th of February 2013 and by virtue of this appointment she was entitled to a monthly salary of Ugx. 811,609/=.

Upon appointment she was posted to Obalanga HC III and she obliged her
posting instructions dated 14th February 2013, however, that starting
30 November 2013 to April 2014 she ceased receiving salary amounting to Ugx. 10,125,000/= and in this period she also got transferred to



5 Kapelebyong HC IV by circular dated 30th December but she did not have money to help her settle in her work place.

That she committedly visited the defendant's office seeking help in getting her salary arrears but she never got any positive response to date. In the circumstances of her operation made her fail to discharge her duties a fact
10 she communicated to the defendant.

The plaintiff was then summoned before the Amuria District Service Commission on the 12th August 2014 where she was charged with abscondment and insubordination, she was eventually terminated without the approval and resolution of Amuria District Local Government.

15 The defendant in its written statement of defence denied the above allegations and contended that the plaintiff was appointed on probation as a Nursing officer on 13th February 2013 and she was posted in Obalanga Health Centre III and on 30th December 2013 in a bid to balance staff development for effective service delivery, she was transferred to
20 Kapelebyong Health Centre IV but she did not heed to the transfer and never reported to Kapelebyong.

That she stopped working at Obalanga Health Centre III upon receiving transfer instructions but would occasionally visit the health facility and intimidate other health workers.

25 That in November 2013 during the migration of the staff payroll to IPPS system the officer was among 106 staff that missed salaries and it require each individual to fill the pay change forms which the plaintiff never did. That the interventions by the Labour Officer Soroti and the Uganda Human Rights Commission failed since the plaintiff failed to comply with the
30 resolutions made.

5 That on the 21st August 2014 the District Disciplinary Committee summoned and gave the plaintiff a fair hearing but she assured the committee of her intention of not reporting to the new station which she did. That the plaintiff abandoned her work voluntarily and upon deletion from the payroll, the plaintiff ought to have applied for reactivation but she
10 chose not to.

That the plaintiff's claim for salary arrears is too remote since salary is paid to a serving officer for work executed but the plaintiff is not entitled since she was drawing multiple salaries from the consolidated fund during that period.

15 That the plaintiff even reported the defendant to IGG for irregular deletion from government payroll but they were cleared of any wrongdoing.

2. Representation:

The plaintiff was represented by M/s Isodo & Co. Advocates and the defendant by the Attorney General Chambers Soroti Regional Office. Both
20 parties heeded court's directions and filed their written submissions which are on court record.

The following issues were raised during scheduling:

- a. Whether the Plaintiff's termination was lawful?
- b. Whether the plaintiff is entitled to the arrears claimed in special
25 damages?
- c. What remedies are available to the parties?

3. Determination:

In civil matters like the instant case, the burden of proof rests on the plaintiff and the standard of proof is on a balance of probabilities.

30 According to Section 101 of the Evidence Act Cap.6 Laws of Uganda,



5 (1) Whoever desires any court to give judgment as to any legal right or liability dependent

on the existence of facts, which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that
10 the burden of proof lies on that person.

Section 102 of the Evidence Act goes on to provide that

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

15 Section 103 further provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that proof of that fact shall lie on any particular person.

The plaintiff was her only witness and the defendant also led only one
20 witness called Adoko George.

a. Issue 1: Whether the Plaintiff's termination was lawful?

Counsel for the plaintiff submitted that the law regulating employment in Uganda is diverse and includes the common law principles.

That Article 200 of the Constitution 1995 creates and designates the
25 District Service Commission as the only entity mandated to appoint, confirm, exercise disciplinary control and/ or remove persons from office. Article 173(b) of the Constitution of Uganda 1995 is to the effect that, a public officer shall not be dismissed or removed from office or reduced in rank or otherwise punished without just cause. That this in effect means
30 that no public servant shall be handled casually.



5 He further submitted that it is also well settled law that before any civil servant is disciplined or dismissed from public service, the victim will first have to be formally charged, given ample time to respond, appear before the duly mandated entity to defend herself, and face off with her accusers before a decision can be made.

10 That this is in adherence to the constitutional right to a fair hearing enshrined under Article 28(1) of the Constitution of Uganda 1995; and listed as non-derogable in any event under Article 44(e) of the Constitution. Counsel submitted that under Section 55(4) of the Local Government Act, the District Service Commission in the performance of any of its functions
15 (including disciplining or dismissing an employee), must act only upon the request and submission of the relevant council. Failure to adhere to this has been found to render the impugned decision null and void. ***[See Charles Akoyo vs. Kamuli District Local Council Court of Appeal Civil Appeal No. 08/2011].***

20 Counsel basing on the above submitted that for the following reasons the plaintiff was unlawfully terminated.

a) She was not invited and neither did she appear before the Amuria District Service Commission. She doesn't know what they discussed, neither does she know her accuser or get to face off with him or her. She
25 was condemned by the District Service Commission without being accorded a fair hearing. It has variously been held that a decision arrived at without a fair hearing is null and void ab initio, and therefore of no consequence.

In ***Charles Twagira Vs Uganda SCCA No. 27/ 2003***, it was held that;

30

5 *"A fair trial, or fair hearing under Article 28 means that a party should
be afforded an opportunity to inter alia hear the witnesses of the other
side testify openly; that he should, if he chooses, challenge those
witnesses by way of cross examination; that he should be given an
10 opportunity to give his own evidence in his defense, that he should if
he so wishes, call witnesses to support his case"*

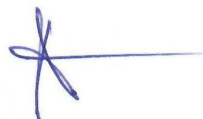
b) The Disciplinary Committee before whom the plaintiff appeared, did not
have the mandate to hear and discipline her, as this is a reserve of the
District Service Commission. Even if they did, the plaintiff never got to face
and cross examine her accuser in that illegal exercise.

15 c) The plaintiff's trials attracted a lot of attention but the relevant council
that would have been the LCIII council of Obalanga Sub County, never
handled this matter, neither did it submit to the District Service
Commission. The Amuria District Council also never deliberated on this
matter; instead it is the Chief Administration Officer who made a
20 submission to the Amuria District Service Commission. This is in direct
breach of section 55(4) Local Government Act, which requires that the
District Service Commission can only execute its mandate upon the request
and submission of the relevant local government council.

That in **Charles Akoyo Supra**, the Court of Appeal set aside the dismissal of
25 the appellant for breaching Section 55(4) Supra.

That in **Ailak Benjamin Vs Kumi District Local Government**, C.S No. 009 of
2005, this Hon. Court held that the contravention of section 55(4) supra
rendered that termination of the plaintiff unlawful, and set aside the
termination.

30



5 d) The termination of the plaintiff was handled in haste as the defendant concentrated on petty official quarrels and discontent to terminate her employment. In counsel's opinion all these issues arose out of non-payment of the plaintiff's salary for a long time and had the defendant sorted out this problem, this debacle would have been avoided. That as a
10 matter of fact, it is clear in paragraph 6 of DEX7 that instead of reinstating the plaintiff to the pay roll, the defendant stood against it, stating that doing so was illegal.

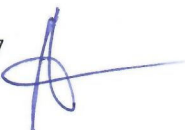
Counsel finally submitted that the manner in which the plaintiff was terminated was so casual that it offended Article 173 (b) of the constitution
15 of Uganda 1995.

Counsel for the defendant in reply submitted that section 66 of the Employment Act provides that before an employer reaches a decision to dismiss an employee on the grounds of misconduct or poor performance shall explain to the employee the reason for which the employer is
20 considering dismissal.

Counsel further submitted that section 67 of the same Act provides that section 66 does not apply where a dismissal brings an end a probationary contract.

That the plaintiff was still on probation when the defendant terminated
25 her employment and though she was not entitled to a hearing per section 67, the District accorded a hearing.

That the plaintiff was summoned and appeared before the Disciplinary Committee of the District (Reward and Sanctions Committee) on 21st August 2014 and she confessed that she will not report to the new station
30 and demonstrated unwillingness to comply with any instructions.

7 

5 That the actions of the plaintiff when she appeared before the Disciplinary
Committee of the District (Reward and Sanctions Committee) prompted
the committee to refer the complaint to the District Service Commission.
Counsel submitted that before a disciplinary matter is referred to the
District Service Commission, the accused employee is first summoned
10 before the Disciplinary Committee of the District (Reward and Sanctions
Committee) which is lawfully recognised under public service.

That the Ministry of Public Service under Circular Standing Instrument No.
1 of 2011 issued the rewards and sanctions framework to guide the service
in managing the process of rewarding excellence and sanctioning under
15 performance and as such the disciplinary committee where the plaintiff
appeared was lawfully in place.

Counsel further submitted that section 55(4) of the Local Government Act
was amended by section 10 (b) the Local Government (Amendment) Act
2010 and the words "*of relevant council*" were substituted with the words
20 "*by the accounting officer*", as such the submissions by the plaintiff that the
District Council should make a submission to the District Service
Commission is not applicable as it is the accounting officer who in this
instance is the CAO.

Counsel finally submitted that the termination of the probation
25 employment of the plaintiff was lawful because she was on probation
which can be terminated without according the plaintiff hearing, this
notwithstanding the plaintiff was accorded a hearing by the Disciplinary
Committee of the District (Reward and Sanctions Committee) which is a
lawfully recognised.

30 That the District Council or Sub-county council do not have mandate to
handle disciplinary matters.

5 In rejoinder, counsel for the plaintiff submitted that the defendants in buttressing their argument cited Sections 66 and 67 of the Employment Act, 2006 to argue that an employee dismissed while on probation is not entitled to a fair hearing.

Counsel argued that having been appointed on the 13/2/2013, the plaintiff
10 duly served her 6 months' probation period as stated in the appointment letter which period is provided for under Section 67(2) of the Employment Act.

Counsel relying on section 67(3) further submitted that there is no evidence on record to suggest that after the expiry of the plaintiff's
15 probationary period, there was a unilateral extension or that she agreed to an extension of the same.

That there is also no evidence that the defendant ever invited the plaintiff to a discussion to extend her probationary period.

He added that in view of the stern warning in Section 67 (3) Supra, the fact
20 that the plaintiff remained in service after the expiry of the six months, implies that she was serving in a confirmed capacity despite not being given a confirmation letter, as the defendant could not issue her with another probationary appointment, or unilaterally extend it without the plaintiff's consent.

25 That this therefore brings the plaintiff under the ambit of Section 66 that demands that she should have been accorded a fair hearing.

Counsel continued to submit that it is his well-considered view that section 67 supra, is inconsistent with Articles 28(1) and 44(c) of the Constitution of Uganda, 1995 which guarantee one the right to be heard. That by limiting
30 that right to only employees that are confirmed, the impugned section is null and void to its extent of inconsistency in the terms of the Constitution

5 which provides that all persons were equal before the law and cannot be segregated against.

Regarding the plaintiff's appearance before the Disciplinary (Rewards & Sanctions) Committee of the defendant, counsel argued the Ministry of Public Service Circular Standing Instrument (CSI) No. 1/2011, was intended
10 to guide the process of rewarding excellence and sanctioning under performance and not meant to have that committee take over the constitutional duties of the District Service Commission who are mandated to appoint, promote and dismiss public servants after according them a fair hearing. He maintained that the plaintiff was never heard by the DSC who
15 are constitutionally mandated to perform that task.

Resolution:

The plaintiff claims that her termination was unlawful because she was granted a fair hearing as required by the law.

The plaintiff testifying as PW1 testified that on 13th February 2013 she was
20 appointed as a nursing officer by the defendant, she was posted to Obalanga HC III and she obliged her posting instructions dated 14th February 2013, however, that starting November 2013 to April 2014 she ceased receiving salary.

In this period, she also got transferred to Kapelebyong HC IV by circular
25 dated 30th December but she did not have money to help her settle in her work place.

That she committedly visited the defendant's office seeking help in getting her salary arrears but she never got any positive response to date. That in the circumstances of her operation made her fail to discharge her duties a
30 fact she communicated to the defendant.

5 The plaintiff was then summoned before the Amuria District Service Commission on the 12th August 2014 where she was charged with abscondment and insubordination, she was eventually terminated without the approval and resolution of Amuria District Local Government which makes her termination illegal.

10 During cross-examination she stated that the District Health Team stopped her from working after she failed to report to Kapelebyong due to lack of transport.

However, when she got transport she reported, she added that she reported to Kapelebyong in 2016- after three years which was after her
15 termination.

That she was not confirmed in the District Health Service of Amuria and she did not know that this was upon satisfactory completion of probation. That when issued with appointment letters she was referred to the Public Service Standing Orders to guide her employment in public service. That
20 before she received the letter of termination by Amuria DLG she was not aware that her services had been terminated.

She informed the Uganda Human Rights Commission that her services had been terminated in 2014. She stated that she did not resign from Kumi DLG where she was an enrolled nurse and she went to Amuria after applying
25 for a job as a nursing officer and when she got the job is when she left the services of Kumi DLG.

She admitted that while working at Amuria she continued receiving salary from Kumi DLG but she did not inform them that she was still receiving their salary after she had left.

30 She admitted that she was invited for and attended the Amuria DLG Disciplinary Committee meeting.

5 The defendant relied on DW1 Adoko George the Chief Administrative Officer of Amuria DLG. He testified that as the CAO he has access to personal files of workers in Amuria and he had the privilege of perusing the plaintiff's file and is well versed with the facts surrounding her employment, behaviour and character.

10 That she was employed on probation as a nursing officer by Amuria District Service Commission in 2013 and she was supposed to perform her duties diligently and in line with Government Standing Orders. When she was transferred to Kapelebyong health centre IV from Obalanga Health centre III she refused to report there and the Assistant DHO through a letter dated

15 9th May 2014 complained to the CAO Amuria regarding the character of the plaintiff especially her behaviour. Due to the plaintiff's character she was summoned to appear before the Disciplinary committee of Amuria and she appeared, the Disciplinary Committee resolved that the complaints against the plaintiff which included abandonment, negligence

20 of duty and insubordination to be submitted to Amuria District Service Commission for further action. The CAO then made a submission to Amuria District Service Commission submitting the plaintiff for disciplinary action. The District Service Commission directed the CAO Amuria DLG to issue a termination letter to the plaintiff, the CAO accordingly issued a termination

25 letter terminating the probation appointment of the plaintiff in service of Amuria DLG. That all due processes were followed by the district before terminating the probation appointment of the plaintiff and she later wrote several letters to the CAO apologising for her behaviour.

30 That it was later discovered through an IGG report that the plaintiff while being employed with Amuria DLG was also employed with Kumi DLG.

5 During cross-examination he stated that the Amuria DSC acted on the submission of the CAO which was from the Disciplinary Committee. He did not know whether the persons who accused the plaintiff appeared before the disciplinary committee because he was not there. The plaintiff did not appear before the DSC.

10 First it needs to be established whether the plaintiff was still on probation when her services were terminated.

PEX1 which is similar to DEX1 is an appointment letter for the plaintiff dated 13th February 2013. It indicates that the DSC appointed her on probation as a nursing officer in service of the defendant.

15 PEX2 which is similar to DEX2 are posting instructions dated 14th February 2013 to Obalanga Center III.

There is no letter confirming the plaintiff's appointment on record.

The plaintiff was transferred from Obalanga Health Centre III to Kapelebyong Health Centre IV on 30th December 2013 per PEX4 and DEX3, 20 per the plaintiff's testimony she did not report to this station till 2016. Thus from the date of assumption of duty 26th February 2013 per PEX 3 to 30th December 2013 the plaintiff worked for approximately 10 months.

The probationary period provided by the law and standing orders is six months which may be extended with the employee's consent.

25 Section 67(2) of the Employment Act provides that the maximum length of a probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee. Section 67 (4) further provides that a contract for a probationary period may be terminated by either party by giving not less than fourteen days' 30 notice of termination, or by payment, by the employer to the employee, of seven days' wages in lieu of notice.

5 The Uganda Public Service Standing Orders 2021 under section (A-d) provide that this period is six months and can only be extended for another six months with agreement of the employee.

The employer is supposed to appraise an employee during their probation to determine whether at the end of the six months they will confirm their
10 appointment, terminate them or enter an agreement for another probationary period.

In this instance there is no evidence that the plaintiff was confirmed, fired or kept on extra probation after the expiry of six months.

In *Nyakabwa J. Abwooli Vs Security 2000 Ltd, Labour Disputed No. 108/2014*
15 *(From HCCS 301/2010)* as cited in *Kaggwa v Plan International (Labour Dispute Claim 175 of 2014) 2016 UGIC 2 (27 January 2016)* it was observed that;

*“Probation is meant for the employer to observe and assess the employee as to the latter’s suitability. The employer has a right after
20 the period to extend the same, terminate the employment or confirm the same. Delaying confirmation of an employee to his detriment without any reason is not acceptable.....”*

An employer keeping on an employee without clearly exercising any of the above options is taken to have confirmed the employee because the law is
25 very clear on the length of a probation period.

I thus find that by the time the respondent terminated the plaintiff’s employment, she had completed her probation and thereby been confirmed.

Having resolved that the plaintiff was no longer on probation, I will not
30 delve into termination of probationary employment contracts under section 67 (1) of the Employment Act.

5 The Uganda Public Service Standing Orders 2021 under section (A-d) provide that this period is six months and can only be extended for another six months with agreement of the employee.

The employer is supposed to appraise an employee during their probation to determine whether at the end of the six months they will confirm their
10 appointment, terminate them or enter an agreement for another probationary period.

In this instance there is no evidence that the plaintiff was confirmed, fired or kept on extra probation after the expiry of six months.

In *Nyakabwa J. Abwooli Vs Security 2000 Ltd, Labour Disputed No. 108/2014*
15 *(From HCCS 301/2010)* as cited in *Kaggwa v Plan International (Labour Dispute Claim 175 of 2014) 2016 UGIC 2 (27 January 2016)* it was observed that;

*“Probation is meant for the employer to observe and assess the employee as to the latter’s suitability. The employer has a right after
20 the period to extend the same, terminate the employment or confirm the same. Delaying confirmation of an employee to his detriment without any reason is not acceptable.....”*

An employer keeping on an employee without clearly exercising any of the above options is taken to have confirmed the employee because the law is
25 very clear on the length of a probation period.

I thus find that by the time the respondent terminated the plaintiff’s employment, she had completed her probation and thereby been confirmed.

Having resolved that the plaintiff was no longer on probation, I will not
30 delve into termination of probationary employment contracts under section 67 (1) of the Employment Act.

5 The next issue is whether the process through which the plaintiff was terminated was legal. She claims she was not accorded a fair hearing. Counsel for the plaintiff argued that a fair hearing involved the plaintiff appearing before the Amuria DSC and the presence of Obalanga LCIII Council. He argued that the Disciplinary Committee did not have mandate
10 to hear and discipline her.

Section 66 of the Employment Act provides for notification and hearing before termination thus;

(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of
15 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 and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall,
20 before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

(3) The employer shall give the employee and the person, if any, chosen
25 under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).

(4)

(5)

(6).....

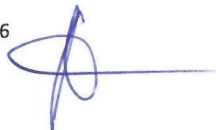
30 In this instance the defendant argued that the plaintiff was accorded a fair hearing when she appeared before the Disciplinary (Rewards & Sanctions)

5 Committee which was created by Circular Standing Instructions No. 1 of 2011.

Public officers are guided in their duties by the Constitution, Public Service Act, its Regulations, Public Standing Orders and any other Laws, Standing Orders or instructions issued by the Ministry of Public service. This is a fact
10 which can also be seen from the plaintiff's appointment letter clearly states that the appointment is subject to the Constitution, Public Service Act, its Regulations, the Pension Act, the Government Standing Orders and Administrative Instructions issued from time to time.

Section (F-r) paragraph 5 (r) (s) and (t) of the Uganda Public Standing
15 Orders define misconduct as absence from duty without permission, refusal to comply with a posting instruction or order and insubordination. Section (F-s) paragraph 6 provides for the procedure where a public officer is involved in misconduct: -

- (a) any person who alleges misconduct by a public officer, shall report to
20 the immediate supervisor of that public officer;
- (b) the immediate supervisor shall inform the public officer of the allegation of misconduct made under paragraph (a) above;
- (c) the public officer shall be given an opportunity to respond to the allegations of misconduct;
- 25 (d) where the public officer accepts that he or she committed the misconduct, the supervisor shall initiate disciplinary action in accordance with Section F-r;
- (e) where a meeting between the supervisor and the public officer was held, a copy of the record of the meeting shall be kept by the supervisor;
- 30 (f) where a public officer denies the allegation of misconduct, the immediate supervisor shall investigate the matter and obtain evidence to



5 determine whether in his or her opinion, the public officer committed the misconduct;

(g) if the immediate supervisor finds that the public officer committed the misconduct, the supervisor shall recommend to the Responsible Officer for appropriate action; and

10 (h) Where the Responsible Officer receives recommendations from the immediate supervisor in paragraph (g) above, he or she may conclude the matter or forward the matter to the Rewards and Sanctions Committee. (emphasis mine)

Under section (F-s) paragraph 8 and 9 it is provided that;

15 The Rewards and Sanctions Committee shall upon receipt of a report from the Responsible Officer under paragraph 5 or 6 invite the public officer to appear before the committee and defend himself or herself.

The Rewards and Sanctions Committee shall make a written recommendation to the Responsible Officer within a period of not more
20 than twenty-one (21) working days from the receipt of report from Responsible Officer.

The public standing orders define a responsible officer as Responsible Officer in relation to a public officer, means the Permanent Secretary of a
25 Ministry or a Department under which the public officer is serving, or head of Department as defined in the Public Service Act, 2008 or Chief Administrative Officer or Town Clerk of a Local Government.

In the instant case, DEX4 is a letter dated 9th of May 2014 from the office of the District Health Officer Amuria to the CAO Amuria regarding the
30 plaintiff. In this letter the DHO the plaintiff never picked her transfer letter, that communications to her were made through the CAO's office, DHO's



5 office and Human Resource office to effect the transfer which she never did. It further states that she stopped working but stays near the facility. The DHO further states that his office on the 8th of May 2014 received information through FOWADE coordinator about wicked behaviour from the facility which drew a group of District Leaders to go and ascertain the
10 situation and these included the CAO, DHO, DISO, FOWADE Coordinator joined by the LCIII and SAS of Obalanga Sub County. During the meeting four health workers testified to intimidation by the Sr. Akurut Betty.

This letter was forwarding a complaint on the plaintiff to the CAO. The plaintiff then appeared before the Disciplinary (Rewards & Sanctions)
15 Committee.

While the minutes of this meeting were not presented in court the plaintiff admitted that she was summoned before the Amuria District Service Commission on the 12th August 2014, PEX5 is a copy of summons to the Disciplinary hearing where she was charged with abscondment and
20 insubordination, she further admitted that she was invited for and attended the disciplinary committee proceedings.

Per DEX6, the CAO informed the plaintiff in a letter dated 3rd November 2014 that the District Disciplinary Committee under minute 05/(b)/8/2014 resolved that her case of abandonment, negligence of duty and
25 insubordination be submitted to the District Service Commission for further action.

DEX7 is a letter dated 24th November 2014 in which the CAO makes a submission on the plaintiff to the secretary DSC Amuria.

He details the history of her appointments, transfer and all subsequent
30 correspondences he received from the Senior Labour Officer, UHRC and IGG. He further states that the plaintiff was accorded a fair hearing by the

5 Disciplinary Committee where she confesses unwillingness to comply with instructions.

He then concludes that in view of continued abandonment of duty and non-compliance to Public Service Regulations among others he recommends that she be declared as having abandoned duty and resigned
10 accordingly.

The DSC per DEX9 which are minutes for meetings held on 10th and 11th of December 2014, under MIN.DSC/AMUR/45/12/2014 titled disciplinary cases discussed under minute 45(59) Akurut Betty, the DSC discussed and found that the plaintiff had not been officially released from Kumi Hospital
15 in Kumi District before her absorption into Amuria DLG since she hid this fact during recruitment.

The DSC further noted issues of abscondment from duty, non-compliance with lawful instructions on transfer, non-compliance with recommendations of the disciplinary committee, uttering false
20 information to UHRC and IGG that she had not been paid since her appointment date. On the basis of the above, the commission resolved that her service be terminated from Amuria DLG.

The plaintiff's termination was communicated via letter dated 14th January 2015 evidenced by PEX6 and DEX8.

25 In the letter the plaintiff's appointment as nursing officer was terminated from the service of Amuria DLG on grounds of abandonment of duty and insubordination.

I find that the procedure followed in the plaintiff's termination was lawful, as her supervisor the DHO in DEX4 which was never challenged stated that
30 attempts to communicate to the plaintiff through the DHO, CAO and HR



5 had proved futile and she was instead causing confusion in Obalanga which attracted the attention of many local leaders.

The DHO forwarded the plaintiff to the CAO who per the Public Standing Orders is her responsible officer, the CAO under the standing orders had the right to finally determine the matter or forward it to the Disciplinary
10 Committee, he opted for the latter and the plaintiff appeared before them. The Disciplinary (Rewards and Sanctions) Committee heard her matter and submitted their findings to the responsible officer which he forwarded with his own submissions to the DSC for final determination. This resulted into her termination.

15 I find that Disciplinary (Rewards and Sanctions) Committee is lawfully recognised body in Public Service with the authority to hear disciplinary matters.

Also the Constitution under Article 198 creates DSCs and under Article 200 gives their functions to include amongst others, the power to appoint
20 persons to hold or act in any office in the service of a district, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office. This is further emphasized in section 55 of the Local Government Act.

25 Article 200 clause 3 provides that the district service commission may establish committees in respect of specialised disciplines.

Section F-r paragraph 26 of the Public Service Standing Orders introduces a Rewards and Sanctions Framework which is to be reviewed regularly.

By Circular Standing Instruction No. 1 of 2011, a Rewards and Sanctions
30 Framework was created which provided for establishment of a Rewards and Sanctions Committee in every Ministry, Department or Agency. Their

5 role in disciplinary procedures is therefore legally recognised and essential to any disciplinary hearing and in the instant case they accorded a fair hearing to the plaintiff.

Regarding the plaintiff's submission that the DSC can only act on submissions of the relevant council which they claim would have been
10 Obalanga, I find that this inconsistent with the Local Government Act as amended.

This is because Section 55(4) of the Local Government Act on which Counsel for the plaintiff is relying was amended by the section 10 (b) which states in subsection (4), by substituting for "*of the relevant*
15 *council*" the words "*by the accounting officer*".

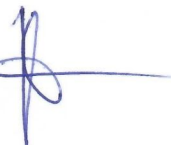
This means that Section 55 (4) of the Local Government Act therefore provides that the District Service Commission shall in relation to its functions spelt out in subsection (1) act only upon the request and submission of by the accounting officer. The accounting officer of a District
20 is the CAO as provided under Article 188 (2) of the Constitution.

Consequently, I find that the DSC in passing its resolution that the plaintiff be terminated acted on the request and the submission of the CAO who by Section 55(4) of the Local Government Act and Article 188 (2) of the Constitution had the authority to do so.

25 I note further that it is alleged that the plaintiff abandoned her duty to the District as a nurse and the procedures relating to abandonment of duty under the Uganda Public Standing Order are different.

Section (F-r) paragraph 16 provides that a public officer who abandons duty shall be regarded as having removed himself or herself from office
30 and the procedure in paragraph 12 and 13 above shall not apply.

Paragraph 12 and 13 provide that;



5 12. It is essential that when disciplinary proceedings are instituted against a public officer, the proceedings are brought to a speedy conclusion including, where applicable, action by the Police, the Director of Public Prosecutions and the Courts of law is required.

10 13. A Responsible Officer shall ensure that the submissions are complete and factual, that events which led to disciplinary action are isolated as to place and time, and that supporting written documents are properly annotated and cross-referenced so as to facilitate speedy handling by the Appointing authority.

15 Section (F-s) under paragraph 12 provides that where a public officer abandons duty, the Responsible Officer shall follow the procedure on abandonment of duty provided for under Section A - o.

 Section A-o paragraph 2(l) indicates abandonment of duty as one of the ways of leaving public service.

20 Section A-o paragraphs 18 to 22 provide for abandonment of duty. Specifically, Paragraph 20 provides that;

In the absence of communication from the public officer and failure to resume duty within 30 days, the public officer shall be deemed to have abandoned duty. The Responsible Officer shall stop the salary immediately and submit to the Appointing Authority for a formal directive of his or her removal from the Public Service on abandonment of duty.

25 Abandonment of duty is, therefore, a way of leaving public service that warrants removal from the Public Service which ideally should have happened in the plaintiff's case because upon transfer to Kapelebyong on December 30th 2013 she stopped working at Obalanga and never reported
30 to Kapelebyong.

5 I find that the defendant instead of removing her from public service father she had abandoned her duties as required kept trying to reach her so that the transfer could be effected to no avail.

Despite this they still accorded her an opportunity through a disciplinary hearing which turned out to be futile as the plaintiff never took up the
10 transfer.

The Disciplinary Committee thus went ahead to forward their submissions to the CAO who forwarded the same to the DSC before she was terminated. Subsequently, I find that the process she underwent before her termination was fair under the amended law and is distinguishable with
15 that of *Ailak Benjamin Vs Kumi District Local Government, C.S No. 009 of 2005* in which this Hon. Court held that the termination of Ailak Benjamin was illegal as it was done in contravention of the then section 55(4) of the Local Government Act while the termination of the plaintiff herein was carried out within the amended law which now provides for an accounting
20 officer to make submissions to the District Service Commission for its action while in *Ailak's case* (supra) the said law provided for submissions from a District Council to the District Service Commission. This ground thus fails.

b. Issue 2 and 3:

- 25 - **Whether the plaintiff is entitled to the arrears claimed in special damages?**
- **What remedies are available to the parties?**

The plaintiff also sought for special damages as her salary arrears. She claimed her salary stopped coming in November 2013 and she has not
30 received anything to date. According to PEX1, the plaintiff was entitled to U5 (SC) 7, 697,701-8,096,174 per annum.

5 Counsel submitted that the plaintiff is entitled to UGX 8,096,174 per
annum for the last 10 years, amounting to UGX 80,961,740 [Eighty Million,
Nine Hundred Sixty-One Thousand, Seven Hundred Forty Shillings]; as
special damages, it being her salary arrears throughout the time of breach.
Counsel for the defendant in reply submitted that salary is paid to a person
10 who is working not an employee who absconded duty without clearance.
The evidence on record shows that after issuance of a transfer notice on
the 30th of December 2013 the plaintiff stopped working. She admits that
as much in her testimony and further adds that she reported to
Kapelebyong in 2016 after her termination.

15 I agree with counsel for the defendant that salary is paid to a working
employee and not one who abandoned duty.

An employee is only paid when not working in cases of various leave
periods provided by the law which was not the case for the plaintiff.

Section (A-o) paragraph 22 of the Uganda Public Standing Orders provides
20 that;

**The public officer who abandons duty shall forfeit all rights and privileges
attached to his or her office with effect from the date of abandonment.**

One such right is salary and the plaintiff is not entitled to any salary for the
period after 30th December 2013.

25 Furthermore, she did not lead any evidence proving that prior to her
abandonment she had not been paid her salary as PEX 8 is a letter from
the Senior Labour Officer who she informed she had not received salary
for 6 months starting November 2013 to April 2014 and in PEX9 which is a
letter from Ministry of Public Service it is indicated she was not paid salary
30 from 2013 but there is no concrete evidence that she did not receive salary
for months before her abandonment.

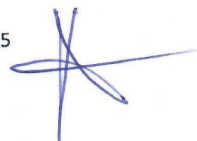
5 In fact, to the contrary PEX 13 which is a letter from IGG dated 8th
November 2017 shows that the plaintiff between January 2013 to June
2014 earned two salaries. She actually irregularly earned an excess of Ugx.
4,026,419 which payments were drawn from Kumi District where she was
previously employed but did not resign. These facts were admitted by the
10 plaintiff. The excess amount received is recoverable by the relevant
authorities.

I therefore find that the plaintiff is not entitled to any salary arrears as
special damages.

Following this, no order can be made as to interest on special damages.

15 The plaintiff also prayed for general damages for breach, losing
employment prospects in civil service, being terminated on baseless
grounds, being terminated unlawfully and illegally by the defendant, being
terminated at the back of having worked without pay and not being
listened to by the defendant, being set up and framed by the defendant,
20 moving in various offices, (labor office, human rights and law firms) seeking
for help in vain, the sudden casual loss of a job after such heavy investment
in education and Job search and the pain of listening to the excitement of
critics who are excited about the plaintiff's failed progress in life. She
prayed for an award of UGX 50,000,000/= [Fifty Million Shillings].

25 It is trite that general damages are such as the law will presume to be the
direct natural or probable consequence of the act complained of. It has
already been established that the plaintiff's termination was lawful,
furthermore she abandoned duty which consequently meant abandoning
her right to salary and any other such benefits. The plaintiff having
30 abandoned her duty as a public officer cannot claim general damages for
the consequences of her own actions.



5 4. Conclusion:

The plaintiff has not proved on a balance of probabilities that she has a case against the defendant that her termination was unlawful.

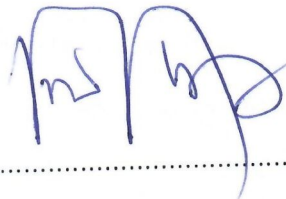
On the contrary her termination was lawful in addition to the fact that she abandoned her public duties. She was accorded a proper hearing as a
10 public servant and was lawfully terminated as the Defendant through its
CAO properly moved the relevant District Service Commission which
terminated the services of the plaintiff.

The plaintiff thus has no remedy against the defendant as her suit fails on
all grounds except for that part ground which this Hon. Court has found
15 that she was a confirmed public servant subject to full proceedings as any
other.

5. Orders:

- This suit is found to lack merit and it thus dismissed.
- The costs of this suit I awarded to the defendant.

20 I so order.



.....
Hon. Justice Dr Henry Peter Adonyo

Judge

24th August 2023

25