

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

5

**CORAM:**

**HON. JUSTICE G.M. OKELLO, JA**

**HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA**

**HON. JUSTICE C.K. BYAMUGISHA, JA**

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**CIVIL APPEAL NO. 60/2006**

**ENG. PASCAL R. GAKYARO:..... APPELLANT**

**VERSUS**

15 **CIVIL AVIATION AUTHORITY:..... RESPONDENT**

**(Appeal from the Judgement of the High Court of Uganda at Kampala dated  
12/5/2006 (Tinyinondi, J.) in Civil Suit No. 13 of 2005)**

20 **JUDGEMENT OF HON. A.E.N.MPAGI-BAHIGEINE, JA**

This appeal is against part of the judgement of the High Court in civil suit No. 13 of 2005 dated 12-5-06. The learned trial judge made the following orders:-

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**“1. I declare the termination of the Plaintiff’s services by the defendant to have been unlawful and void.**

**2. The plaintiff is entitled to Shs. 11,966,626/= wrongfully withheld by the defendant.**

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**3. The amount in paragraph 2 hereof shall attract interest at Court rate from 08-12-2004 when the parties executed exhibit 'P12'.**

5 **4. The defendant shall pay costs of this suit.”**

The background to this matter is that on 29-07-92 the appellant was employed by the respondent corporation as manager in charge of Engineering - Special Duties (Upcountry Aerodromes). He held that  
10 position till 27-05-04, when his services were terminated.

On 12-01-03 the appellant was arrested by security operatives at Lweza, at around 2:30pm, on charges of treason and kept him at unknown places. He was subsequently produced in court on habeas  
15 corpus and was later granted bail.

On 22-01-03, the appellant was suspended from duties pending police investigations into alleged charges of treason against him, which suspension was done without giving the appellant a chance to explain  
20 what had happened to him.

On 7<sup>th</sup> August 2003, the appellant wrote to the respondent seeking permission to resume work, pointing out that the charges against him were independent of his employment and that he was innocent until  
25 otherwise proved.

On 26<sup>th</sup> September 2003, the respondent replying to the appellant's letter of 7<sup>th</sup> August 2003 confirmed and upheld the suspension. The appellant was prohibited from accessing the respondent's offices  
30 except on request by the respondent. He was also ordered to hand over his Airport Entry Pass to the Security Officer.

On 27-5-04, without any reason, the respondent terminated the appellant's services.

On 8<sup>th</sup> December 2004, the treason charges were withdrawn and  
5 proceedings by the DPP were dropped.

The appellant thereupon sued for special and general damages for wrongful termination of his services with the respondent and a return of his personal properties detained by the respondent in his former office or their value.

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The Memorandum of Appeal comprised three grounds which were crystallized into the following three issues:

(i) ***Whether or not the appellant is entitled to general  
15 damages his termination of services having been found by the court to be unlawful and void.***

(ii) ***Whether or not the appellant is entitled to claim the  
20 value of his personal property left in his office at the respondent's premises.***

(iii) ***Remedies.***

The respondent cross-appealed on the following grounds:

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**1. *The learned trial Judge erred in law and fact when he held that the termination of the Appellant's services was unlawful and void.***

2. ***The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record in arriving at his decision.***

5 3. ***The learned trial Judge erred in law and fact when he held that the appellant is entitled to a sum of U. Shs. 11,966,627/= with interest without accounting for it.***

Mr. Francis Katabalwa appeared for the appellant while Mr. Enos  
10 Tumusiime represented the respondent/cross-appellant.

Concerning Issue No I, Mr. Katabalwa submitted that the learned Judge erred when he declined to grant general damages to the appellant after having declared the termination of his services unlawful. The  
15 termination did not follow the principles of natural justice. The appellant was never given a chance to be heard. Learned counsel pointed out that it was contrary to the respondent's **General Terms and conditions Of Service Regulations, Clause 43 (3) 1992 (Exp P2)** which made it mandatory that before any disciplinary or any such  
20 action could be taken against any person, he had to be heard. Learned counsel contended that in this case the only remedy would be general damages, taking into consideration all his circumstances like his age of 57, and remaining working life.

25 He cited **E. A Airways V Knight (1975) E A. 165** where loss of career compensated by way of general damages; ***Bank of Uganda V Betty Tinkamanyire, CACA No. 49 of 2005*** where damages were also awarded.

30 Learned counsel further pointed out that the learned trial Judge declined to award general damages on ground that the appellant had

admitted receipt of one month's salary in lieu of notice. In the judge's view this disentitled him to general damages. He contended that this finding would mean that the termination was regular and the order of termination being void and unlawful meaningless.

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In reply Mr. Enos Tumusiime argued that the appellant had been arrested and charged with treason. In this regard he pointed out that his workplace; the Airport is a security sensitive area. The appellant himself acknowledged that special passes were required for employees to enter. The respondent was quite justified to be apprehensive about the appellant.

Learned counsel asserted that the termination of the appellant's employment was in conformity with his appointment letter and the Employment Regulations (Ex P2). The appellant was paid all his terminal benefits and in addition received one month's salary in lieu of notice. This disentitled him from the award of general damages. The termination was thus not unlawful or void. He referred to the **Regulations Ex P2 Clause 43 (i) (2) and (3); Barclays Bank of Uganda V Godfrey Mubiru, SCCA No 1/1998 (pp 247 para 3); Githinji V Mumias Sugar Corporation Ltd EALR (1995-1998) 1 E A 68 (HCT); Ombaya V Gailey & Roberts (1974) EA 522 at 524;**

Learned counsel contended this case was not for loss of career as argued by Mr. Katabalwa and for which general damages might be considered. The appellant is still an engineer running the firm of Alfa and is also part-time lecturer at Makerere University, Kampala. He pointed out that in **Tinkamanyire case (supra)** was distinguishable in several respects. In that case the Bank of Uganda being activated by improper motives purported to terminate Tinkamanyire's services under the guise of retirement. Secondly the Court never awarded

Tinkamanyire any general damages for unlawful dismissal. The appellant was awarded special and punitive damages.

The learned trial Judge after reviewing **Ridge V Baldwin & Others (1964) AC 40** said:

5 **“In Mumira V National Insurance Corporation (1985) HCB, Karokora J, held that a decision reached in violation of these principles is void and unlawful. The same conclusion was arrived at in the RIDGE page 80 case (ante) by the majority of 4 to 1. I have come to the conclusion that in the case before**  
10 **me the decision of the board to terminate the Plaintiff’s services was null and void. The answer to the first issue is therefore in the negative.”**

I would not fault the above finding. The **Civil Aviation Authority (General Terms and Conditions of Service) Regulations 1992 Clause 43** governing suspension provides:

**‘43. Suspension**

20 **43.1. The competent Authority may suspend an employee from duty on suspecting him to have committed an offence that requires investigations.**

.....

25 **43.3. After completion of the investigation, where the employee will be given an opportunity to make written submissions, the competent Authority may proceed to award any punishment as it deems fit against the employee keeping in view the gravity of the misconduct or exonerate him of the**  
30 **charges leveled against him.”**

This right to a hearing before being condemned is enshrined in article 28 (i) of the constitution.

**“28 Right to a fair hearing**

5           **(i) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law”**

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In the **Ridge case (Supra)** it was held, inter alia, that even if the respondents had power of dismissal without complying with the regulations, they were bound to observe the principles of natural justice.

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The appellant was being deprived of an office of a public character with the attendant statutory benefits. The principles of natural justice demanded that he be given an opportunity in his defence for whatever worth it might be. The overall effect of a denial of natural justice to an  
20 aggrieved party renders the decision taken void and of no effect.

The next aspect to this matter is whether general damages would have been awarded.

25 *Clause 31 of the regulations, 1992* provides:

**“31. The services of a permanent employee may be terminated with one month’s notice or pay in lieu thereof on the following grounds not amounting to misconduct under Regulation 39, namely:-**

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**(a) .....**

**(b) If his continuance in employment constitutes in the opinion of the Board, a grave security risk making his continuance in service detrimental to the interest of the Authority.....”**

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This clause derives from a very well established legal principle. In **Ombaya V Gailey And Roberts Ltd (1974) EA 522**, it was held that where a person was employed and one of his terms of employment included a period of termination of that employment, the damages suffered are the wages for the period during which his normal notice would have been current.

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In this case the plaintiff was awarded one month's salary in lieu of notice. He could not recover any more than one month's salary.

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In **Central Bank of Kenya V Nkabu EALR (2002) 1 EA. 34 (CAK)**, it was held that when the contract of employment is terminated by giving notice according to the contract, damages should be restricted to the period of the notice. Also See - **Githinji V Mumias Sugar Co. Ltd (1991) LLR 1373 (CAK)**.

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It is apparent therefore that though the appellant's services were wrongfully terminated, on ground of the respondent's failure to observe the principle of natural justice, alterem partem, he would only be entitled to damages equivalent to the salary he would have earned for the period of the notice, namely one month.

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The learned Judge was thus correct. The appellant was not entitled to general damages, having already been paid one month's salary in lieu of notice. I would thus answer Issue No I in the affirmative.



The next issue is whether or not the appellant is entitled to claim the value of his personal property left in his office at the respondent's premises. This involves cash, books and a Laptop.

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Regarding Shs. 11,966,626/= unlawfully withheld by the respondent, Mr. Katabalwa submitted that the appellant accounted for all moneys advanced to him and had never been notified that it was still owing. He was hearing of it for the first time. He stated that the appellant was  
10 insistent all the receipts were still in his office together with his other personal property he was using during the course of his official duties. He was denied access to his office and therefore had no way of producing them before Court.

15 Mr. Tumusiime submitted that the appellant was not entitled to Shs. 11,966,626/=. The amount had been advanced to him a year before termination of his services. The details appear on page 184 (record) as **"Eng. Gakyalo's unaccounted for funds."** He got these funds between August 2001 and August 2002. He was supposed to account  
20 for it by receipts within 30 days of taking it but he never did.

Concerning his personal property allegedly left in his office. Learned counsel asserted that it was on record that the appellant had sold the Laptop to the office and had been paid. Counsel did not show this to  
25 Court. As regards other properties, he failed to produce any evidence to prove ownership, e.g. their serial numbers and general description. He stated that the appellant had been availed all the necessary equipment for the execution of his duties. Furthermore, since he was claiming all this by way of special damages, he had to specifically  
30 prove it - **Kibimba Rice Co. V Uma Salim C/A No 7/1988.**

Mr. Tumusiime prayed for dismissal of the appeal with costs and for the cross-appeal to be allowed with costs here and below.

The learned Judge also held:

5        **“..... I commend the Plaintiff’s over  
dutifulness and dedication to his work. I, however,  
find it dangerous in the circumstances of this  
poverty stricken and corrupt country to give free  
license to any employee to ferry into a public office  
10        tool and equipment which that office can ill-afford to  
adequately afford to the employee without the  
notice or permission of the employer. I hold that,  
notwithstanding the plaintiff’s failure to strictly  
prove the value of the property, he is not entitled to  
15        claim it except on the condition I have underlined  
above.”**

The learned trial judge noted:

20        **“When he was referred to the list of the *“unaccounted for  
funds,’* page 1 of exhibit “D1”, the plaintiff stated that he  
could only account by submitting reports and receipts but that  
these documents were in the office to which the defendant had  
denied him accessibility.**

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**In further cross-examination the plaintiff testified that other  
than the Shs. 11M/= he received the rest of his terminal  
benefits ..... At no time was the Defendant’s stand reversed. It  
30        is unfair and unjust to tie a man Kandoya and ask him to**

**engage in a just fight. I note that the Defendant unfairly withheld shs. 11,966,626/= ..... He is entitled to it.”**

5 I would quite agree with the Judge’s analogy. I think that the appellant was treated rather callously. It is common practice for public officers to keep their valuables in public offices which are invariably more secure than private homes.

10 I thus find it a little bit difficult to understand why the respondent was reluctant to have the appellant escorted to his office, to collect the accountability receipts for 11,966,626 and his other properties if they were there. The appellant was entitled to be availed an opportunity to access this evidence. I would uphold the award of 11,966,626/- as the appellant’s entitlement.

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As regards the other personal properties, the appellant hit a hitch here by claiming the value of these properties as special damages in absence of sufficient proof. ***See Kibimba Rice Co. V Umar Salim CA No 7/1988 -; Shamji V Bhatt (1965) E.A 789.***

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In my view this appeal would partially succeed. The cross-appeal would succeed on grounds 1 and 2 but fail on ground 3.

25 The appellant would be entitled to 2/3, (two-thirds) of the costs of this appeal and similarly the cross- appellant would also be entitled to 2/3 (two-thirds) of the costs of the cross-appeal, each party having failed on one ground.

Dated at Kampala this ...15<sup>th</sup> ... day of .....November.....2007.

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**HON. A.E.N. MPAGI-BAHIGEINE**  
**JUSTICE OF APPEAL**

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