

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

CIVIL SUIT NO. 214 OF 1996

LAWRANCE OKAE PLAINTIFF

Vs

UGANDA POSTS AND TELECOMMUNICATIONS

CORPORATIONDEFENDANT

BEFORE: THE HON. MR. JUSTICE V. F. MUSOKE-KIBUUKA_

JUDGEMENT

The plaintiff was employed by the defendant, in this judgment referred to as “the corporation.” He was employed as an executive officer, in he accounts department of the corporation. He started working for the corporation on 16th October, 1978, as a clerical officer.

On 28th September, 1995, the plaintiff was interdicted from duty upon some suspicion that he was involved in malpractices in connection with telecommunication services. He was, subsequently, on. 20th October, 1995, retired, in public interest, on the ground that he was a person of doubted integrity.

Upon his retirement, in public interest, the plaintiff was paid his retirement benefits as ere due on the date of retirement. However, he was not satisfied that the he decisions

to interdict him and., subsequently, to retire him in public interest had been lawful. He contends that the decision to retire him from the service of the corporation was taken in contravention of the corporation's own Staff Regulations, Terms and Conditions of Service. The plaintiff further claims that the decision to retire him in public interest, was made in utter breach of the fundamental rule of natural justice (*audi alteram Partem*) in that before his fate was determined, he was never given an opportunity to be heard.

The plaintiff also claims that the ground of doubted integrity upon which he was retired, purportedly in public interest, was never properly established. He claims that That ground was merely imputed upon him by a fellow employee of the corporation (DW2) who was assigned by the head of the Investigation Bureau of the corporation to investigate the allegation against the plaintiff, hut whom the plaintiff claims to have had some social differences.

In his amended plaint, the plaintiff seeks, from this honourable court, the following orders:
a) a declaration that his involuntary retirement from the corporation's employment is unlawful.

b) salary, allowances and terminal benefits, from the date of the purported dismissal, 21st October, 1995, to the date which would have been the plaintiff's normal retirement date, 15th October, 2003.

c) punitive/exemplary and general damages; and

d) interest and costs of the suit.

It is contended, by learned counsel. Mr. Nyanzi Yasin, on behalf of the corporation, that the plaintiff's interdiction on 20th September, 1995, and his subsequent retirement, in public interest, on 20th October, 1995, were lawful and were carried out in strict accordance with the law and the Staff Regulations, Terms and Conditions of Service, of the corporation. The corporation prayed that this suit be dismissed with costs to it.

At the beginning of the trial, three issues were agreed upon by the two learned counsel involved in the case. They are:

a) Whether the plaintiff's interdiction was lawful.

b) Whether the plaintiff's retirement in public interest was lawful.

c) Whether the plaintiff is entitled to the reliefs which he seeks.

The plaintiff was the sole witness on his side. The corporation called four witnesses, namely, DW1 Gwanyambadde Dick, an investigation officer with the corporation's investigation branch. DW2 was Okiya Charles Michael, the Chief Investigation Officer of the corporation. DW3 was Kategaya Samson, a Senior Personnel Officer, and DW4 was Asimwe Vincent, EU in the Personnel and Administration department of the corporation.

Now, the first issue in respect of which I have to analyse the evidence is whether the plaintiff's interdiction was lawful.

It appears to me that the subject at interdiction of any member of staff of the corporation is governed by regulation 23.12.1 of the Staff Regulations, Terms And Conditions of Service. That regulation sets out three instances when interdiction is appropriate:

a) When an officer is charged by the police with an offence which, if proved, would lead to his or her dismissal;

b) when suspension of an officer from duty has been lifted after an acquittal of the officer by a court and disciplinary proceedings which would lead to the officer's dismissal are being taken or are about to be taken; and

c) When proceedings involving departmental charges before the disciplinary committee have been taken or are about to be taken leading to the officer's dismissal.

The interdicting authority is set out in appendix C to the Staff Regulations (under delegation by the Board vide paragraph 23.12. of the same Staff Regulations.) in the instant case, the interdicting authority should have been the Director of Personnel.

It clearly appears to me that the plaintiff's interdiction did not fall, under any of the three instances set out under regulation 1 which I have outlined above. The letter of interdiction, Exhibit P1, only mentioned that the plaintiff was suspected of involvement in malpractices in connection with telecommunications services. No departmental charges were mentioned or ever presented. No proceedings were ever commenced before any disciplinary body. The letter never mentioned any.

It is, therefore, quite apparent that: the interdiction was done pre-maturely and outside the provisions of the Staff Regulation.

The next issue is whether the plaintiff's retirement in public interest was lawful.

Mr. Nyanzi did submit that it was. He argued that the plaintiff was retired in public interest after full investigations had been carried out. Secondly, he argued that the plaintiff had failed to act in an honest manner and had caused financial loss to his employer as a result retirement in public interest or summary dismissal was justified at common law. Mr. Nyanzi relied upon the decisions in Obonyo vs. Chillington Tool Co. Ltd. (1988) HCB and Mary Mugenyi vs. CMB, C. App. No. 13 of 193. In regard of the common law principle of the employer employee relationship whereby an employer has an inalienable right to dispense with the services of an employee, he relied upon S. B. Kibirige vs. Uganda Commercial Bank (1992) II KALR 162 and John Elatu vs. Uganda Airlines Corporation (1984) HCB 40.

I have had an opportunity to peruse those decisions. I do not think that they bear any relevance to the instant case.

First of all, in the instant case, it is not true that it was ever established that the plaintiff had failed to act in an open honesty. The report, Exhibit D2, which arose out of what appears to have been a very rudimentary investigation which was carried out by a Mr. Gwayabadde DW1, was very specific. It stated that there was no conclusive evidence to show that the plaintiff had been involved in the alleged malpractices. However, the same report for some rather incomprehensible reasons went on to recommend that because the plaintiff was working in the same section where the suspected telephone numbers' bills ought to have been handled, but were not he could

have influenced that act even though he himself was only responsible for government, public corporations and Embassy telephone bills. The report specifically stated that there was nothing more than mere suspicion against the plaintiff. That was never the case in Obonyo's and Mary Mugenyi's cases (supra)

In the instant case, no specific loss to the corporation was ever established. The investigation report, Exhibit D2 shows that the plaintiff was suspected to be the person helping to shield

telephone numbers: 259178, 259517 and 259246, from being cut off for non-payment of bills. The persons under whose names the respective numbers were registered were also found out. Telephone number 259246 and 259517 had outstanding bills of 23,931,03/= and 201,083/= respectively. Telephone number 259178 had no known outstanding bill. It was not established that those bills could not be or were not, paid by the operators of those numbers. There was, in other words, no loss to the corporation ever established. But even if any loss had been established, there would be no credible link between it and the plaintiff according to the evidence in the instant case.

Now that was not: the position in both S. B. Kibirige vs. Uganda Commercial Bank (supra) or in John Eletu vs. Uganda Airlines corporation (supra) In Kibtri9e's case, (supra) it was clearly established that owing to his neglect of his duty, the bank suffered loss of well over 7,000,000/= and that dismissal without notice in the circumstances was justified under common law.

But it was pointed out by this court in the case of John Eletu vs. Uganda Airlines Corporation (supra) that while a summary dismissal was dismissal without notice, to justify such dismissal, at common law, the breach of duty, by an employee, must be a very serious one. It must be such a breach as amounting in effect to repudiation by the employee of his or her obligations under the contract of employment such as disobedience of lawful orders, misconduct, drunkenness, immorality, assaulting fellow workers, incompetence or neglect. In the instant case, it cannot be said that such justifiable cause has been establish for mere suspicion cannot amount to such cause.

More importantly, it was pointed out by Sekandi, Ag. J., as he then was, in the case of A.M. Jabi vs. Mbale Municipal Council (1975) HCB 191, that the inalienable right of an employer to dismiss his employee was not absolute on the contrary, it was subject to certain limitations e.g. once a contract existed between the employer and the employee, it was the duty of each party to observe its provisions. The common law right of an employer is thus not absolute as the defendant claims in this case.

The Staff Regulations, themselves state, in their preamble, that they cover "general conditions of service as employment practices, rules and discipline, industrial relations, having medical and other fundamental duties rights and obligations of both management and staff." In other words they form part of the contract of every officer of the corporation and as such they limit

the corporation's right at common law to summarily dismiss the plaintiff lawfully.

The relevant regulation for termination of service in public interest in respect of permanent employees of the corporation, is regulation 23.4.6:2 of the Staff Regulations of the corporation. The only ground which is provided under that regulation, is "general inefficacy which cannot clearly be attributed to negligence or failing mental or bodily health."

According to DW1 and DW2 Okia, the head of the investigation branch and Dw3, Kategaya Johnson, a Senior Personnel Officer of the corporation, the plaintiff was retired upon suspicion of doubted integrity. Now) doubted integrity does not appear to fit in well with sustained gal inefficiency which cannot clearly be attributed to negligence or failing mental or bodily health.

My only logical conclusion there, is that the plaintiff's purported retirement in public interest fell outside the corporation's own Staff Regulations and Conditions of Service which formed part of the plaintiff's contract of service with the corporation.

The failure, on the part of the corporation, to accord the plaintiff an opportunity to be heard even when he specifically wrote to management to accord him that opportunity constituted a fundamental breach of the rule of natural justice (audi alteram partem) Indeed, the plaintiff was totally condemned unheard. See. George Semboze vs. Uganda Red Cross Society, Mbarara 11/C Civil Suit No. 49 of 1997.

In the circumstances, therefore, I have to find that the plaintiff's retirement in public interest was unlawful.

The next issue is whether the plaintiff is entitled to the relief's which he sought in his pleadings. The plaintiff properly merits the declaration that both his interdiction and subsequent retirement in public interest were wrongful and unlawful. I make that declaration.

The second relief sought by plaintiff relates to his salary and allowances which he claims would have been paid to him up to the date of what he calls retirement. It is not in dispute that the plaintiff was paid all that was due up to the day he was so wrongfully and unlawfully retired.

Mr. Nyanzi has argued and I duly agree with him, that the plaintiff has not proved strictly as the law requires the special damages which he claims in the form of prospective salary and allowances between October, 1995 and October, 2003, when he claims he would have

ordinarily retired. For there is no guarantee that he would have held the job up to then. It appears to me that such a claim remains highly speculative. I am of the view that the claim in that regard is misconceived. The plaintiff's proper remedy tort he wrong done to him by the corporation lies in general damages rather than in recovery of unearned salary and allowances or other prospective benefits.

For that reason, the claim for special damages fails. They have not been strictly proved.

Third the plaintiff seeks general damages. I am satisfied that he must get these. He was summarily retired in public interest without being given a chance to defend himself. Article 28 of the constitution requires that a person whose civil rights are being determined must accorded a fair hearing. That was not done in the instant case. A photograph of the plaintiff was published in the New Vision Newspaper issue of 25th November, 1995 at page 25, portraying him to the public as a risky person to employ. He has spent a long time without a job. He was rejected several times because several times because his untimely retirement and uncalled for publication of that fact in the newspaper raised a great deal of public suspicion. He was embarrassed and deeply humiliated. The unnecessary abruptness of the plaintiff's retirement caused him embarrassment and deeply humiliated. The unnecessary abruptness of the plaintiff's retirement caused him embarrassment and inconvenience.

In the case of Matia Wamala vs Uganda Press Trust Ltd (1982) HCB 114, Allen J, as he then was, awarded a sum of shs.50,000/= as general damages, to the plaintiff whose monthly salary was shs.4000/=. The learned judge applied a multiplier of twelve and half times. Again in the case of George Semboz vs. Uganda Red Cross Society (supra) this court awarded general damages in the sum of Shs.6, 000,000 to the plaintiff in that case whose total monthly package was Shs.700, 000. The multiplier used as over nine times.

In the instant case, the plaintiff's monthly package, which was not disputed, 'as constituted by mainly four major items. That: is salary, house rent, lunch allowance and transport allowance (notwithstanding the fact that this was for the time being in kind) The total monthly salary would therefore be rough) Shs.140,000/= 14,000= + 87,500= + 87,500= 329,000/ =

I have considered the circumstances and the special peculiarities of this case. I have decided to use a multiplier of twenty times that package. The quantum of general damages will, therefore, be Shs.329,000 x 20 = 6,580,000/=. I accordingly award Shs. 6,580,000/= to the plaintiff as general damages.

The plaintiff also prayed for punitive or exemplary damages. I am satisfied that owing to the rather high handed manner in which the plaintiff was treated and the unlawful and unconstitutional approach adopted by the corporation call for exemplary or punitive damages to be awarded. I have considered a sum of Shs.2, 000,000/= to be adequate in that regard. I accordingly award 2,000,000/= to the plaintiff as exemplary damages.

I also award the costs of this suit to the plaintiff.

In the final result, I make the following order:

- a) a declaration that the plaintiff's interdiction and retirement i.n public interest: was unlawful;
- b) an order for the corporation to pay the plaintiff:
 - (i) Shs.6,580,000 general damages;
 - (ii) Shs.2,000,000 punitive damages;
 - (iii) the costs of this suit; and
 - (iv) interest on (a) and (b) above from the date of Judgement until payment in full at court's rate.

V. F. Kibuuka

Judge

14/08/2000

Order:

This judgment may be delivered by the Registrar of the High Court on a day fixed by him.

V. F.

Judge

14/08/2000