

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 165 OF 1995

ANDREW MUKASA ::: PLAINTIFF

VERSUS

UGANDA ELECTRICITY BOARD ::: DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The plaintiff brought this suit against the defendant for special and general damages for wrongful dismissal. In an amended plaint filed on 6/5/1996 the plaintiff claims to have worked for the defendant since 1970 until 1991 when his contract of service was abruptly terminated on allegations of gross negligence. He was alleged to have collected revenue cheques for his employer, but a number of them found their way to a criminal, one Caesar Kakooza. As a result the defendant is said to have lost shs 40 million in the scam which it attributed to the gross negligence of the plaintiff according to the letter of termination.

Accordingly the plaintiff contended that his summary dismissal was wrongful, unjustified and in breach of the principles of natural justice in so far as he was not afforded the opportunity to explain

himself before being fired. He thus claimed all his terminal benefits contending that he is entitled to them. From the record the Defendant did not file an amended defence having filed its WSD on 10/4/1995 denying liability. It also contended in it that the plaintiff had been laid off for misconduct and charged that the suit had not been competently filed since no statutory Notice had been served.

When the case first came up for hearing on 2/4/1996 four issues were framed namely:-

1. Whether or not the plaintiff was guilty of gross negligence
2. Whether or not the plaintiff was wrongly dismissed.
3. Whether the defendants were properly served with statutory Notice.
4. Damages if any.

At the trial the plaintiff testified as PW1 and called one other witness. The defendant opted not call any witness and also conceded to having been served with statutory Notice. The third issue was therefore abandoned.

On the first issue namely whether or not the plaintiff was guilty of gross negligence it was the plaintiffs case which was stated as follows:-

“I used to be in charge of companies owing a lot of money. I contacted them and collected cheques from them. In all cases the cheques were handed to the supervisor, head of department, Chief cashier or any cashier on the counter. The cheques were written in the names of UEB and were always crossed. The chief cashier was responsible for banking the cheques. There were several chief cashiers.”

The plaintiff exhibited the letter that fired him which was marked as P.1. He then went on to deny any knowledge of dealing with Ceasar Kakooza. He told court that he protested his being linked to the criminal gangster Ceasar Kakooza. He did so up to the union. He stated:-

“Before termination I was not given an opportunity to defend myself. I was given an outright termination. I was not suspended first as standing instructions require. I had never been warned throughout my service with UEB... I was not given reasons why I was not reinstated in writing...”

The plaintiff went on to defend himself on the issue of the lost revenue:-

“I was told about the two cheques that went into wrong hands... One was from Uganda Breweries Ltd the other from Makerere University. I collected the two cheques.”

He then went on to say that he gave the two cheques to a cashier called Miss Obwoya for her to hand the same to the Chief Cashier. He also stated that Kyambadde a clerk was present when he gave the cheques to Obwoya. Neither Obwoya nor Kyambadde was called to testify. The chief cashier did not give evidence though from the circumstances it can be discerned that the controversial cheques were not directly banked nor directly given to the chief cashier. The plaintiff only stated that he informed Obwoya about the cheques, and that he had put a note to them for the chief cashier to have cheques banked directly, as he handed them to Obwoya. From this evidence one can see some uncertainty in the manner the cheque was presented to the Cash office for banking and their likely subsequent misplacement. This is perhaps the only point taken by the defence but the plaintiffs explanation sufficiently puts the cheques off his hands. Once the loss was recognized the plaintiff was fired and police was called in to investigate. The police eventually cleared the plaintiff. According to Mr Lyelmoi Otong Ongaba PW2, internal or union investigations were discouraged:-

“... it was decided by UEB to leave it with Police. Later police wrote to say that Mukasa had no case to answer.”

It thus transpired that criminal investigations were carried out and the plaintiff was cleared by police. From the plaintiffs evidence the lost cheques were crossed and written in the defendant's

names. He also told court that tax cheques written out together with the lost cheques were duly paid to the treasury. It would appear that the cheques disappeared around the time they were handed in to Obwoya or thereafter in the cash office. They were collected by plaintiff who according to his own testimony placed it in the rather unwieldy cash office of the defendant from where they went missing and were later spirited out and cashed by the unscrupulous criminal Ceasar Kakooza who was identified as the culprit by the defendant itself. Exhibit P.1 is indicative of this. What this shows is that the cheques were stolen given that the plaintiff has on a balance of probabilities shown that he did his part more or less satisfactorily by taking the cheques to the cash office from where they went missing. He could have been a suspect given the mystery surrounding the loss of the cheques. But to establish gross negligence on his part needed a more objective appraisal involving the role played by Obwoya and the chief cashier and the process of cashing the cheques. A due investigation was inescapable in the end. In the written submissions filed by the counsel for the defendant it is pointed out that there was an apparent contradiction as between the plaintiffs examination in chief and in cross examination. But either evidence is testimony given in court and in the absence of the statement referred to said to have been made on 2/4/1991 and proof as to its contents no contradiction in substance is indicated. I do not agree that such a statement by the plaintiff in court that he did make a statement is enough to prove the

contents of such statement against him, or to act as an admission on his part, admitting as it is suggested that he did not hand over the cheques to Obwoya. I have already stated that neither Obwoya testified nor was the statement itself made part of the court record as such. Taking the plaintiffs own statement in its context, i.e.

“In the statement I said I told Obwoya about the cheques and I put a note for the chief cashier to have them banked directly.”

It must be understood that the plaintiff did three distinct things. First he admits making a statement. Second he states that in that statement he told Obwoya about the cheques. Thirdly he put a note for the chief cashier to have them banked directly. From the context it is clear he drew the attention of Obwoya to the cheques as he handed them to her together with a note attached together with the cheques. This is not an admission that he did not hand in the cheques. To the contrary he explains the handing in process and removes the deceptive uncertainty I had pointed out and which the defendants counsel sought to cling to. I have come to the conclusion and I hold and find that the plaintiff handed the cheques to the cash office and as such he was not guilty of gross negligence. The first issue is thus answered in favour of the plaintiff's case.

From the foregoing one can say that if this were the reason for his dismissal it would have been unjust. But even more significantly the dismissal process itself was flawed. He was dismissed summarily for alleged gross negligence which has not been established. Secondly reasons for his dismissal were investigated by police who cleared him. The union also intervened as stated both in the plaintiff's evidence and in the evidence of PW2. The union also found the plaintiff free of guilt and demanded his reinstatement. In the end no form of disciplinary procedure was followed wherein the plaintiff was given an opportunity to substantiate his side of the story. I can only say the plaintiff's dismissal was arbitrary and in utter breach of the principles of natural justice. I do not agree that merely requiring a person to make an explanation in writing without the contents of those explanations being proved against the plaintiff as affording him the opportunity to defend himself and before what forum is sufficient to oust the demands of natural justice. The evidence on the record is that no forum including the tripartite workers forum was allowed to review the plaintiff case. The whole process was arbitrary and one sided and no record or evidence of its substantive quality has been shown to court. Moreover having now seen that no gross negligence could have been shown against the plaintiff in the first place, any epistolary defence he could have made did not enable the defendant to do away with him on the ground that he had now been afforded opportunity to defend himself. From what went on, the plaintiff's dismissal

proceeded in total irregularity and as such was wrongful and he is entitled to all his benefits. As stated in the written submissions and from the evidence on the record the plaintiff is entitled to judgment covering award of salary, housing Allowance Lunch Allowance Transport Allowance Energy Allowance and Leave Allowance. I would allow his claim of shs 47,915,630.22/= as well as shs 97,200,000/= being the, loss of benefits for his remaining working life giving a total of shs 145,115,630/=. On this I would award interest at the rate of 10% only. He prayed generally for any further or other relief as this honourable court may deem fit. I suppose he would have thought of pension or gratuity. But he did not plead them as such. I thus give Judgment for plaintiff against defendant and with costs and in the terms stated above.

R.O. Okumu Wengi

JUDGE

3/11/2004.

3/11/04

Lwanyaga for plaintiff

Wamala for defendant

Court: Judgment read.

G. Namundi

DEPUTY REGISTRAR.