

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 458 OF 2001

PETER RUHIGIRA ::: PLAINTIFF

- VERSUS -

WALUSIMBI GARAGE (U) LTD ::: DEFENDANT

BEFORE: HON. MR JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff sued the defendant for unlawful dismissal. The plaintiff's case is that on 14th January 1967 he was employed by the defendant as an Accountant and that he later became the Chief Accountant thereof until 4th November 1999 when the defendant without notice or any justifiable cause indefinitely suspended him without pay pending investigations. The plaintiff claimed that ever since the above date he had never been summoned to testify or made aware of the findings of any investigations carried out by the defendant against him. The plaintiff further averred that the said indefinite suspension was contrary to the law, the terms and conditions of service and therefore amounted to unlawful dismissal. Hence this suit where he sought special and general damages for breach of contract, interest and costs of the suit.

The defendant denied the claim by contending that the plaintiff was rightly suspended for abuse of office and theft of company funds.

Agreed issues:-

- (1) Whether the indefinite suspension amounted to a dismissal.
- (2) Whether the dismissal was lawful.
- (3) Whether the plaintiff is entitled to the remedies sought.

Evidence:-

The plaintiff adduced evidence from two witnesses. Venacious Munina (PW1) and Peter Ruhigira (PW2). The defendant relied on three witnesses: Rosemay Kadoko (DW1) and Salome Walusumbi (DW2) and Francis Robert Baliruno (DW3).

Venacious Munina (PW1) testified that he was in the defendant's employment as Personnel Manager between September 1991 to August 2000. As a Personnel Manager he used to hire and fire workers, among other duties. He was also in-charge development of personnel policy of the company. He stated that the company had staff regulations which was drafted in 1992 and revised in 1997 (exhibit P1). He stated that the regulations were not given to the employers but were being implemented by the company. He stated that after the plaintiff was given indefinite suspension, he was not invited to defend himself. He concluded that the suspension was contrary to Article 21 of the Staff Regulations.

Ruhigira Peter (PW2) testified that he started working with Yafesi Walusimbi in 1967 up-to 1972. In 1973 Yafesi Walusimbi turned his business into a company called Walusimbi Garage Ltd, which is now the defendant company. He started as an accountant until 4th November 1999 when he got a suspension letter (exhibit P3). Again on 30/11/99 he got another letter (exhibit P4) in which he was given indefinite suspension without pay. Before his suspension he was called by management for an issue involving a one Rose Kadoko for not balancing her books properly. At that meeting he was not told that he was responsible for the loss of that money. He stated that between 4th November and 30 November 1999 he was never called to answer any queries and that since 30th November 1999 to-date he had never been called to answer any queries by the defendant. During the time of his suspension he was not being paid anything. He accordingly prayed that he should be paid salary arrears, and allowances, leave and gratuity.

Rosemary Kadoko (DW1) testified that in 1999 she was employed by the defendant as a Cashier and her immediate boss was the plaintiff. She stated that she left her job because she had abused her office. She abused her office because she was not balancing her books. She was not balancing her books because the plaintiff who was her boss had withdrawn the company money amounting to shs.1,200,000/=. The plaintiff used to withdraw the money after promising to pay back with his salary. When the defendant discovered the said abuse both of them were

summoned before the Director and the Auditor. The plaintiff admitted the malpractice in writing and undertook to repay the money. She stated that she was suspended/dismissed because of that act. She denied lending that money to the plaintiff by saying that her salary of 190,000/= could not be lent out. She stated that the plaintiff used to get that money in small bits which later accumulated to 1,200,000/=.

Salome Walusimbi (DW2) testified that she was the defendant director. She stated that the plaintiff ceased to work for the defendant in November 1999 after losing the company funds. She testified as to the circumstances under which the plaintiff left the company as follows. Sometime in 1999 one of their workers called David Sempuma brought in cash from their tenants amounting to shs.1,200,000/= which was taken to the cashier, one Rose Kadoko (DW1). The next morning she checked the books and discovered that the cashier had not banked that money. She later on summoned Kadoko and requested to know why that money had not been banked. Kadoko told her that she had given that money to the plaintiff after he had called for it.

She decided to summon the plaintiff to explain why he had done that. The plaintiff admitted that he had got that money from Kadoko and that he was to refund it later. The plaintiff admitted taking that money in writing (exhibit D2). After that meeting the plaintiff was dismissed because of theft of company funds. Kadoko was also dismissed over the same case. She stated that the company regulations became operational in the year 2000 after the plaintiff had been dismissed.

Francis Robert Baliruno (DW3) testified inter alia that in his audit report, he discovered that the plaintiff had caused financial loss to the company.

RESOLUTION OF ISSUES:

(1) Whether the indefinite suspension amounted to a dismissal.

It appears that the above issue is not contested by the defendant. DW2 in fact stated that the plaintiff's indefinite suspension was as good as a dismissal. As a matter of fact a suspension may act as a merciful substitute for a dismissal. See National Trading Corporation Vs Kityo

[1972] EA 471. In that case court further held that an employer has the right to suspend an employee with or without pay at his pleasure.

In Damulira Vs National Insurance Corporation [1972] HCB 181, the plaintiff was employed as a book-keeper by the defendant at a stated salary with 30 days of notice on termination. Some money got missing and the defendant suspended that plaintiff from duty on 17th May 1966 and formally terminated him on 13th August 1966. It was held that the plaintiff was dismissed with effect from the date of suspension.

In the instant case the plaintiff was suspended on 4th November 1999 and again on 30th November 1999. His suspension amounted to a dismissal with effect from 4th November 1999.

Issue No. 2:-

Whether the dismissal was lawful.

The law is that an employer can terminate the services of his employee at any time and for any reason or for none: See Ridge Vs Baldmin [1964] A.C. 40. In Sinclair Vs Neighbour 1966 3 ALLER 988 it was further held that it is well established law that a servant can be instantly dismissed when his conduct is such that it not only amounts to a wrongful act inconsistent with his duty towards his master but is also inconsistent with the continuance of confidence between them.

In the instant case there was overwhelming evidence that the plaintiff was guilty of conniving with the cashier in diverting the defendant's funds into his own business. The cashier (DW2) was emphatic that it was the plaintiff who forced her to abuse her office by withdrawing the money which was meant for the defendant. As a result of that, her accounts could not balance and that led to her dismissal. The act of diverting the defendant's money was incompatible with the due or faithful discharge of the plaintiff's duty to his master and therefore the master was right to dismiss him: See Kiggundu Vs Barclays Bank of Uganda Ltd [1973] EA 5691.

Even if the plaintiff had refunded the said money still his conduct would have been in contempt. Indeed in **Sinclair** (supra) the plaintiff took 15 pounds from the defendant's belting shop and repaid the same the next day. Court held that that act was wrongful and inconsistent with his duty and his dismissal was held to be lawful. Likewise I find the conduct of the plaintiff very wrongful and inconsistent with his duty to the defendant of keeping proper accountability of funds. The defendant was therefore very right to dismiss him without notice.

Issue No.3:-

Whether the plaintiff is entitled to the remedies sought.

As I have held above, the plaintiff's conduct was inconsistent with the faithful discharge of his duties which was fair enough for him to be summarily dismissed. It was unfortunate for the plaintiff who was in the evening of his retirement to conduct himself in such a manner. He should only blame himself. However, he should consider himself lucky of escaping criminal prosecution.

For the above reasons I find that the plaintiff's claim against the defendant is baseless. It was the defendant who had suffered more injuries at the conduct of the plaintiff. This suit is accordingly dismissed with costs to the defendant.

RUBBY AWERI OPIO

JUDGE

4/11/2004.

4/11/2004:-

Oyine for plaintiff.

Plaintiff in court.

Defendant and counsel absent.

Court:-

Judgment read.

GODFREY NAMUNDI

DEPUTY REGISTRAR/CIVIL

4/11/2004.