

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-CV-CS-0196-2001**

JOSEPH BAGUMA ::: PLAINTIFF

- VERSUS -

UGANDA NATIONAL

EXAMINATIONS BOARD (UNEB)::::::::::::::::::::::::::::::::::::: DEFENDANT

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGMENT:-**

The plaintiff Joseph Baguma, a former employee of the defendant brought this suit against the defendant seeking to recover special damages by way of the balance of unpaid terminal benefits in the tune of shs.5,260,250/=; general damages and interest at 20% on the above.

The facts giving rise to the cause of action were that in January 1988 the defendant employed the plaintiff as a Higher Clerical Officer. The plaintiff worked diligently for the defendant and rose to the rank of Higher Executive officer, until suddenly and without any warning he was unlawfully terminated on the false allegations of involvement in gross misconduct concerning the leaking of examinations. Hence this suit.

The defendant denied the plaintiff's claim and contended inter alia that the plaintiff was lawfully summarily dismissed for gross misconduct in relation to the leaking of examinations and that all payments which were made to the plaintiff were made ex-gratia on humanitarian grounds.

During scheduling conference the fact that the plaintiff was employed by the defendant and was in service of the defendant until he was terminated on 6<sup>th</sup> October 1999 was not contested. It was also agreed that the plaintiff received some amount of money from the defendant as terminal benefits.

**Issues for determination:**

- (1) Whether the plaintiff was unlawfully terminated or unlawfully dismissed.

- (2) Whether the plaintiff is entitled to special damages, general damages and other remedies claimed.

**Evidence:**

The plaintiff led the evidence of two witnesses, namely, James Baguma (PW1) and Nelson Owor (PW2). The defendant led the evidence of one witness namely Mr William Kabanza (DW1).

David Baguma (PW1) testified that he was employed by the defendant on 22<sup>nd</sup> January 1988 as Higher Clerical Officer where he worked for 11 years and 9 months when he was terminated on 6<sup>th</sup> October 1999. He tendered both appointment and termination letters in court (exhibit P1 and P2 respectively). He stated that no reasons were given for his termination except that the meeting of the appointment committee had decided on the termination after receiving a security report in the examinations. He testified that he was not called to defend himself but was only served with a letter of termination. He denied being involved in any leaking of examinations since he was in Finance and General Administration which had no access to examinations. He stated that because he was wrongly terminated, he wanted to be paid for three months notice. He also prayed for general damages and terminal benefits.

Nelson Owor Adhola (PW2) testified that he used to work for the defendant before he was terminated in February 2000. He stated that on termination he was paid terminal benefits which was calculated using formula of  $60\% \times \text{basic salary} \times \text{number of years worked} \times 2$ . On top of that he was paid transport home, savings scheme and outstanding leave. He stated that he did not know the formula which was used to calculate terminal benefits of the plaintiff in 1999.

William Kabanza DW1, the Principal Administrative Officer of the defendant confirmed in his testimony that the plaintiff was a former employee of the defendant. He stated that the plaintiff was terminated because the defendant was not sure of his integrity. After his termination, the plaintiff was paid his due terminal benefits. He state that the plaintiff who left in November 1999 was entitled to full contribution in staff in staff saving scheme and NSSF and one month's salary and transport home. He stated that after 7<sup>th</sup> April 2000 the defendant came up with an improved retirement package to conform with those of traditional Civil Servants. He stated that it was those who retired after 7<sup>th</sup> April 2000 who were entitled to the new package. He stated that

the plaintiff was not entitled to the new scheme because he had already been terminated by the time the scheme was put in place. He concluded that Opungo and Owor who benefited from the new scheme were retired after 7/4/2000 unlike the plaintiff.

**Resolution of the issues:**

**Issue No. 1:**

**Whether the plaintiff was unlawfully terminated or unlawfully dismissed.**

According to the letter dated 6<sup>th</sup> October 1999 (exhibit P2) the plaintiff was given terminal benefits. The question of dismissal does not therefore arise in the circumstances.

It is trite law that where it is not expressly excluded by the terms of a contract, the right to terminate a contract of employment is absolute and arbitrary subject to the giving of notice. The right to terminate can therefore be exercised at anytime and the reasons for its exercise are irrelevant and cannot be inquired into. As a matter of fact in **RIDGE Vs BALDWIN [1964] A.C. 40** LORD REID held that a master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he may pay damages for breach of contract. In the same case it was held that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation.

There is an unbroken line of authorities in support of the above position. In **Jabi Vs Mbale Municipal Council [1975] HCB 191**, it was held that an employer has unfettered right to terminate the services of an employee and that the notice period required to be given would be determined from the contract of service itself or custom or any written regulations governing the employment of which the plaintiff was a party. The court also held that an employee on a permanent and pensionable terms cannot be lawfully dismissed summarily for an alleged breach without following the rules of natural justice and in particular being informed of the charges against him and being afforded an opportunity to exculpate himself and that once reasons for termination were given the plaintiff ought to be given chance to explain his position. Lastly the court held that considering the absence of sufficient cause, failure to follow the disciplinary

procedure (i.e. rules of natural justice) and failure to give adequate notice the termination became unlawful for which the plaintiff was entitled to damages.

Similarly in **Obwolo Vs Barclays Bank of Uganda [1992-93] HCB 179** it was held that dismissal would be wrongful where an employee is not given an opportunity to defend himself about the misconduct which led to his summary dismissal thereby violating the principle of natural justice.

In the instant case the plaintiff's services were terminated allegedly in terms of Section B Clause 33 of the Board's Regulations (exhibit P3). That section provides that the board may terminate the appointment of staff in scales EB14 – EB12 other than on disciplinary grounds, by giving such staff one month's notice. According to the termination letter exhibit P2 it appears the plaintiff's services were terminated on disciplinary grounds. The letter reads:-

**“This is to inform you that the appointments and disciplinary committee meeting which was held on 2<sup>nd</sup> September 1999, after reviewing the security of examinations, directed termination of your service in accordance with section B, clause 33 of the Board's Regulations.**

**You will receive one month's salary in lieu of notice as this directive takes immediate effect. All other terminal benefits will be paid to you as soon as they are processed. You are to surrender the official UNEB identity card to PAC before getting your dues”.**

The plaintiff was therefore terminated because of involvement in examination malpractice. Such termination could not be undertaken under section B Clause 33 which is about termination when there is no allegation of any wrongdoing. According to UNEB Regulation, examination leakage is the worst form of malpractice which leads to arrest and prosecution.

In short, two wrongs have been committed by the defendant. First of all it was wrong to ground the plaintiff's termination under Section B clause 33 of Boards Regulations when they were alleging that the plaintiff was guilty of examination malpractice.

Secondly having found that the plaintiff was wanting in integrity the defendant was wrong in terminating him on such serious allegation without giving him chance to explain himself. Condemning the plaintiff's integrity without giving him opportunity to explain himself was the worst form of injustice. A person's reputation/integrity is his or her best investment. For the above reasons and in view of the authorities cited above, I find the plaintiff's termination was wrong and unlawful. It offended the rules of natural justice.

Issue No.2:-

**Whether the plaintiff is entitled to the remedies claimed.**

The plaintiff claimed the following remedies:-

- (a) Three months pay in lieu of notice.
- (b) Terminal benefits as per new scheme.
- (c) Interest at 20% from the date of termination.
- (d) General damages.
- (e) Costs of the suit.

(a) As far as payment in lieu of notice is concerned, I do agree that the plaintiff was entitled to three months notice. His termination could not be under section B Clause 33 of the Regulations for the reasons I have stated above. Under Section 25 (2) (e) of the Employment Act the plaintiff was entitled to three months notice since he had worked for the defendant for over ten years. He was therefore entitled to three months pay in lieu of notice. Having got one month's pay already, he is entitled to the balance of two months i.e.  $497,200 \times 2 = 995,000/=$ .

(b) Terminal benefits as per new scheme.

The new scheme came into force on 7/4/2000 when the plaintiff had long been terminated in October 1999. The Scheme did not have any retrospective effect. The plaintiff's claim under the above item is therefore baseless.

(c) Interest at 20%.

The plaintiff would be entitled to the above 20% on payment in lieu of notice i.e. 995,000/=.

(d) General damages.

The plaintiff claimed general damages for wrongful termination, inconvenience and suffering from unemployment since October 1999 to date. The grounds for the plaintiff's termination is likely to affect his chances of getting alternative employment. A person with questionable integrity is not worth employing especially during this time when war on corruption is on its highest gear. For such inconvenience and failure to get an appropriate employment as a result of the wrongful termination, the plaintiff should be compensated by way of general damages.

Considering the nature of the injury I would grant the plaintiff shs.10million (ten million) as claimed. The same is to attract interest at court rate from the date of judgment until payment in full.

(e) The plaintiff is entitled to costs of this suit.

**RUBBY AWERI OPIO**

**JUDGE**

**21/10/2004.**

21/10/2004:-

Barya present.

Walukaga for defendant.

Judgment read in chambers as in open court.

**RUBBY AWERI OPIO**

**JUDGE**

**21/10/2004.**