

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 327 OF 2000**

DAVID IYAMULEMYE ..... PLAINTIFF

**VERSUS**

THE ATTORNEY GENERAL ..... DEFENDANT

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

**JUDGMENT:**

The plaintiff sued the government for unlawful dismissal from the Public service. He challenges the procedure adopted in so far as he alleges that he was not given the allegations against him and that the same contravened the rules of natural justice. He gave evidence as his only witness while the Permanent Secretary (P.S) testified for the government side together with two other witnesses. The issues framed for the hearing were:-

1. Whether the Plaintiff dismissal was in accordance with established procedures.
2. Remedies.

It was an agreed a fact that the Plaintiff was recruited in 1986 into the Civil Service and worked up to 20/8/1998 when he was interdicted and later

dismissed from the service. Three defence exhibits were admitted at the scheduling namely:-

- (i) D1 – Appointment letter
- (ii) D2 – Letter of Dismissal
- (iii) D3 – PSC minute No 943 of 1999.

In the course of the trial the Plaintiff presented one exhibit, while the defendant exhibited D.4. The plaintiff contended in his testimony that he received a letter on 1/10/98 (exhibit P.1) which required him to have responded to it by 29/9/1998. He testified that he attempted to respond on 2/10/1998. He however failed to provide a carbon copy of his response that could be taken in evidence. He further testified that he was never called upon to defend himself before the Public service commission before it dismissed him. He said:-

“I was surprised when I went to check on my half salary on 3/3/99 to find that I had been deleted from the payroll. I discovered that I had been dismissed. I went to my postal address only to find a letter of dismissal signed by the P.S with an attachment of a minute of the Public Service Commission confirming my dismissal. I was never contacted nor called upon till I saw my letter of dismissal. Up to now I do not know why I was dismissed.”

But the key defence witness Mr. Francis Xavier Kiwanuka Lubega (DW1) who was also the Permanent Secretary in the Ministry of Education explained that the officer had been suspected of losing funds related to sales of career guidance forms. That the issue of the loss had been put to

him and he had made an unsatisfactory explanation after which he was interdicted and later dismissed with disgrace. The documents for proceedings of the Public Service Commission was exhibited as D.4 and included the Plaintiff's belated response of 2/10/98. The witness stated that the Plaintiff's defence was unsatisfactory and that he had several cases of indiscipline.

Mr. Angelo John Awany a record clerk in the Public Service Commission testified as DW2. He exhibited the Plaintiff's file in court and the relevant minute was taken as (Exhibit D.3) and D.4. Then Mr. Philemon Mubiru a former secretary to the Public Service Commission (P.S.C) testified as D.W.3. He explained the plaintiff's file documents and gave the progress of the disciplinary case against him as well as the grounds thus:-

“The first document here is a submission by the PS Ministry of Education... It recommended dismissal of Iyamulemye. Grounds for it were a record of dishonesty and checkered career in the service. Paragraph 7-10 refer to defrauding of a sum of 20 million... the auditors established that he printed careers guidance forms and sold them without remitting the funds.”

The witness explained that the Plaintiff's unsatisfactory answer to the allegations were included for action by P.S.C. which examined the documents. He went on:-

“The Commission then decided to dismiss Iyamulemye from service. We communicated to the PS with a relevant minute enclosed...”

He then confirmed the argument by the Plaintiff that he was never called but justified it thus:-

“We did not call Iyamulemye to verbally and physically present his side as the P.S’s submissions was thorough and his own defence was very clear... It was discretionary on commission to set up a sub Committee. But in this case the matter was straightforward... It is my evidence that Iyamulemye was never called to the commission proceedings at all.”

From the evidence it is agreed that the Plaintiff was not called to make an oral presentation. But it is also correct that his written explanation was presented along side the submissions by the P.S which included audit documents. The PSC then proceeded to dismiss the Plaintiff. I think the issue here is whether the Plaintiff was denied a hearing. It would have been the case that a person who is surprised by a dismissal was not given a hearing. But in this case I did not believe the Plaintiff that he never knew of the progress of his case to the Public Service Commission and that his dismissal was a total surprise. He had been interdicted and there had been audit queries on him. True the PSC did not call him. But they had his written explanation and his case was one of naked and systematic theft by a clever man. There is authority to say that an oral hearing of a witnesses is not always required for a fair hearing. See **Chairman of the Public Service Commission and Anor Vs Maru Mahoko** 1992 (1) Zimbabwe Law Reports 304. Further still reasons need not have been given to the plaintiff for his dismissal beyond the minute dismissing him: See **Public**

**Services Board of New South Wales Vs Osmond** (1987 LRC (const.)  
681.

In the present case I am not satisfied that the Plaintiff has proved his case on a balance of probabilities. He has not proved that if there were any irregularities they were of such a nature as to have denied him a hearing or that the procedures were not followed by the PSC in dismissing him for justifiable cause. In the result the Plaintiff's case is dismissed forthwith.

R.O. Okumu Wengi  
**JUDGE**

22/11/2005.

5/11/2005  
Mwaka for Defendant  
Ntwali for Plaintiff  
Senabulya Court Clerk.

**Court:**  
Judgment read in open court in the presence of above persons.

**Sgd by:** R.O. Okumu Wengi  
**JUDGE**

5/12/2005.