

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 441 OF 2002

1. **MUJAMBERE EVARY**
2. **KASAMBA MICHAEL**
3. **JOHN KADDU** } **PLAINTIFFS**

VERSUS

1. **PICFARE INDUSTRIES (U) LTD**
2. **DRURY (U) LTD** } **DEFENDANTS**

BEFORE HON. JUSTICE GIDEON TINYINONDI:

JUDGMENT

The 1st Plaintiff was taken on by the Defendant as a packer/checker on 01/07/1993. The 2nd Plaintiff was recruited as a storekeeper by the Defendant on 03/08/1994. The third Plaintiff was recruited by the Defendant as a Computer Operator on 07/05/1994. The Plaintiffs completed their probation and were

confirmed on permanent terms. Consequently they were all suspended on 23/07/1996 without half pay. [Exhibits "P3", "P5", and "P" respectively]. On 28/05/2006 they all received letters of termination.

They filed this suit claiming wrongful dismissal, special and general damages arising therefrom.

In their written statement of defences the Defendants made a general denial.

The following were the agreed issues: -

1. Whether the Plaintiffs were unlawfully dismissed and, if so, when
2. What are the remedies available to each.

PW1, Majambere Evary, testified as hereafter. He was 37 years old and unemployed at the time of the hearing. He was appointed (exhibit "P1") and confirmed (exhibit "P2"). As a

storekeeper he was to receive goods coming in the store, fill in stock cards, and make transactions like closing statements at the end of the day.

He was earning a gross Shs. 150,000/= (One hundred fifty thousand shillings only) per month which include unspecified net pay, housing allowance, and transport. Upon his suspension the 1st Plaintiff handed over the stores to his in-charge, Mr. Ruskin, the Marketing Manager after cross - checking the stock. The two signed the statement he had made for the close of the day. Exhibit "P3" stated that he was suspended because he was "involved in misappropriation of Company funds in cash sale transactions." It was not true.

He went home, waited for communication from the office and none came. In 2002 he repaired to the Labour Office who got in touch with the Defendants. Eventually the Labour Office showed him exhibit "P.9". He prayed for a declaration that his dismissal was unjustifiable and an order to be paid terminal benefits salary arrears from 23/07/1996 to-date and costs of the suit.

In cross - examination the 1st Plaintiff testified that his employer was the 1st Defendant and he was suspended by the 2nd Defendant. When referred to exhibit "P1", he said his address therein was the same as the 1st Defendant's. He had never changed it. The same went for exhibit "P2". According to exhibit "P1", gratuity ("c") and annual leave and annual leave benefits ("f") were to be paid according to the Company Standing Orders. That although exhibits "P1" and "P2" mentioned these Standing Orders he was never allowed to see them. He had asked for them from the Factory Manager but the latter told him to only concern himself with the letter of appointment. He only succeeded to see these Standing Orders when they were availed to him in Court.

The 1st Plaintiff further testified that during his tenure he was paid overtime, though it was not expressed in exhibit "P1". Occasionally he would be asked to work overtime and would be paid. Though exhibit "P1" did not provide for wearing of uniform he was required to do so during working hours. He also received salary increment though again, it was not provided for in the

Company Standing Orders. He was not to report for duty when drunk or smoke on the work premises. These prohibited acts were not specified in exhibit "P1".

The 1st Plaintiff further testified that he was staying in Namuwongo, not far from his working place, Nkrumah Road. Ruskin was staying in Kabalagala. Other workmates apart from the 2nd and 3rd Plaintiffs, were also staying in Namuwongo.

When he received exhibit "P3" he went with Kasamba Michael with whom he worked in the stores, John Kaddu (a computer operator) and Nankoma Jilis (a cashier) to Mr. Ruskin to discuss his suspension. Ruskin told him to do as the letter demanded and the rest would be communicated to him. Less than a month later the 1st Plaintiff went to Ruskin's home on three occasions. Eventually Ruskin told the 1st Plaintiff that they would never be reinstated. The 1st Plaintiff did not check at the office because his colleagues told him the gate security would never let him into the premises.

Finally the 1st Plaintiff testified that at the time of his suspension July 1996 he maintained a family. It took him that long to report to the Labour Office in May 2002, because he was looking for other means to sustain his family, relocate them, and look for money to engage a lawyer.

In re-exam the 1st Plaintiff clarified that he had used the address in exhibits "P1" and "P2" because this was an internal application, firm having been ex-employees of the 1st Defendant who had been rendered redundant. The Defendant had an alternative means of tracing him because it was the Company's policy for supervisors to know other workers' residences, especially because the workforce was only 12 and especially further, because the 1st Plaintiff being in-charge of the stores, he was in fact regularly contacted on Sundays for stock-taking and whenever the Company auditors visited because the Company had branches in South Korea, Zaire and Rwanda. Ruskin knew the 1st Plaintiff's residence and would drive there to pick him up. The normal communication at the workplace was that a fellow worker would be used to deliver a letter. This is what the 1st Plaintiff expected

when Ruskin told him to comply with exhibit “P3” and await further communication. The rules on not coming to work when drunk, not smoking on the work premises and not leaving work without permission were communicated during meetings.

PW2 Kasamba Michael (2nd Plaintiff) testified as follows.

He was 32 years old and resident of Lweza Kajjansi. He was an employee of Kenfreight (U) Ltd as an accountant. On 03/08/1994 the 1st Defendant employed him as a Storekeeper and dispatch clerk (exhibit “P4” not dated). The undated letter did not spell out his duties. However as a Storekeeper he was to dispatch finished goods to customers, clean and arrange the stores, keep daily records of dispatches and take charge of loaders. In his letter of suspension (exhibit “P5”) it was stated that he misappropriated company funds. Yet he had nothing to do with company funds. After receipt of exhibit “P5” he went home. Three days later Ruskin and the Marketing Executive, Mr. Wamala, came to his home in Katwe, Kiganda Zone. They asked him if he knew about the misappropriation of the Company funds then going on: He denied any knowledge. They left promising to return the next day

- Saturday 27/07/1996. Indeed Wamala returned with a driver and they went with the 2nd Plaintiff to the 1st Plaintiff's residence. Wamala then engaged the 1st Plaintiff while the 2nd Plaintiff remained outside the house. Wamala then emerged to tell the 2nd Plaintiff to go home and await further communication. He never received any, although the 2nd Plaintiff checked on Wamala several times. They lived 600 metres apart. Also the 2nd Plaintiff went to the 1st Plaintiff's residence on 06/08/1996. They went to Ruskin's house where they expressed to him their concern for the lack of communication from the Company. Ruskin told them to wait for communication from the Company. It never came. They had elected to go to Ruskin's residence instead of the workplace because, when giving the 2nd Plaintiff the letter of suspension, Ruskin told him to hand in all the dispatch records and keep away from the Company premises.

Following upon lack of communication from the Company the 2nd Plaintiff looked for alternative employment. He got it. After some savings he went to the Labour Office which wrote to the 1st Defendant.

When referred to his letter of appointment, exhibit "P4" he recited the contents. They are:

EXHIBIT "P4"

"PICFARE INDUSTRIES (U) LIMITED

P. O. BOX 9396 KAMPALA, UGANDA. TEL: 256356/230138. TELEX 81029

MR/MISS/MRS.....

Dear Sir/Madam

RE: APPOINTMENT

With reference to your application ofwe are pleased to offer you an appointment in our company asfromon terms and conditions as below: a) Monthly basis salary of U Shs.

b). House allowance

c). Transport allowance

TOTAL

d). Medical expenditure on you and your immediate family, subject to maximum of one month's emolument in a year, after confirmation.

e). Gratuity as per company standing orders.

- f).Month's probation which may be extended at the discretion of the company.
- g). Confirmation of appointment after a satisfactory completion of probation period.
- h). Annual leave of 21 or 31 days after 12 consecutive months plus 30% or 50% of monthly emolument as leave benefit, in a year as per standing orders.
- i). Termination of appointment at the discretion of the company by giving 1 month's notice or by either side.
- j). Free Lunch from Monday to Friday.
- k). Hours of service are

Monday to Friday	8.00 a.m. to 1.00 p.m.
	2.00 p.m. to 5.30 p.m.
Saturday	8.00 a.m. to 1.00 p.m.

Yours faithfully,

PERSONNEL MANAGER.

He stated that he got confirmed as per exhibit "P6".

DRURY UGANDA LIMITED

Plot 2/1 Bombo Road, P. O. Box 232, Kampala, Uganda Tel. 256356, 230138. Telex 61029 Fax: 245137

Our Ref:

Your Ref:

Date: 31st Jan. 1996

Mr. Michael Kasamba
C/O P. O. Box 232.

Dear Sir,

RE: CONFIRMATION OF SERVICE

With reference to your appointment dated 3rd Aug. 1994. We are pleased to offer you a **Confirmation of Service** as a **Store Keeper** from 31st Jan. 1996 on terms and conditions below:

- (a) Consolidated monthly salary of **UShs. 125,000=.**
- (b) Medical expenditure on you and you and your immediate family, subject to maximum of one month's emoluments in a year, after confirmation.
- (c) Gratuity as per Company orders.
- (d) Annual leave of 21 or 31 days after 12 consecutive month months plus 30% or 50% of monthly emoluments as leave benefits, in a year as per standing orders.
- (e) Termination of appointment at the discretion of the company by giving one month's notice or by either side.
- (f) Free Lunch from Monday to Friday.
- (g) Hours of service are:

Monday to Friday
Saturday

8.00 a.m. to 5.30 p.m.
8.00 a.m. to 1.30 p.m.

Yours faithfully,

DIRECTOR

c.c. Accounts Dep's"

He now prayed for salary from July 1996 to May when he learnt his services were terminated. He read it from a letter from the Labour Office. He also claimed accrued leave and terminal benefits, according to his exhibit "P6". He prayed for the costs of the suit.

In cross-examination PW2 testified that he had so far worked for Kenfreight (U) Ltd for three years. He had worked for Roofings (1999 to 2002). He was unemployed from 1996 to 1999. When referred to exhibit "P4" he stated he did not recall signing anywhere accepting the appointment. The parties to the exhibit were the 1st Defendant and himself. The exhibit did not show his address.

When shown exhibit "P5" he stated that the parties to it were himself and the 2nd Defendant.

When referred to exhibit "P6" he said he was the addressee thereof, did not sign for it and gave his address as "P. O. Box 232". During his first application he had given "P. O. Box 661 Jinja." The first application was lost by the Company. So when he made the second January 1996 application he gave "P. O. Box 232 Kampala, as his address."

When referred exhibit "P6" PW2 stated that it showed the 2nd Defendant's address as "P. O. Box 232, Kampala."

PW2 was referred to paragraphs "(e)" and ("h") of exhibit "P4" and paragraph "(c)" of exhibit "P6". He replied that although they all referred to the Company Standing Orders, the orders were never given to him. He had asked to see them in 1996 but Peter, the Personnel Officer, did not give them to him.

PW2 prayed for terminal benefits according to paragraph I of exhibit "P4" that is one month's salary in lieu of notice.

PW2 further testified that the alleged misappropriation of Company funds in cash sale transactions in exhibit "P5" did not relate to his duties because he only dispatched goods for sale. The alleged crime could only apply to events subsequent to such dispatch.

The witness stated that he worked with the 1st Plaintiff in the same department. He never saw a worker being disciplined while the witness worked for the Defendants. He last communicated with Mr. Ruskin at a Trade Fair in Makerere in October, 1996.

When referred to exhibit "P5" the witness testified that it did not specify that he should never show up at the Company premises. It was Mr. Ruskin who had stated so verbally.

PW2 further testified that he knew that his services were terminated and resorted to court. He could not go to court before

because he had no money. He did not know that the Labour Office offered free services. During his tenure with the Company no official written communication was ever delivered to him outside the Company premises. But the Company used to send transport to pick him from his home to go and work overtime. Finally the 2nd Plaintiff testified that he used “P. O. Box 232, Kampala” because he was already employed by the 2nd Defendant.

PW3 (the 3rd Plaintiff) testified as follows.

He was 37 years old and resident of Nakulabye, Kampala. He was a Computer Operator. The 1st Defendant employed him in 1994 in that capacity (exhibit “P7” refers). He was confirmed (exhibit “P8” refers). According to these two exhibits his address was care of the 1st Defendant’s address because his late father worked for this Company as Personnel Manager hence PW3 found it an easy address for communication. In addition the Company Manager’s vehicle used to pick his father from home where they lived together.

As a Computer Operator he issued invoices, receipts and some statements. On 23/07/1996 he received a suspension letter alleging that he was involved in the misappropriation of Company funds. This could not be true because his duties were not connected with cash. He handed over the office and left. After waiting for two weeks without a word from the Defendants he went back but the security guard stopped him at the gate, saying the Company would communicate with him.

In 2002 he went to the Labour Office and reported his illegal suspension. The Labour Office communicated with the Defendants. Later he learnt from the Labour Office that the Defendants had issued a notice to report back for duty but he had not received it. At the same time the Labour Office told him the Defendants had terminated his services.

He prayed for his arrears of salary and the costs of this suit.

In cross-examination PW3 testified that currently he was employed by YOUMA since 2004. Before that Kasese Cobalt

Company employed him for one year. He had not worked elsewhere.

When referred to exhibits "P7" and "P8" he said it was issued by the 1st Defendant and he had used the 1st Defendant's address as his forwarding address. After receiving exhibit "P8" he received a salary increment, though not in writing. His father ceased to work for the 1st Defendant. During PW3 tenure with the Defendants, the Defendants never sent any correspondence to his home. It was the Company practice to transport workers to and from their residences and work place. During his tenure he did not get involved in any disciplinary proceedings. He also did not know of any such proceedings against any of his workmates. He did not know the procedure in such proceedings because he was never given access to the Company Standing Orders.

When referred to paragraph (e) of exhibit "P7" he said he did not know how gratuity was calculated because he had not seen the Standing Orders though he had asked for them from the Marketing Manager without success.

The 1st Defendant was located on Bombo Road, Kampala at first but later relocated to Nkrumah Road, Kampala. No workmate lived near the witness in Nakulabye.

The 3rd Plaintiff further testified that the invoices and receipts he issued related to cash and cheques. When referred to exhibits “P3” and “P5” he said they did not mention that he was not allowed to go back to the work premises.

He took so long to go to the Labour Office (23/07/1996 to 2002) because he was looking for a job. He received free services from the Labour Office.

PW4, Namara Adrin, testified as follows.

He was a District Labour Officer working with the Kampala City Council. He handled labour disputes between employers and employees in Kampala district. On 23/05/2002 the Plaintiffs came to his office complaining that the Managing Director of the Defendant had sent them on indefinite suspension in July 1996.

PW4 wrote to the Managing Director seeking an explanation. The Managing Director replied as per exhibit “P9”. It reads:

EXHIBIT “P9”

PICFARE
GROUP OF COMPANIES

“PICFARE INDUSTRIES LTD
P. O. Box9396
Kampala, Uganda
Tel: 230416/343619
Fax: 256-41-345137
E-mail: picfare@picfare.com

28th May 2002.

The District Labour Officer
Department of Welfare &
Community Services
City Council of Kampala
P. O. Box 2403

Kampala.

Dear Sir/Madam,

RE: MESSRS MUJAMBERE EVARY, KASAMBA MICHEAL & KADDU J.

Reference is made to your letter dated 23rd May 2002 (Ref. M.3) in connection with the above former employees of ours. It is with utmost disappointment that we learn of the glaring allegations made against us.

On the 1st August 1996, management issued a Notice that was copied to all Notice Boards of the company calling upon the trio to report for duty within fourteen days. The Notice clearly stated that should the trio fail to turn up for their respective duties within the specified period, they were to be considered deserters and they would automatically cease to be employees of the company.

The foregoing mode of application was used and quite justifiably owing to the fact that for purposes of personal contacts the trio had indicated M/s Picfare Industries Limited and M/s Drury Uganda Limited as their respective contact addresses (refer to their appointment/confirmation letters). The postal addresses in this regard were irrelevant and inconsequential as they belonged to the would-be senders of the letters.

Management waited in vain for the trio to turn up during the said fourteen days that expired on the 15th August 1996. As a consequence the trio were deemed to have deserted company employment then. It is our surprise that they are now alleging that they were unfairly suspended after a period of six years! (For ease of reference a copy of the said Notice is hereby attached).

We imagine that our response will be of value to you and to the unusual complainants.

Yours faithfully,

.....
AUTHORISED SIGNATORY".

In June 2002 the Plaintiffs came to follow up the matter. He showed them exhibit "P9". After reading it they said they were not satisfied with its contents because they had not earned any salary during suspension.

In cross-examination PW4 testified that when the Plaintiffs showed him their appointment letters the address was care of the 1st Defendant's address. They did not show him their suspension letters. When he asked them why they took so long to complain, they replied that they had waited to be recalled but in vain.

With this evidence the Plaintiffs rested their case.

DW1, Wamala Daniel, testified as follows.

He worked for the Defendants as a Sales Representative, Marketing executive, Senior Marketing Executive/Assistant, Marketing Manager between 1993 to 1998. At the highest point he was overseeing the marketing staff, assisted in the accounts department, and oversaw the stores. At the time of his

recruitment he was given a letter of appointment and later on a confirmation letter. They both bore "P. O. Box 3635 Kampala." During his tenure he was given a copy of the Company's Rules and Regulations (exhibit "D1" without objection).

DW1 further testified that the Plaintiffs were employees of the Defendants during his tenure. The Plaintiffs left the Company's employment before he did. Between 1994 to 1997 he performed the duties of Personnel Officer at the head office on Bombo Road. In 1994 the Company opened a branch along Nkrumah Road to be manned by a Marketing Officer who was being assisted by DW1 and a Sales Manager. The Personnel Manager remained on Bombo Road head office. At the Nkrumah Road branch the three said officers recruited disciplined and made final decisions about the staff there. They only recommended to the Personnel Manager merely to implement according to Regulations 2, 3 and so on. This was because these duties of the Personnel Officer had been delegated, by the Director at the headquarters, to the Nkrumah Road, branch Senior Officers. The Plaintiffs worked in the Nkrumah Road branch.

DW1 further testified that the Plaintiffs left the employ of the Defendants on account of misappropriation of Company funds. They were suspended but later forgiven by the Management in 1996 in writing. He did not have the document. The Company practice was for the Management to write to an employee through his address. During his tenure the Defendants did not provide transport to African Staff. The Defendant was not required to know the physical address of each employee. Absconding from duty earned an employee termination. {Regulation 11 Part III}.

In cross-examination, DW1 testified that in 1994 to 1996 he first resided in Mpererwe, moved to Nsambya and on to Wakaliga. While at Nsambya the 2nd Plaintiff also stayed there. It was possible for DW1 to trace the 2nd Plaintiff if there was need to do so. After the Plaintiffs were suspended he saw the 2nd Plaintiff both at his (DW1's) home and at the Church. The two discussed, inter alia, the 2nd Plaintiff's suspension because he was asking about his reinstatement. DW1 told him to await communication from the Company. The 2nd Plaintiff had confessed to the

misappropriation of the Company funds and what he had used it for. The 2nd Plaintiff's confession took place at the workplace in the presence of one William and DW1 and again at DW1's home in Nsambya.

After the Company opened the Nkrumah road branch, the Company address remained the same. The Marketing Accounts and Stores Departments were at the Nkrumah Road branch. Between 1994 to 1997 there was a shortage of staff. So he was made the overall in charge. Later on when more staff came on board he reverted to Marketing Department. The 1st and 2nd Plaintiffs were in Stores while the 3rd Plaintiff was in the accounts. During 1994 to 1997 the 1st and 2nd Plaintiffs were answerable to the Marketing Manager whom DW1 was not. The 3rd Plaintiff was answerable to the head office accounts officer, whom, again, the witness was not.

There was provision for overtime work for junior staff. The Plaintiffs were senior staff.

In re-exam DW1 testified that at the branch they marketed the Company products. Accounts were done for the goods coming in the stores and goods marketed out. The Marketing manager (Mr. Ruskin) was not always at Nkrumah Road branch. Sometimes he would be at the head office or at the factory. As Ruskin's assistant DW1 would be the in-charge in the former's absence. Although he knew the 2nd Plaintiff's residence it was not his duty to convey his mail.

DW2, Oseno Joseph, testified as follows.

Since 26/04/1996 to-date he was employed by the Defendant (exhibit "D2"). His duties were to guard Company property at the factory on plot No. 2, 2nd Street and at times on Nkrumah Road branch and the New Site along Port Bell Road. On his appointment, the Company regulations were brought to his attention. This evidence closed defence evidence.

Counsel opted to file written submissions. I obliged them. The written submissions were duly filed. I will only refer to them as and when I deem it necessary.

I will start off with the first issue. The Defendants alleged that the services of the three Plaintiffs were terminated in a General Notice dated 01/08/1996 whereby the Plaintiffs were required to report on duty by 15/08/1996, failing which “you will be deemed to have deserted the company’s employment and you shall cease being employees of the Company automatically.”

At the outset I find and hold that this document was not exhibited. On 13/04/2006 after Counsel for the Plaintiffs objected to the tender thereof Counsel for the Defendants applied that it be tendered for subsequent identification. On the same day defence Counsel closed his case and abandoned the document. Thus although there was a photocopy of this document annexure “A” to the written statement of defence it remained an allegation and ended up as of no evidential value.

I am not remiss of DW2 evidence that he was the Defendant’s security guard from 26/04/1996. That he was at times deployed at the Company’s head office on Bombo Road and the Company’s

shop on Nkrumah Road. That on three occasions between 9th and 10th August 1996 he saw this document pinned on the Company's notices boards on the two premises.

Assume, for argument's sake, that this evidence is true, all the Plaintiffs testified how they were told, on the day of their suspensions, not to approach the Company premises and that their fate would be communicated to them eventually. Briefly, the 1st Plaintiff testified that the Company knew his residence because they would pick him in company vehicles on Sundays to do stock taking. This evidence was neither cross-examined nor contradicted. He also told that when he approached Mr. Ruskin, the latter told him he would never be reinstated. This evidence was neither cross-examined nor contradicted. The 2nd Plaintiff told how M/s Ruskin and Wamala went to interrogate him at his residence. Mr. Wamala told him that his (2nd Plaintiff's) fate would be communicated to him. Mr. Ruskin told him to keep away from the Company premises. This evidence was not contradicted or cross-examined. The 3rd Plaintiff told how the Company drivers used to collect his father from his home for work at the company

premises. That he resided with his father. So the Company knew his residence. That when he tried to go to the Company premises the Security guard denied him entry. That at one time he had an accident and the company collected him from home. This evidence was not cross-examined. It was not contradicted.

The above summary shows:-

- a). the Plaintiffs were not allowed back on the Company premises from the day of their suspensions.
- b). the Defendants knew their places of contact.
- c). the Plaintiffs did not learn of their dismissals till the Labour Office managed to obtain and show them the alleged notice of termination. This was in June 2002. PW4, the Labour Officer's evidence was not contradicted.

It is trite that evidence not cross-examined on is deemed admitted by the party against whom it is addressed. {See: Moses Sebitangaro Ganya vs Uganda Criminal Appeal 32/95 (SC)}.
Sebitangaro Ganya vs Uganda Criminal Appeal 32/95 (SC).

Counsel for the Defendants submitted: -

“The Plaintiffs were accordingly dismissed when they did not report to work within the fourteen days provided for.”

Counsel for the Plaintiffs submitted: -

“...we submit they were terminated on 28/05/1996 or shortly thereafter when they were informed about the decision of the Defendants.Thus the dismissal of the Plaintiffs took effect from the date it was communicated to them by the Labour Officer.”

These statements by Counsel for the Plaintiffs are as equal as they are vague. Especially so when PW4 did not testify to the categorical date when she stated: -

“In June 2002 the Plaintiffs came to follow up the matter. I showed them exhibit “P9”

Be the above as it may in exhibit “P9” the Defendants clearly specify that on 15/08/1996 “the trio (Plaintiffs) were deemed to have deserted Company employment then.”

From the foregoing I find and hold that the Plaintiffs’ employment was terminated on 15/08/1996.

Was the dismissal of the Plaintiffs lawful? Defence Counsel referred to exhibit “D1” when addressing this issue. I agree with Plaintiffs’ Counsel’s submissions that these regulations did not apply to the Plaintiffs. Rules 1.1 and 1.2 provide:

“LEGALITY

1.1. These rules and regulations and any additions as well as amendments thereto, which may be laid down from time to time and duly, notified, shall apply to permanent employees (hereinafter called “employees”) employed by Nytil PICFARE

LTD. (hereinafter called “the company”) and shall constitute the conditions of contract of service between the company and each such employee.

- 1.2. These rules which are and shall at all times be, subject to any applicable statutory law, shall supercede and substitute all previous Rules of employment for all permanent employees and be effective from, and inclusive of the 1st January, 1997 and shall be cited as Nytil PICFARE LIMITED Rules and Regulations for Permanent Employees”.

{Emphasis is mine}

Since I have held that the Plaintiffs’ services were terminated on 15/08/1996 these rules did not, therefore, apply to them.

In paragraph 9 of the plaint and their evidence the Plaintiffs give reasons why they consider that their dismissal was wrongful and unlawful. In paragraph 15 of the written statement of defence the Defendants merely put up a general denial. DW1 did not testify

on the issue but merely stated that “the Plaintiffs left on account of misappropriation of Company funds” No other evidence was called by the Defendants to justify the dismissal of the Plaintiffs. In light of these findings defence Counsel’s submissions on this issue becomes an exercise in futility since they are not backed up by any evidence. His reliance on DW2’s evidence without any documentary evidence (that is, the alleged General Notice) becomes ludicrous, to say the least. Hear what he states: -

“The Plaintiffs were accordingly dismissed when they did not report to work within the fourteen days provided for.”

I repeat that I find and hold that no such notice. Most important, if it existed, it was never served on the Plaintiffs till they chanced on it in the Labour Office.

To conclude this issue the Defendants violated the provisions of the contract in its entirety. They dismissed the Plaintiffs without any proven misconduct by them and without giving them the contractual notice or salary in lieu of that notice. The dismissal of the Plaintiffs was thus unlawful.

I will now address the issue of the remedies. In paragraph 10 of the plaint the Plaintiffs each claim:

a). Special damages

b). unpaid arrears of salaries from the time they were suspended (23/07/1996) till they learned of their dismissal (28/05/2002). I hasten to add that I have held that the Plaintiffs' employment was terminated on 15/08/1996.

In view of my holding on the date of termination each of the Plaintiff's arrears of salary is, therefore, for the period 23/07/1996 to 15/08/1996.

In their plaint the Plaintiffs claimed annual leave. Annual leave was provided for in each Plaintiff's letter of appointment. I here now decry the art of advocacy. The Plaintiffs' claims for annual leave remained a pleading. It was never translated into evidence. This claim being in the nature of special damages it could only be sustained if it was strictly pleaded. Unfortunately none of the

Plaintiffs ever alluded to this claim in their evidence. I dismiss it as not proved.

The Plaintiffs claimed payment in lieu of notice. This was provided for in each of the Plaintiff's appointment letters. I have held that the Defendants dismissed the Plaintiffs without giving them the contractual notice or salary in lieu of notice. Each of the Plaintiffs is therefore entitled to this claim.

Finally the Plaintiffs claimed general damages. In KENGROW INDUSTRIES LTD vs C. C. CHANDRAN: C. A NO. 07/01 (Sc) in upholding the Court of Appeal on the issue of the measure of damages for wrongful dismissal where that court stated, inter alia,

“.....in the latter case (in which there is a provision enabling either party to terminate the employment) the wronged employee would be entitled to recover, as damages, the equivalent of remuneration for the period stipulated in the contract for notice.”

In the judgment of Tsekooko, JSC added: -

“I respectfully agree that this is a correct statement of the law. I would add that it is premised on the principle of restituto in integrum”.In the case of a contract terminable on notice, if the termination provision is complied with, the employee would serve the stipulated notice period and receive remuneration for that period, or would be paid in lieu notice.”

I am bound by this decision. For emphasis I would add the decision in GITHINJI vs MUMIANS SUGAR CO. LTD: {199 - 98} E. A 81

In conclusion I hereby enter judgment for the Plaintiffs in these terms.

1. Their employment was wrongfully terminated on 15/08/1996.
2. They are entitled to:

- a). arrears of salaries for the period 23/07/1996 to 15/08/1996.
- b). payment of one month's salary in lieu of notice.
- c). Interest at court rate on (a) and (b) from the date of filing till payment in full.
- d). Costs of the suit.

Gideon Tinyinondi

JUDGE

29/06/2006.

29/06/2006:

Mr. Kaggwa M. for Plaintiffs.

Mr. N. Mwesigwa for Defendants.

Ms. Kauma, Court Clerk.

Court:

Judgment read in open court.

Gideon Tinyinondi

JUDGE

29/06/2006.