

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
HCT-02-CV-CS-0094-2001
SGT CONSTANTINI OCHEN:.....:PLAINTIFF
VERSUS
LIRA DISTRICT LOCAL GOVT:.....:DEFENDANT
BEFORE

HON JUSTICE AUGUSTUS KANIA

JUDGMENT

Sgt Constantino Ocen has brought this suit against Lira Local Government for wrongful dismissal and for the non payment of his salary from February 1993 to date. By this suit the plaintiff is claiming for general damages for breach of contract, special damages from 1993 to June 2001, interest on the decretal sum at 25% p.a from the date of filing this suit till payment in full and the costs of the suit.

The brief facts of this case are as follows. The plaintiff was employed by the defendant in 1968 as a Prison Officer in its District Administration Prisons Department at Aler District Administration Prison farm. The plaintiff was transferred to Kioga Prison by a posting letter dated the 6th January 1994 which is exhibited P.3 on the court record. He objected to and appealed against the said transfer on Medical grounds by his letter dated 22nd January 1994 exhibit P.4 but his appeal was rejected by the Under Secretary ! District Executive Secretary per his letter Exhibit P.5 who insisted that the plaintiff proceeds on the said transfer. He had no alternative but to comply but requested for funds to facilitate the transfer to his new station but in vain. As a result he remained at Aler Prison Farm under employed because he was being assigned no duties. The plaintiff stayed at Aler undeployed until July 1995 all along not being paid his salaries so he moved to his home. On 28th January 2002 the plaintiff received a letter from the Chief Administrative Officer, Lira District terminating his services dated 8th January 2002. The letter which is exhibited P.1 on the Court record gave no reasons for the termination of his services. The said letter purported to have terminated his services with effect from the 1st March 1995. The plaintiff considered that these facts constituted a breach of his contract of employment with the defendant hence this suit.

The defendant neither filed a written state of defence nor appeared at the hearing though it was duly served with the summons to file a defence and the hearing notice see the affidavit of service of Abraham Lincoln Okullo and Boniface Owera respectively. When Hon. Omara Atubo learned counsel for the plaintiff applied to proceed with the hearing of the suit ex parte, I allowed his application and the hearing in this matter proceeded exparte under the provisions of Order 9 rule 17 (1)(a) of the C.P.R.

At the commencement of the hearing of this case, the following issues were framed for determination.

1. Whether the plaintiff was employed by the defendant.
2. Whether his dismissal was wrongful.
3. What remedies are available.

With regard to the first issue Hon. Omara Atubo submitted that though the plaintiff did not produce the appointment letter issued to him by the defendant on engagement, the fact of his employment could be proved by other evidence. He argued that the fact that the plaintiff applied for such leave to the defendant and the latter granted the same on Exhibit P.2 showed he was an employee of the defendant. He contended that the fact that the defendant transferred the plaintiff from Aler Prison Farm to Kioga Prison Farm per its letter Exhibit P.3 together with the fact that the defendant by its letter of 8th January 2002 dismissed the plaintiff all show that the plaintiff was its employee. Counsel invited me to answer the first issue in the affirmative.

Apart from the plaintiffs evidence that he had been in the employment of the defendant since 1968, PW2 Lingo Jackson also testified he worked with the plaintiff in Lira District Local Government Prisons Service from 1987 until his retrenchment in 1993 and that by then the plaintiff was stationed in Aler Prison Farm. The evidence of the plaintiff and PW3 Lingo Jackson in this regard has not been contradicted. Apart from the above if the plaintiff was not an employee of the defendant he would not have applied for and leave he would not have been granted sick leave by the defendant nor would the defendant have transferred him from Aler Prison Farm to Kioga Prison, both facilities that belonged to the defendant. Lastly the fact that the defendant wrote exhibit P.1 dismissing the plaintiff from its employment could not have been written if the plaintiff was not indeed its employee. The granting of such leave to the plaintiff, transferring him from Aler Prison Farm to Kioga Prison and dismissing him from Lira

District Administration Prisons Department prove that the plaintiff was indeed an employee of the defendant and I so find. The first issue is answered in the affirmative.

As regards whether the plaintiffs dismissal was wrongful Hon. Omara Atubo submitted that since the termination of the service of the plaintiff was without reasonable cause and notice it should be held to have been wrongful dismissal. He argued that the plaintiff did nothing to justify his dismissal. Counsel submitted that though the plaintiff was entitled to notice or payment in lieu thereof no such notice was given. He argued that this made the termination wrongful on the authority of A.M Jabi vs. Mbale Municipal Council [1975] HCB 191. Counsel also submitted that in the absence of any misconduct cited on the part of the plaintiff his contract could only have been lawfully terminated after reasonable notice. He contended that the fact that the defendant in the letter of termination exhibit P.1 thanked the plaintiff for his commendable service is a clear indication that the defendant had no reasonable grounds for termination the plaintiff s employment contract. Counsel finally contended that the plaintiffs wrongfully backdated the termination letter dated 8th January 2002 to the 1st March 1995 purposely to cut down on the plaintiffs year's diligent service. He invited Court to answer the second issue in the affirmative. Section 25(1) of the employment Act recognizes the rights of parties to a contract to terminate such contract by giving notice and section 25 (3) of the same Act provides for payment in lieu of such notice of a sum of money equivalent to the wages of the days of the relevant notice.

It is also trite that a dismissal will be held to be wrongful if it is for no justifiable cause and effected without reasonable notice See A.M Jabi vs. Mbale Municipal Council [1975] HCB 191.

In the instant case the plaintiff testified that he had been in the employment of the defendant since 1968. Though PW2 Lingo Jackson testified that he worked with the plaintiff in the service of the defendant from 1987 and he was retrenched in 1993 the fact that the plaintiff was dismissed in 2002 means he had been in the service of the defendant for more than ten years. Section 25(2) (c) of the Employment Act provides that if the service of an employee has lasted for at least ten years, he is entitled to three months notice. The plaintiff herein was entitled to three months notice. The plaintiff had his service terminated by a letter dated 8th January 2002 and backdated to the 1st March 1995 thus cutting his service period by about six months instead.

The defendant gave no justifiable reason for terminating the contract of the plaintiff. In the letter terminating the service of the plaintiff which is exhibit P 1, the defendant instead praised the plaintiff for the commendable service the plaintiff rendered to the defendant and the Government of Uganda. The inference from the above is that the plaintiff was dismissed for no reason or justification at all. These circumstances no doubt make the dismissal of the plaintiff unlawful on the authority of **A.M.Jabi vs Mbale Municipal Council (Supra)**. I accordingly find that the dismissal of the plaintiff without justifiable cause and without notice was unlawful. I accordingly answer the second issue in the affirmative.

Hon Omara Atubo on the third issue submitted that the prayers of or damages by the plaintiff are justifiable because an employee is entitled to damages arising from breach of contract by his employer. He relied for this proposition on the Judgment of Manyindo J as he then was in **Eletu vs Uganda Airlines [1984J BCB 39]**. Counsel submitted the claim of unpaid salary and allowances is by way of special damages. That though these damages are to be pleaded specifically they don't need to be proved by the production of receipts. **He cited Onyu Terence vs Attorney General BCCS No. 0104/2001 (unreported) and Kyambadde vs Mpigi District Administration [1983] BCB 44** for this proposition.

Counsel computed these special damages comprising of a salary of 168,000 per month a bicycle allowance of shs 10,000 per month payable from 1 st February 1993 to 30th June 2001 covering a period of 125 months totaling to shs 22,250,000/=.

Hon Omara Atubo submitted that contrary to the provision of section 16 of the Employment Act the defendant failed to provide work to the plaintiff for the proposition that the defendant is obliged to pay the plaintiff even if he did not work because it was the defendant who failed to provide or allocate work to the plaintiff. Counsel relied on the authority of **Gulaballi Ushilani vs Kampala Pharmaceutical Ltd SCCS No. 6198 (Unreported)**.

He also argued that the plaintiff is entitled to shs 434,000 being three months salary in lieu of notice. Counsel also prayed that an award of shs 10,000,000/= in general damages should be made to the plaintiff for breach of contract, suffering and pain for having gone without payment of salary and the mental pain and anxiety for making this matter drag on until the plaintiff had to take it to court. Counsel prayed that Judgment be entered for plaintiff for damages with interest at 25%. He also asked for the costs of the suit.

A claim of salaries and determinable allowances and terminal benefits are by way special damages **See Eletu vs Uganda Airlines (Supra)**. As special damages the plaintiff has a duty to plead them specifically and prove them strictly before they can be awarded. **See Christopher Kigundu and David Sentongo vs Uganda Transport Company Il..2W Ltd SCCA 7/ 1991 (unreported)**. It was also held in that case that though they must be strictly proved, they need not be proved by the production of receipts and documentary evidence alone but also by the plaintiff vividly describing the transaction that forms the basis of claim.

In the instant case the plaintiff testified that he was at the rank of a Sergeant in the prisons department. And that his salary was 168,000/= per month. The plaintiff testified that besides his salary he was paid 10,000/= per month as bicycle allowance and that he last received the above sums in January 1993. It is the testimony of the plaintiff at least by implication that he has not been paid his salary and bicycle allowance for the periods of 125 months being the arrears under these two heads to 22,250,000/=.

PW2 Lingo Jackson who according to his testimony was also a sergeant in the employment of the defendant confirmed that a sergeant salary was 168,000/= but stressed that allowances were only paid as reimbursements or payment for work done. He did not testify on a bicycle allowance.

From the above evidence of the plaintiff and PW2 Lingo Jackson I believe that the plaintiff's salary was 168,000/= as at 1993. I also found that from February 1993 to the date of the termination of the plaintiff's employment which is a period of 125 months his salary was not paid. If the salary of 168,000/= is multiplied by 125 months unpaid salary arrears due to the plaintiff would total 21,000,000/=

In his calculation Hon Omara Atubo came to a figure of 22,250,000/= because he included the bicycle allowance of 10,000/= which I have discounted. I discounted that figure because PW2 Lingo Jackson apart from not testifying on it categorically stated that the only allowances payable were only reimbursements or allowances for work actually done. Further more the plaintiff gave evidence that in 1993 he went on sick leave and when he resumed work he was transferred. Because he remained in the old station due to the defendant's failure to transport him, he was assigned no duties until his dismissal. If allowances were reimbursements or payment for work done as testified to by PW2 Lingo Jackson which I believe was the case, I find no basis of the plaintiff claiming the bicycle allowance of 10,000/= per month.

The plaintiff also claims three months salary in lieu of notice under the provisions of S 25(2)(e) of the employment Act. This at shs 168,000/= per month comes to 534,000/= .The grand total of salary arrears for 125 months at 168,000/= per month and three months salary in lieu of notice is 21,534,000/=.

The issue to decide is whether the plaintiff is entitled to receive the above sums and in particular 21,000,000/= which is the arrears of salary for the period of 125 months in the light of the plaintiff's own evidence that he was not working for a large part of that period.

The circumstances that led to the plaintiff not working during the said period are that when he was transferred to a new station the plaintiff asked for money to transport

himself, his family and property. He claimed 150,000/= .A voucher was raised but the money was not paid. He could not raise the transport costs himself because he had not been paid his salary for one year. He remained at Aler Prison Farm but his employer assigned him no work then and thereafter until his services were terminated on the 8th January 2002 purportedly with effect from 1 st March 1995.

Section 17 of the Employment Act provides as follows;-

"(1) An employer shall, unless the employee has broken his or her contract of service or the contract is frustrated provide his or her employee with work in accordance with the contract, during the period for which the contract is binding on a number of days equal to the number of working days expressly or impliedly provided for in the contract.

(2) Where an employee fails to provide work in accordance with a contract of work, he or she shall pay to the employee in respect of every day on which he or she shall so fail wages at the same rate as if the employee had performed a day's work"

In interpreting Section 16 of Decree 4/75 the Employment Decree which is in identical terms with Section 17 of the Employment Act Cap.219 Laws of Uganda in **Gulaballi Ushilani vs Kampala Pharmaceuticals Ltd SCCA 6/1998 A Karokara JSC** had this to say

"In my view if the respondent, in complete disregard of the employment contract abandoned the appellant or repudiated the contract, the abandonment or repudiation of the contract would be wrongful----- . In my view, if there is a case here the employer should be ordered to pay the employee for the employment period of the lifespan of the full contract, this is a proper case for such order -----if under Section 16 of the Decree 4/75, the employer failed to provide work to the employee in accordance with the terms of the contract of employment, like in this case, then the employer was under obligation to pay to the employee in respect of every day on which it so failed, wages at the same rate as if the employee had performed work for the life span of the contract of employment"

In the instant case when the plaintiff was transferred from Aler Prison Farm to Kioga Prison, he had not been paid his salary for one year. On receiving the transfer letter he was ready to proceed on transfer and asked for money to transport himself his family and property to the new station. The money was not given so the plaintiff remained at Aler where the defendant did not assign him duties. He had no duties assigned to him until he was retired by the letter dated 8th January 2002. The defendant was in breach of the contract of employment in the first place by not paying the salaries of the plaintiff for a whole year. He further acted in contravention of section 17 of the Employment Act by refusing to assign work to the plaintiff. In keeping with the provisions of Section 17(2) of the employment Act and the holding **in Gulaballi Ushilani vs. Kampala Pharmaceuticals Ltd Supra**. The defendant must pay and the plaintiff is entitled to the arrears of his salary of shs 21,000,000 for 125 months that he was not given work.

As every employee is entitled to his services being terminated with notice as provided under S. 25(1) and (3) of the Employment Act and having found that the plaintiff was entitled to three months notice or payment in lieu thereof, I find that the plaintiff is entitled to the sum of shs 534,000/= in lieu of notice.

The plaintiff also prayed for general damages for wrongful dismissal anxiety, suffering and mental pain for withholding his salary for all the years from 1993 to 2002. Hon Omara Atubo proposed the figure of shs 10,000,000 as the appropriate quantum.

General damages are awarded at the discretion of Court. They are intended to place the injured party in as good a position in monetary terms, as he would have been had the wrong complained of not occurred. **See Philips vs Ward 1956 IAD EA Rand Livingstone vs. Rawyads [188012 AC 25.**

The facts of the instant case are that the plaintiff was not paid a salary from February 1993 to January 2002. From 1994 he was not assigned any work putting him in a state of anxiety even though he kept enquiring about his status from the defendant. He was eventually dismissed with no justifiable reason and without notice and without terminal benefits. The above caused him deprivation pain of mind and anxiety. I accordingly

consider an award of shs 3,000,000/= in general damages will meet the justice of the case.

Though the plaintiff prayed for interest on the decretal sums at the rate 25% p.a that rate is even slightly higher than the current commercial rate of interest. It is now trite that the commercial interest rate is awarded where the claim arises from a Commercial transaction. **See Ecta (U) Ltd vs. Geraldine Namubiru SCCA 29/94 (Unreported).** The plaintiffs instant claim not arising from a Commercial transaction I shall award interest on the decretal sums at court rate.

As costs follow the event, the plaintiff will also have the costs of the suit. In the result Judgment is entered for the plaintiff in the following:-

- a) The defendant shall pay to the plaintiff shs 21.534.000 in special damages.
- b) The defendant shall pay to the plaintiff shs 3, 000, 000/= in general damages.
- c) (a) and (b) shall attract interest at the Court rate from the time of Judgment till payment in full.
- d) The plaintiff will also have the costs of the suit.

Signed

AUGUSTUS KANIA

JUDGE

1/6/2006