

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 500 OF 2002

FAUSTINE RUGYERA ::: PLAINTIFF

- VERSUS -

WORLD VISION INTERNATIONAL UGANDA ::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff brought this action against the defendant for inter alia, wrongful dismissal, malicious prosecution, slander, salary arrears and allowances, benefits out of the provident funds, accumulated leave, interest and costs of the suit.

The facts giving rise to the cause of action were that the plaintiff was an employee of the defendant at its Buseruka Integrated Rural Development Programme (BIRD) as the co-coordinator based in Hoima from 1989 to 1997, when he was summarily dismissed.

As the defendant's co-coordinator, in July 1997, the plaintiff noticed anomalies in the accounting department and reported the matter to the police whereupon the Bookkeeper, one Ambrose Owiny was arrested. Upon getting information of the arrest of the bookkeeper, officials came down and negotiated for the release of the bookkeeper and authorized him to go back to office and work normally.

In the turn of events however, in December 1997 the plaintiff together with the said bookkeeper were arrested and jointly charged with another staff one Robinah Bantebya for embezzling and causing financial loss to the defendant vide Hoima Criminal Case No. 454/97. Before determination of the case the plaintiff received a dismissal letter without being give a hearing. Later on the plaintiff was acquitted. Hence this suit in which the plaintiff claimed special damages for the wrongful acts and omission enumerated above.

The defendant on the other hand claimed that the plaintiff was lawfully dismissed for mismanaging the project he was heading

thereby causing financial loss for which he was arrested, prosecuted although acquitted. The defendant contended that contrary to the information that the plaintiff discovered anomalies by the bookkeeper, later investigations revealed that the reporting of the bookkeeper was an attempt by the plaintiff to save himself from this financial loss caused by the plaintiff were such that they warranted a dismissal. So the dismissal was legal and lawful.

Admitted Facts:-

At the scheduling conference as provided under order XB of the Civil Procedure Rules, the following facts were agreed by the parties:-

- 1) That the plaintiff was employed by the defendant from 1989 to 1997 as the coordinator of Buseruka Integrated Rural Development Programme (BIRD).
- 2) That in December, 1997 the plaintiff was arrested and charged with offences of embezzlement and causing financial loss vide Hoima Criminal Case No. 454/97 but was acquitted.

- 3) That before the verdict of the court, the plaintiff was served with the dismissal letter from the employment of the defendant.
- 4) That no terminal benefits were paid to the plaintiff.

Issues for Determination:-

- a) Whether the plaintiff was lawfully dismissed.
- b) Whether the plaintiff was maliciously prosecuted by the defendant.
- c) Whether the plaintiff mismanaged the defendant's project.
- d) Whether the plaintiff suffered any loss or damages.
- e) Whether the plaintiff is entitled to any remedies.

The plaintiff relied on the evidence of one Tinkamanyire Ali (PW1) in support of his case. Tinkamanyire testified inter alia that he knew the plaintiff who was coordinator of Baseruka Integrated Rural Development Programme. The plaintiff was the project coordinator while he was the project Chairman. During the plaintiff's tenure, the project was a success in that they put up eight Primary Schools, two health centres, boreholes, a training centre and loans to farmers. In addition, secondary schools were

also assisted. He concluded that he later learnt that the plaintiff had been removed because project money had got lost because one of the plaintiff's staff called Owiny Ambrose had tampered with cheques.

The plaintiff Faustine Rugyera (PW2) on his part testified that he was employed by the defendant between 1991 and 1997 when he was summarily dismissed. He testified that before his dismissal, in July 1997 he went to Canada to negotiate an extension of the project he was coordinating for the defendant in Hoima. Upon his return he discovered some anomalies in accountability of the project monies and departmental heads pointed fingers at the Project Accountant. He went to the bank and discovered that some cheques had been altered on the way to the bank. He found that the cheques which had been altered were in the names of the Accountant called Ambrose Owiny and his wife Mary Owiny Twesigye who was the documentation officer. Upon that discovery, the Accountant was arrested and detained. During the detention the defendant was informed. The defendant sent their Chief Accountant and Senior Auditor to find out the total loss. A

total of 43 cheques, were found to have been altered occasioning a total loss of about 30 million. The cheques had been written in the names of Mr. and Mrs. Owiny. It a turn of events the defendant pleaded for the release of Mr. Owiny claiming that it was administrative and that if their donors learn of it, it would affect their operation. Upon release, Owiny went back to office and got books of accounts and tampered with them. After three weeks Mr. Owiny bundled books of accounts and took them to the defendant for auditing. Five months later in December 1997 the defendants caused the arrest of the plaintiff.

The plaintiff testified that while he was in detention the defendant served him with termination letter without any audience. Later on he was charged together with Mr. Owiny after which he was acquitted. The plaintiff denied mismanaging the project. He stated that he used to monitor the project and was the one who had discovered the anomalies. He denied being aware of the forgeries done by Mr. Owiny Ambrose.

Robert Muhereza (DW1) testified that the plaintiff used to work for the defendant but had been dismissed for misappropriation of funds. He testified that during the course of his work with the defendant, he received information that there was a problem in the Buseruka Project where the plaintiff was coordinating. He was instructed by the defendant to go and find out and make a report. He found the project accountant in police custody and the problem had to do with loss of funds due to forgeries. He found that cheques had been altered. He testified that the plaintiff as principal signatory and Ambrose Owiny as the accountant were to blame for the alterations. He blamed the plaintiff for signing cheques leaving there gaps which were later filled to cause alterations (whether by plaintiff or other people). He concluded that he was surprised that the plaintiff was acquitted after alteration of the cheques leading to substantial loss to the defendant.

George Wamushiya (DW2) testified that he used to work for the defendant and during the course of his duties he was part of the team which carried out audit investigations in Buseruka Project

where the plaintiff was coordinator. The audit report (exhibit P2) revealed inter alia mismanagement of the project; lack of systems and internal control; failure to follow earlier audit recommendations, direct forgeries and alterations of cheques and irregular staff advances all of which led to a total loss of \$44,000. He testified that as a result of the said loss and mismanagement, the Canadian Government through CIDA recommended closure of the project. He testified that he was among the people who gave evidence against the accused in the criminal trial. He told court that the plaintiff was to blame for the alteration on the cheques because he was a principal signatory.

Lastly, Edward Stephen Gaamuuwa (DW3) testified that during the material time he was the defendant's Human Resource Manager. He testified that in 1996 there was a problem in the Buseruka Project which the plaintiff was running. The problem involved loss of funds due to frauds and forgeries. As a result, the plaintiff was suspended from work pending investigations. While that was going on, management learnt that there was also mismanagement of the programme in that the staff, including the

plaintiff were advanced funds which were not accounted for. The plaintiff had advanced to himself a sum of shs.13,240,000/= which he failed to account for. Because of the said mismanagement, it was decided that the plaintiff's services be terminated summarily. He testified that investigations showed that the plaintiff was not involved in the fraud. He testified that three months notice were only applicable in normal circumstances for involving expiry of contract; incompetence or inefficiency. But in the plaintiff's case there was provision for summary dismissal for indiscipline, insubordination, drunkenness or mismanagement. He testified that the plaintiff was not dismissed for fraud but because he had mismanaged the project leading to losses, which included unaccounted for advances to the plaintiff. He concluded that the plaintiff was dismissed according to the policies of the organization and that was not illegal.

Issues:-

1. Whether the plaintiff was lawfully dismissed:-

The law is well settled that an employer has a right to terminate the employment of his employee at anytime for any reason or for

no reason at all. The employer must do so in the manner warranted by the contract; otherwise the employer will be liable for damages for unlawful dismissal: See **George Ndyahabwe Vs Shell (U) Ltd; Court of Appeal Civil Appeal No. 97 of 2003** (unreported).

It is very unusual that an employer may dismiss his servant for such reason like misconduct, substantial negligence, dishonesty and the like. However the inalienable right of an employer to dismiss his employee is subject to certain limitations. Thus in **Jabi Vs Mbale Municipal Council [1975] HCB 191**, the court held inter alia, that the inalienable right of an employer to dismiss his employee was subject to certain limitations for example once a contract of service existed between the employer and the employee, it was the duty of each party to observe its provisions. Court further held that it was also a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving a breach of any regulations or misconduct. Where that was not done, it could properly be said that the dismissal was wrongful.

In the instant case, the record is to the effect that the plaintiff was duly employed by the defendant on contract since 1989 which contract was renewed on 2nd July 1997. The plaintiff's services were however terminated on 8th December 1997. The audit report upon which the defendant premised the plaintiff's dismissal was made in June 1998. In that report, the plaintiff was implicated in the mismanagement of the project which the plaintiff was heading. That report came in June 1998 long after the plaintiff had been dismissed in December 1997. Therefore, the plaintiff was not given an opportunity to defend himself against the allegations made against him in the dismissal letter nor was he required to answer to the queries raised by the Audit report.

For those reasons I find that the plaintiff's dismissal was done in glaring breach of the principles of natural justice which was enshrined in ***Jabi*** (supra). Natural justice is along cherished principle which was even observed by GOD in the Garden of Eden that "***no one shall be condemned unheard.***" To say the least, it was inhuman for the defendant to condemn the plaintiff

unheard. The defendant's acts and omissions were therefore unlawful.

Furthermore, the dismissal of the plaintiff was also contrary to his contract or employment. The contract of service provided for three months notice or payment in lieu of notice if either party elected to terminate the contract. If the defendant chose to terminate the contract, it had to have followed the contract of service by giving the plaintiff three months' notice or three months pay in lieu of notice. This position first found its boldest pronouncement in the case of **Jabi** (supra) and was recently restated by none other than Hon. Justice Kanyeihamba in **Barclays Bank (U) Ltd Vs Mubiru Supreme Court Civil Appeal No. 1 of 1998:**

***“In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such contract can be terminated by giving the stipulated notice for the period.*”**

In default of such notice by the employer, the employee is entitled to receive payment in lieu of the notice. The right of the employer to terminate the contract of service whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated cannot be fettered by courts. The employee is entitled to compensation even in cases where the period of service is fixed.”

In the instant case, the plaintiff was dismissed without notice or payment in lieu of notice. His dismissal was in breach of the contract of employment. So the dismissal was unlawful.

2) Whether the plaintiff was maliciously prosecuted by the defendant.

The law regarding malicious prosecution was duly stated in ***Kenneth Owiny Vs Attorney General [1997] IV KALR 70,*** where Okello J (as he then was) held as follows:-

“To prove the tort of malicious prosecution the plaintiff must prove that his prosecution by the defendant was actuated by malice and to prove that malice the plaintiff may show that the prosecution was not based on reasonable or probable cause that the plaintiff had committed the offence with which he was prosecuted.”

The learned Judge defined the term reasonable or probable cause to mean:

“that there must be sufficient ground for thinking that the plaintiff was probably guilty of the crime imputed. This does not mean that the prosecution has to believe in the probability of conviction: The prosecution has not got to test the full strength of the defence, he is concerned only with the question of whether there is a case fit to be tried. The prosecution must believe that the probability of accused’s guilt is such that upon general grounds of justice, a charge against him is warranted.”

In the instant case the plaintiff was jointly charged with his programme accountant upon forgeries and alterations of cheques which led to loss of colossal sums of project money. The plaintiff was one of the principal signatories as the head of the project. That position made the plaintiff a principal suspect, more especially on the ground that in writing the cheques, the plaintiff had left a lot of spaces, which could allow alterations. There was therefore reasonable and probable cause for his prosecution. The mere fact that he was acquitted is no ground to say that there was malice in his prosecution. Any reasonable employer could have taken the course the defendant took in prosecuting the plaintiff because there was a case fit to be tried. In the circumstances, the 2nd issue is answered in the negative.

3. Whether the plaintiff mismanaged the defendant project.

Having stated that the plaintiff's dismissal was unlawful for breach of natural justice and employment contract, this issue is of no consequence. In any case an employer has inalienable right

to dismiss his employer however good or bad he may be, except that the dismissal ought to follow principles and procedures laid down by law. This, I have discussed above.

4. Whether the plaintiff suffered any loss or damage.

As I have alluded above, the contract of the plaintiff did not deserve summary dismissal. The issues of mismanagement raised against the plaintiff required his explanation as a matter of natural justice. This is pertinent due to the fact that the plaintiff was expected to reimburse the money he allegedly advanced to himself in the course of his duties. Above all, the termination was done in breach of employment contract: ***See Barclays Bank (U) Ltd Vs Mubiru (supra).***

Natural justice in particular is God given justice which should be the last to be denied a human being unless his conduct is excessively prejudicial to the employer, such as bordering impunity. In the instant case, apart from the fact that the audit report which alleged mismanagement was made one year after the plaintiff's dismissal, the report itself did not implicate the

plaintiff decisively but exposed general weakness in management. The same report did not also spare the defendant in the mismanagement. Therefore premise the plaintiff's dismissal on such report was to say the least, very harsh and unnatural.

In ***Kiyingi Vs National Insurance Corporation [1985] HCB 4*** it was held that in wrongful termination, general damages may be awarded for embarrassment and inconvenience. In ***Bank of Uganda Vs Tinkamanyire; Court of Appeal Civil Appeal No. 49/2005*** Kitumba J.A went further and held that where termination was done in a highhanded, harsh and arbitrary manner, punitive damages may be awarded on top of general damages. In the instant case the termination was borderline and resulted in loss and damage to plaintiff.

5. Whether the plaintiff is entitled to the remedies prayed for:

Having found the above issues in favour of the plaintiff, it is my finding that the plaintiff is entitled to remedies. First of all he is

entitled to three months salary in lieu of notice which is shs.1,939,482/= . The plaintiff is also entitled to payment of Shs.1,100,000/= in lieu of accumulated leave. By way of general damages, the plaintiff claimed a total of shs.50,000,000/= (fifty millions). The plaintiff did not lay evidence to justify the about amount of money. That amount is on the highest side and it would amount to unjust enrichment. Appropriate reparation must always be premised on the principle of restituto in integrum which means to restore the wrong party into the position he would have been if there had been no breach. In the circumstances an award of Shs.20,000,000/= (twenty million) would be appropriate.

Lastly the plaintiff claimed shs.44,059,352/= as unpaid salary and arrears. I find no justification in the remedy. All in all I enter judgment for the plaintiff in terms set below:-

1. Shs.1,939,482/= salary in lieu of notice.
2. Shs.1,100,000/= in lieu of accumulated leave.
3. Shs.20,000,000/= (twenty million) for general damages.

4. Total award - Shs.23,039,842/= (Twenty three million thirty nine thousand eight hundred forty two hundred only).
5. Interest at court rate from date of judgment until payment in full.
6. Costs of the suit.

RUBBY AWERI OPIO
JUDGE
10/5/2007.

10/5/2007:-

Plaintiff present.

Defendant absent.

Rebecca Kasolo for Muhimbura.

Turyakira for defendant.

Judgment read in chambers as in open court.

RUBBY AWERI OPIO

JUDGE

10/5/2007.