

The Town Treasurer reported the matter to Gulu Central Police station, to investigate and prosecute the culprits.

The plaintiff was interdicted pending police investigations and decision as to prosecution. Two bank cashiers were arrested and prosecuted.

Plaintiff was told by the defendant's officials to keep staying at home until a final decision would be taken by the police.

Plaintiff reported to Gulu Central Police Station who told him there was nothing wrong he had done. He then reported to the Town Clerk and told Town Clerk that police had nothing against him, but the Town Clerk insisted that plaintiff remains away from work until the defendant would get the final decision from the police.

Plaintiff continued to report to police and defendant, but was all along being told to wait.

This went on up to 2001 when plaintiff took the matter of his interdiction to Inspector General of Government; who too insisted that plaintiff first clears with the police. The police issued to plaintiff a report exonerating him. Exhibit P3. In the same communication, the police called upon the defendant

“ 04 The purpose of this letter is to enable you decide on the fate of your former cashier”

When the Inspector General of Government Business read the contents of exhibit P3 he advised the plaintiff to institute this suit.

For the defendant it is submitted that the plaintiff's suit is time barred having been filed outside the limitation period of three (3) years prescribed by section 3 (2) of the Civil Procedure and Limitation Miscellaneous Provisions Act, Cap.72; the material date, when the limitation period began to run being the 02.08.83, when the plaintiff was interdicted.

It is not denied by defendant that they never communicated to the plaintiff to the effect that his services had been terminated. Defendant does not also refute the plaintiff's evidence that in calling upon he defendant to know the final position whether or not he was to resume work, plaintiff was being told that the defendant was awaiting the final decision of the police regarding the allegations against him.

Therefore on the evidence adduced, the cause of action of the plaintiff was by arrangement of the defendant, made to be dependant upon the final decision of Gulu Central Police

station as regards the allegations made by defendant against the plaintiff. The final decision of the police on the matter was formally made and communicated on 13.02.2004.

It is therefore on the 13.02.2004 that the defendant should have decided to reinstate or not to reinstate the plaintiff into his job. The defendant did not reinstate the plaintiff, in spite of the final decision of the police. The cause of action of the plaintiff as regards termination of his employment by defendant therefore arose on 13.02. 2004 since defendant filed the suit on 14.09.2004, the plaintiff's suit is therefore not time barred.

The second issue is whether or not the plaintiff's services were lawfully terminated by the defendant.

The evidence of the plaintiff is that while working as cashier in cash office with the defendant he proceeded on leave for two months that is June- July 1983, and on return from leave on 02.08.83 he found a letter interdicting him. He was told to keep at home until a final report is got from the Gulu Central police station. He was never arrested, or charged of any offence, or charged of any criminal offence, or subjected to any disciplinary action.

The defendant, apart from restraining the plaintiff from accessing the office premises, never communicated to plaintiff dismissing him from his employment. All that they communicated to the plaintiff was that his fate, as far as resuming his work was concerned awaited the report of the Gulu Central Police station regarding the allegations against him of embezzling council funds.

However, when the final report of police exhibit P3 came out on 13.2.2004, totally exonerating the plaintiff of any wrong doing, the defendant did not take back the plaintiff into employment.

The plaintiff in his employment with the defendant was a public officer: see Article 257 of the 1995 Constitution. As such plaintiff enjoyed the protection of Article 173 of the said constitution:

“ A public officer shall not be

- (a) ***victimized or discriminated against for having performed his or her duties faithfully in accordance with this constitution; or***
- (b) ***dismissed or removed from office or reduced in rank or otherwise punished without just cause”***

Article 173 of the Constitution is reproduced as section 59 of the Local Governments Act, Cap. 243. In **Civil Suit Number HCT – 02 – CV – SC – 0119 – 2001 Angwee Kalanga vs The Attorney General**: this court has observed with regard to article 173 of the constitution that:-

“ This Article, in case of public servants, renders the common law principle that an employer may terminate one’s employment, even for no cause, no longer tenable in Uganda. Therefore the holding with the case of PATEL VS MADHVANI INTERNATIONAL (1992 – 1993) HCB 189 is no long applicable to public servants in Uganda”

The above applied with equal force to the plaintiff in this case.

It is now settled as the law that interdiction must only last for a reasonable time, and not all the time: see Supreme Court of Uganda Civil Appeal No. 27 of 1992: **Wycliffe Kiggundu vs Attorney General**.

It is also the law that a dismissal from employment is wrongful if the same is made without justifiable cause and without reasonable notice: **See A.M. JABI VS MBALE MUNICIPAL COUNCIL (1973) HCB 191**.

In the case of the plaintiff, no communication of dismissal was made to the plaintiff. No notice was to him. He was just made, under the quite of interdiction, to keep away from work pending a police report about some allegations. When, after a very long period, the police report came and was given to the defendant, plaintiff was not reinstated in employment.

On the evidence availed, the defendant cannot be said to have acted in compliance with the law when he made it impossible for the plaintiff to work.

The answer to the second issue is that the plaintiff’s services were unlawfully terminated by the defendant.

The third issue is whether plaintiff has suffered any damages.

The evidence adduced is that plaintiff was not being paid his salary or any part of it since 02.08.83 upto August 2003, when the police issued their report on the allegations against him. Court finds that the defendant was under obligation to pay the plaintiff is salary pursuant to section 17(2) of the employment Act: See also the Judgment of **Kano Kora J. A. in SSCA No. 6 of 1998: GULLA BALLI USHILLANI VS KAMPALA PHARMACEUTICALS Ltd.**

According to the plaintiff once defendant got the police report exonerating the plaintiff, and defendant refused to reinstate the plaintiff, then that is when his termination of service should be taken as effective.

Court accepts the evidence adduced by the plaintiff and the submission that the effective date of termination of service is 03.08.2004.

In the plaintiff's plea the plaintiff pleaded that his salary per month was shs 126,605/= under the U6 scale. In his testimony to court he claimed his salary to be shs 238,518/= per month.

There was no prayer to amend the plaintiff's plea. The plaintiff is bound by his pleadings.

Court therefore holds that the plaintiff suffered damage by way of non payment of salary, which on average, and in accordance with what is pleaded in the plaintiff's plea is determined by court to have been shs 126,605/= per month for the period from 03.08.2003 the date of interdiction, to 03.08.2004, the date found by court to be the termination date of the services of the plaintiff by the defendant.

As already found by court, the termination of the employment of the plaintiff by the defendant was unlawful by reason of being contrary to the terms and conditions of services, therefore in accordance with section 61 (2) of the Local Governments Act the plaintiff is entitled, and therefore has suffered damage of being denied by defendant of:-

- (a) one years gross pay in lieu of notice as from the date of termination of service i.e. 13.08.2003
- (b) pensions in accordance with the pensions Act
- (c) basic salary in lieu of all earned and officially carried forward leave.
- (d) Severance package equivalent to six months basic pay for every completed year of service.
- (e) Transport expenses at the rate equivalent to one currency point for every five kilometers from duty station to the employee's home district headquarters.
- (f) Transport expense at the rate equivalent to fifteen currency points from home district headquarters to the employees home village.

Issues numbers four (4) and five (5) will be considered together as they are interconnected with each other.

The fourth (4) issue is what is the quantum of damages suffered and the fifth (5) issue is what are the remedies available to the plaintiff.

As to quantum of damages suffered by plaintiff, it is possible on the evidence adduced to quantify the loss by way of salary not paid and the one year gross pay in lieu of notice.

The plaintiff was not paid his monthly salary, found by court to be on average shs 126,605/= from the date of interdiction i.e. 02.08. 83 to 03.08.2004 the date found by court to be the termination date of the plaintiff's employment. This works out: shs. (126,605/= x 21 x 12) = shs 31,904,460/= sum of shs. 31.904.460/= is awarded to plaintiff as lost salary.

As to the one years gross pay in lieu of notice the amount due to plaintiff is: shs (126,605/= x 12) = 1,519,260/=. Thus shs 1,519,260/= is awarded to plaintiff being one years gross pay in lieu of notice.

As to entitlement to pension, section 10(2) and (3) of the pensions Act would have entitled the plaintiff pension, gratuity or other allowance on the attainment of the age of forty five years and on serving a continuous period of ten years or more. The plaintiff could also have compulsory retired on reaching the age of fifty five years.

The plaintiff stated his age as sixty (60) years as at the date of his testimony to court on 24.04.2007. He was thus born in 1974. By the time of termination of his services by defendant on 03.-8.2004, the plaintiff was aged fifty six (56) years. He had started his employment on 10.05.73. He was thus eligible for pension under section 10 of the pensions Act, Cap. 243, and under section 61 of the local Governments Act.

In the case of Angwee Kalanga vs Attorney General (supra) this court held:-

“ Service in the public service has with it entitlement to pension, gratuity and other benefits depending on the number of years served. Continuity of service is thus of paramount value to serving in public service. To purport to terminate the service of a public servant through unclear and indirect means such as deleting an employee's name from the pay roll cannot be allowed by this court as lawfully terminating the service of the plaintiff and thus deprive him entitlement to pension, gratuity and other benefits that are intended for a public servant and his/her family to fall on in retirement. To do so would amount to violating Article 173 of the Constitution to the prejudice of the plaintiff”

The above holding equally applies to the plaintiff in this case.

In the case, unlike in the Angwee Kalanga, case where a declaration that the plaintiff was entitled to pension was sought, the plaintiff claims general damages for the suffering,

including loss of pension caused to him by the defendant's unlawful conduct in the matter; pension entitlement and calculation being one of them; basic salary in lieu of all erred and officially carried forward leave is another. Since defendant made it impossible for plaintiff to work, it is not possible for court to calculate the severance package equivalent to six months basic pay for every completed year of service as it is a matter of argument as to what is a **“completed year of service”**. Given the nature of the termination of the plaintiff's employment and the lapse of time it has taken, the exact amount due to plaintiff by way of transport expense cannot be easily ascertained also.

In two cases, rather of recent, and with facts similar to those of this case, the High Court, has on the principles that general damages are awarded at the discretion of the court, as compensation to place the plaintiff in as good as position as he/she would have been had the wrong complained of not taken place, proceeded to award general damages.

In **Christopher Yiki Agatre vs Yumbe District Local Government: HCCS No. 0022/2004** court awarded shs 55,000,000/= by way of general damages to a Chief Administration Officer for loss of job and income and failure to provide for is family. His status in society had dropped and his children were out of school.

In High Court of Uganda at Arua H..C.C.S No. 0104 of 2004: **MARCELO LERI KOWO VS MOYO DISTRICT LOCAL GOVERNMENT** decided on 02.04.2008, Kania, J. awarded shs 40,000,000/= general damages to a District Engineer, unlawful dismissed by the Moyo District Local Government. The plaintiff claimed in that suit damages for unlawful dismissal and sought to be paid his salary and allowances and general damages for breach of contract of employment amongst other prayers.

In this case, the plaintiff, as a cashier, is of a lower status than the Chief Administrative Officer in the **“ Christopher Yiki Agatre”** case; and a district engineer in the **“ MARCELO LERI KOWO”** case, and therefore the damages to him should be lower than those awarded in the two cases. On the other hand, the plaintiff in this case has been subjected to suffering for a very long period than each of the plaintiffs in the two quoted cases.

It is also to be appreciated that the general damages being awarded to the plaintiff in this case are in addition to awards for salary lost, and one years gross pay in lieu of notice.

Taking into account the age of plaintiff, his salary, the loss of pension, loss of payment for earned leaves, the severance package, and entitlement to payment for transport from

place of work to home district, whose combined effect has caused anguish and suffering to the plaintiff, court awards shs 10,000,000/= general damages to the plaintiff.

In conclusion, judgment is entered for the plaintiff against the defendant for:-

- (a) Shs. 31,904,460/= lost salary
- (b) Shs. 1,519,260/= one years gross pay in lieu of notice.
- (c) Shs 10,000,000/= general damages.
- (d) Interest at court rate on the sums above from 02.08.83 in respect of the lost salary amount, from 02.08.83 in respect of the sum of one years gross pay in lieu of notice, and as from the date of judgment in respect of the general damages, till payment in full.

It is further ordered that the plaintiff is to have the costs of the suit.

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Remmy K. Kasule

Judge

30th September, 2008