

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL SUIT NO. 057 OF 2009**

5

**MARGARET NTORANTYO ::**  
**PLAINTIFF**

**VERSUS**

10

**MUKONO DISTRICT COUNCIL ::**  
**DEFENDANT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

15

**JUDGMENT**

20 This is a claim for payment of terminal benefits, general damages,  
interest and costs.

It is based on wrongful dismissal in disregard of a Court Order as well as  
a directive of the Public Service Commission both of which were to the  
25 effect that the Plaintiff remains in her employment.

The background to this suit is that the Plaintiff was employed by the  
Defendant as Principal Personnel Officer from 1992. On 23/11/2004,  
the Chief Administrative Officer of the Defendant issued the Plaintiff a  
30 Notice of retirement in public interest. The said Notice cited instances  
of acts by the Plaintiff which were unacceptable to the Defendant.

The Plaintiff contested the purported retirement and was reinstated by  
Court Order in 2005.

The same year, the Defendant again attempted to terminate the Plaintiff claiming she was not qualified for the position she was holding. She challenged this before the Public Service Commission which ordered that she be reinstated on 26/5/2006.

5

On 15/8/2007, the Defendant wrote to the Plaintiff retrenching her on the excuse that it was carrying out a restructuring exercise.

10 The following year when the retrenchment should have been complete, the Defendant again wrote to the Plaintiff claiming that instead of retrenchment, the Plaintiff was being retired in public interest and would be entitled to benefits accruing calculated by the said Defendant about Shs.22,000,000/=.

15 The Defendant claims that having retired the Plaintiff, she is only entitled to pension which she has refused and or neglected to access by filling and filing the necessary documentation.

20 At the Scheduling of this matter on 30/3/2012, the parties agreed on the following issues:

1. Whether the Plaintiff's retrenchment was lawful.
2. Remedies available to the parties.

25 After various adjournments, the hearing of the matter proceeded exparte under Order 9 r.20 (1) (a) CPR the Defendant's Counsel having failed to turn up even after proper service of notice of hearing date.

**1. Issue No.1 - Whether termination was unlawful:**

Right from the beginning, I must say that the Defendant's conduct towards the Plaintiff demonstrates intentions to get the Plaintiff out of the Defendant's employment, literally by hook or crook. The Defendant used all means to ensure that they evade the Court Order and the directive by the Public Service Commission that the Plaintiff remains in the Defendant organization.

The Plaintiff's evidence which was by way of witness statement clearly outlines the various attempts made to have her terminated as the Defendant's employee.

In the Supreme Court Appeal case of **Bank of Uganda Vrs. Betty Tinkamanyire CA. 12/2007**, Justice Kayeihamba JSC (as he then was) in his lead Judgment stated **"It is trite law, that a Court should not use its powers to force an employer to retake an employee it no longer wishes to continue to engage. However depending on the circumstances, an employee who is unfairly or unlawfully dismissed, should be compensated adequately in accordance with the Law."**

It has been submitted for the Plaintiff that the Defendant's various attempts to get rid of the Plaintiff were in contravention of the Court Order and the directive by the Public Service Commission to have the Plaintiff reinstated and maintained.

What is clear however is that when the Defendant realized that they were bound by the two positions mentioned above, they then tried to get rid of the Plaintiff by lawful means only that they failed to do it right. The Plaintiff was purportedly reinstated and then the Defendant

sought ways to go around the Court Order and Public Service Commission directive.

As stated earlier, all along, the Defendant demonstrated intentions to terminate, bad faith and ill will. They tried to cloak their ill and malicious intentions with legalese e.g. **Restructuring and retirement in public interest.**

I observe that the Defendant must have also realized that they would pay more if they proceeded and effected the retrenchment of 15/8/2007. They had a change of heart and purported to retire the Defendant in public interest.

There was no evidence shown that any restructuring was taking place in the Defendant's organization.

15

Similarly even if they had a right to retire an employee in public interest, the reasons for so doing had to be clearly indicated and within the provisions of the various regulatory provisions of the law.

20 I agree with the submission for the Plaintiff that:

1. The plaintiff required due notice of termination, spelling out the grounds of termination.
2. The rules of natural justice were not observed by denying the Plaintiff a hearing.

25

I accordingly find that the termination of the Plaintiff's employment on 15/8/2007, was unlawful.

I equally reject the defence claim that the purported retirement in public interest of the Plaintiff a year later, reversed the decision of 15/8/2007. That decision was arbitrary, unlawful and an afterthought. The correct position is that the Plaintiff was (Unlawfully) terminated on  
5 15/8/2007.

Issue No. 1 is accordingly resolved in favour of the Plaintiff.

10 **2. Remedies:**

The termination letter disguised as a restructuring exercise laid out what the Plaintiff should be entitled to which is outlined in paragraph 6 of the Plaintiff.

15 Having held that the termination was unlawful and unjustified and without regard to proper procedures, I agree with the Plaintiff's submissions that the Plaintiff is entitled to benefits governed by the provisions of Sections 61 (1), (2) and (3) of the Local Government Act.

20 These are as follows:

- One year's Gross pay in lieu of Notice.
- Pension (in accordance with the Pension Act) especially as she had served for 16 years.
- Basic salary in lieu of earned and officially carried forward leave.
- 25 - Severance package equivalent to 6 months basic pay for every completed year of service.
- Transport expenses (Section 61 (1), (e) and (f) Cap. 243).

The above benefits when calculated within the provisions of those sections translate into a total of Shs.126,556,210/= as of the time of termination.

5 The Plaintiff has prayed for General damages, interest and costs. The Plaintiff did not however make a substantial submission in respect of the claim for damages other than claiming she is entitled to the same due to the unlawful termination of her services.

10 I have taken into account the circumstances leading to the termination of the Plaintiff's employment. To say the least, the Defendant's acts were arbitrary, malicious, callous and without due regard to procedures and regulations. The Plaintiff was at her rank, a senior member of staff who deserved better treatment.

15

This is a case that deserves award of aggravated damages. The length of service, the unfair treatment and the fact that at her age, the Plaintiff may find it difficult to get another job have all been taken into account. I assess the said damages at Shs.50,000,000/=.

20

In conclusion, the inconsiderate use of authority and arbitrary conduct verging on impurity must be frowned upon. Judgment is entered in favour of the Plaintiff and the following orders are made:

25 1. The Defendant is to pay the Plaintiff a total of Shs.126,556,210/= as terminal benefits computed as outlined in paragraph 9 of the Plaintiff.

2. Payment of monthly Pension with effect from this Judgment (that from termination to date is catered for in No.1 above).

3. Aggravated General damages assessed at Shs.50,000,000/= for unlawful termination of employment.

5 4. Interest on 1 and 3 above at Court rate from Judgment until payment.

5. Costs of the suit.

10

**Godfrey Namundi**

**JUDGE**

**14/11/2014**