

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

CIVIL SUIT NO. 001 OF 2008

5

TWESIGYE

WILSON ::P

LAINTEIFF

10

VERSUS

UMEME

LIMITED ::

DEFENDANT

15

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

20

The Plaintiff brought this case against the Defendant for wrongful dismissal from the Defendant's employment. He claims general damages, special damages as a result of the said wrongful dismissal. The brief facts of this matter are that the Plaintiff was an employee of the Defendant Company. He was first employed in February 2005 and worked until August 2006 when he was terminated in service. He was first arrested and released on Police bond on which he was kept for about one year. He was later cleared of allegations of impropriety but was still terminated in employment by the Defendant.

The Defendants filed a defence in which they denied the Plaintiff's claims. They claimed in Paragraph 4 of the Written statement of defence that their investigations revealed that the
5 Defendant had breached his contract of employment with the Defendant.

Further that the termination was done in accordance with the regulations of the Defendant. The particulars of breach were: -

- 10 i) The Plaintiff attempted to destroy evidence by tearing a document during investigations.
ii) Tampering with and adjusting of an installation.
iii) Consuming and using electrical energy in a dishonest manner.

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Issues:

1. Whether the termination of the Plaintiff was lawful.
2. Whether the Plaintiff is entitled to any remedies.

20 The Plaintiff's case is based on the evidence of the Plaintiff himself who testified that his work was that of a Revenue Controller of Iganga District office where he was stationed.

On 20/4/2006, he was handed a suspension letter and arrested
25 by police. He was later released on police bond to which he kept reporting for a period of one year. In September 2007, he was

given a report that he had been cleared by the DPP who advised the police to close investigations in the matter.

5 The suspension letter which was tendered as PExh.3 stated that the cause of suspension was **causing financial loss to the company and disrepute to the company name by extorting money from company customers and reversal of meters.**

10 He was not subjected to disciplinary proceedings e.g. before the Disciplinary Committee. He testified further that because of the said acts by the Defendant, he lost income, was grossly humiliated and was seen as a thief. He incurred losses like money for transport which he was never given, paying for the
15 police report (Exh.P4) and other expenditures like transport to police to answer the bond and to court. He further denied any misconduct on his part by;

- Destroying evidence
- Manipulating the system.
- 20 - Framing on Tenywa a bill of Shs.180,000/= instead of Shs.1,000,000/= as claimed by the Defendants. Finally that he never received any termination benefits promised by the Defendants.

The Plaintiff closed his case and after several adjournments, the Defendant failed to conduct its defence. The court directed the plaintiff to file submissions.

5 It was submitted for the Plaintiff that the allegations against the Defendant were disproved by the police investigations. The Plaintiff was not invited for any disciplinary proceedings as alleged by the Defendants in the letter of termination. It is accordingly submitted that the Plaintiff was not given a right to
10 be heard. That termination by an employee must be done properly in the manner provided for by the contract or the rules in accordance with terms and conditions of service. Ref: **Beatrice Mirembe Mukasa Vrs. Sarah Apedet Okumu CS. 293/2007.** It was further submitted that if an employee is
15 terminated without being heard on allegations of misconduct, the termination is unlawful.

The dismissal was therefore contrary to the rules of natural justice and in contravention of Article 28 (1) of the Constitution.
20 Ref: **Nester Machumbi Gasabira Vrs. Inspector General CA. 62/2009** and **Bakaluba Peter Mukasa Vrs. Nambooze Betty Bakireke EPA 4/2009.** It is also submitted that the reasons for termination and suspension are at variance with the reasons given in the written statement of defence. That this offends
25 Order 6 rule 3 of the Civil Procedure Rules which provides that a party is bound by his pleadings.

It is submitted for the Plaintiff that he was entitled to 15 days notice before termination and failure to do so was illegal and unlawful. This was in violation of Section 58 (1), (2) and Section 5 3 (b) of the Employment Act. Ref: **Tommy Otto Vrs. Uganda Wild Life Authority CA. 63/06.**

It is submitted that as a result of the Defendants unlawful conduct, the Plaintiff is entitled to the remedies laid down in the 10 **Plaint.**

According to the **Plaint** the entitlements are;

- a) Salary from 20/4/2006 to date of filing suit.
- b) Leave allowance.
- 15 c) Repatriation allowance.
- d) One months in lieu of Notice.
- e) Police Report.

That the above would be categorized under special damages. It 20 was also submitted that he is entitled to general damages for unlawful/dismissal without pay, was exposed to financial hazards, stress and general suffering.

Further that he is entitled to punitive damages to punish and 25 deter the outrage and Defendants - high handed, malicious vindictive conduct.

I have considered the evidence and submissions on record. Apart from the Written statement of defence, the Defendant offered no defence to this suit. That notwithstanding, a look at
5 the Written statement of defence indicates that the defence claims lacks substantiation or support.

It is my finding therefore that the dismissal;

1) Was done unlawfully in contravention of the terms and
10 conditions of service. The Plaintiff was not given a right to a fair hearing in contravention of Article 28 (1) of the Constitution. It follows that he is entitled to the remedies laid out in the Plaint. I find that the claim of
15 Shs.15,557,665/= as special damages has been proved and are so awarded. Regarding General damages, the general principle is that their award is discretionary.

However, they are aimed at;

a) Compensating the wronged party,
20 b) Placing the wronged party in a position as much as possible to that he was in at the time of breach.

I have considered the circumstances of this case. The Plaintiff was to say the least, manhandled, mishandled and humiliated,
25 leave alone the uncertainty suffered as investigations were going on.

Fortunately he was cleared of the allegations but the defendant in its high handed manner went ahead and terminated him. It has been submitted that the Defendant should be punished by
5 an award of punitive damages.

It is my finding that an award of General damages will be sufficient to compensate the Plaintiff. No amount was suggested by the Plaintiff.

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I have however considered all the circumstances of this case, the fact of being unemployed, the humiliation and inconvenience and the rapidly depreciating value of the Uganda shillings. I assess the General damages at Shs.80,000,000/= . It has been
15 submitted that court should award interest at 30% interest in line with the case of: **Interfreight Forwarders (U) Ltd Vrs. East African Development Bank CA. 33/93.**

Interest is provided for under Section 26 (2) of the Civil
20 Procedure Act and the court will award interest as deemed reasonable in the circumstances. I will award interest on the special damages, and general damages at 10% from date of Judgment to payment in full. I also award costs of the suit.

25 I accordingly enter Judgment in favour of the Plaintiff in the terms outlined above namely:

1. Special damages at Shs.15,557,665/=
2. General damages at Shs.80,000,000/=.
3. Interest on (1) and (2) above at 10% from Judgment to payment in full.
- 5 4. Costs of the suit.

Godfrey Namundi

Judge

10 **2/12/2015**

2/12/2015:

Plaintiff present

15 Defendant absent

Court: Judgment delivered.

20 **Godfrey Namundi**

Judge

2/12/2015