

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO.66 OF 2011**

**MICHAEL FRANCIS SEMUJU ::::::::::::::::::::::: PLAINTIFF
VERSUS**

- 1. KAMPALA UNIVERSITY**
- 2. ANDREAS FROWEIN ::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON.LADY JUSTICE ELIZABEH MUSOKE

JUDGMENT

On the **4th September, 2010**, the plaintiff was offered a place by the 1st defendant University to pursue a course at the said university leading to an award of the Diploma in Film-TV-Video. The plaintiff accepted the offer, and by letter dated **4th September, 2010**, [EXH P1], the plaintiff was admitted at the 1st defendant University. On the **13th December**, the plaintiff was dismissed from the University for failure to attend classes, which was against the terms and conditions for admission at the University.

The plaintiff brought this suit against the defendants for special damages, general damages and aggravated damages for wrongful and unlawful dismissal, and for breach of contract.

On the other hand, the defendants contended in their written statement of defence that the plaintiff was discontinued from the 1st defendant because of absenteeism from class which was not communicated to the relevant authorities. The defendants denied liability.

At the scheduling conference, the following issues were agreed upon for determination by court;

1. Whether the plaintiff's dismissal from the University was wrongful.
2. Remedies available to the parties.

Resolution of Issues;

ISSUE 1,

Whether the plaintiff's dismissal from the University was wrongful.

It was the plaintiff's evidence (PW1), that after his admission at the 1st defendant University, he commenced attending classes regularly, save for the dates **7th to 10th December** when he missed classes due to ill health. The 2nd defendant was the Head of the department of Film-Tv-Video and

a principle lecturer. It was the plaintiff's testimony that when he reported for classes on **13th December, 2010**, the 2nd defendant used abusive language and threatened to physically assault him if he did not leave the class immediately. Thereafter, the 2nd defendant gave the plaintiff a dismissal letter [EXH P3], and the letter stated the grounds for dismissal as failure to attend class for three days and lack of communication. Further, that whereas it was true that the plaintiff did not attend class for three days, it was not true that he failed to communicate failure to attend classes because his mother had telephoned the 2nd defendant and informed him accordingly.

PW2; Jayne Frances Walusimbi who is the plaintiff's mother, testified that the plaintiff had never missed class until **7th December, 2010**, when he was suffering from Odontalgia. She telephoned the 2nd defendant, and informed him that the plaintiff would not be able to attend class until he was recovered from the sickness. When the plaintiff went back to the University on the **13th December, 2010**, he was discontinued for failure to attend class.

The defendant adduced no witness evidence or documentary evidence. However, either side filed written submissions in support of and against the claim respectively.

It was the submission of Counsel for the plaintiff that the reasons given by the defendants for the plaintiff's dismissal were untrue, and that it was uncontroverted that PW2 had telephoned the 2nd defendant and informed him of the plaintiff's health condition. Counsel contended that absence of three days in a semester of Seventy Five days could not amount to constant absenteeism.

Counsel for the plaintiff further contended that dismissal was done summarily, with no notice or hearing being given to the plaintiff. It is after the plaintiff's Lawyers wrote to the defendants that the plaintiff was asked to return to the University for a disciplinary hearing, which the plaintiff refused to attend because he had already been dismissed.

On the other hand, Counsel for the defendant submitted that if the plaintiff alleged that his mother (PW2) had telephoned the 2nd defendant and informed him of the plaintiff's ill health, the plaintiff had the duty to prove the date and time when his mother called the 2nd plaintiff; which he did not do. Further, that the mobile number provided in PW2's evidence was incomplete and therefore could not have been used by her to communicate to the 2nd defendant. Counsel contended that the plaintiff had the obligation of bringing in evidence from the telecommunication companies to prove that PW2 actually talked to the 2nd defendant. Besides, the plaintiff failed to adduce medical evidence to prove the ill health for the duration of his absenteeism from class. The incorrect telephone number of the 2nd defendant could not be accepted as true just because of the defendant's failure to challenge it in cross examination.

Counsel relied on *Akol Patrick & Others Versus Uganda [2006]1 HCB 4*, to submit that while it is trite law that the failure by the defendants to cross examine the plaintiff's witnesses would lead to an inference that the evidence is accepted, that inference was subject to the evidence being assailed as inherently incredible or untrue.

Counsel for the defendants further submitted that as evidenced in Exhibit P5, the plaintiff was asked to return to the University to face disciplinary proceedings which were expected to be fair, because the University had never dismissed him. What the 2nd defendant did was completely *ultra vires* his powers as a lecturer, and if the plaintiff had been prudent, he would have sought clarification through the available channels like the Dean of students, student's guild or the Vice Chancellor's office. Counsel contended that there was negligence on the part of the plaintiff, and it would be unfair to hold the University for the *Ultra vires* and unratified actions of its errant lecturers.

I have considered the evidence adduced as well as the submissions of Counsel for either side, and I have made the following findings.

It is apparent and undisputed that there existed a contractual relationship between the plaintiff and the 1st defendant entered into upon the plaintiff being admitted at the 1st defendant University. On the **13th December, 2010**, the plaintiff was dismissed from the 1st defendant University on allegations of failure to attend classes without communication, which was against the University Terms and conditions of admission. I agree with Counsel for the plaintiff that absence of three days in a semester of seventy five days could not amount to constant absenteeism thereby sanctioning immediate dismissal. Regardless of the issue whether the plaintiff or his mother made any communication to the 2nd defendant, I find that the 2nd defendant should have first investigated the circumstances under which the plaintiff had missed classes for three days before dismissing him from the University with immediate effect. By the Medical reports tendered in evidence [EXH P2], it appears to me that the plaintiff indeed underwent treatment and, therefore, was sick for the days he missed classes.

It also appears to me that the plaintiff was not afforded a right to be heard before the dismissal from the 1st defendant University. It is trite law that the right to be heard is a fundamental procedure; it requires that a person in a cause cannot be condemned unheard. As such, a decision reached in breach of the right to be heard is void. *(See Kyamanywa Versus IGG HCMA No.143/2008)*.

It was the contention of Counsel for the defendants that the plaintiff was asked to return to the University to face disciplinary proceedings which were expected to be fair, but he did not appear for the hearing. However, this was done after the plaintiff's Lawyers had written to the defendants a notice of intention to sue, demanding for compensation for the loss suffered, resulting from the dismissal. I find that a disciplinary hearing should have preceded the dismissal. I agree with Counsel for the plaintiff that there would be no justice in a disciplinary hearing after the punishment had already been meted out. It would have been fair and in the interest of justice for the plaintiff to be accorded a right to be heard before he was dismissed from the 1st defendant University.

It was also the submission of Counsel for the defendants that the 1st defendant had never dismissed the plaintiff, and that 2nd defendant was acting *ultra vires* his powers as a lecturer. The duties of a lecturer do not include management functions like admitting or discontinuing students. Counsel contended that it would be unfair to hold the 1st defendant liable for the *ultra vires* and unratified actions of the errant lecturers.

It is trite law that a master is vicariously liable for authorized wrongful acts as well as a wrongful and unauthorized mode of doing an act authorized by the master. This ordinarily means that the servant/agent should have the authority/power to do that act, for the master to be held vicariously liable. However, a master may also be liable for acts which are not authorized, but are so closely connected with the acts which the master has authorized that they might be regarded as modes or improper modes of doing them. (*See Avi Enterprises Versus Orient Bank & Anor HCCS No.147 of 2012*).

I have put into consideration the submission of Counsel for the defendants that the 2nd defendant had no authority to participate in managerial functions like the admission and discontinuing of students. However, from the perusal of the plaintiff's admission letter [EXH P1], it was solely signed and stamped by the 2nd defendant as the Head of department. The space that was supposed to be signed by the Academic Registrar was neither signed, nor stamped. I find that the contention that the 2nd defendant was not involved in managerial functions is not true; otherwise, he would have no powers to solely sign an admission letter for a student. It appears to me that although the power/authority to dismiss students could not have been expressly given to the 2nd defendant by the University, it was so connected with the duties assigned to the 2nd defendant like the signing of admission letters, that the plaintiff could reasonably anticipate that the 2nd defendant also had the powers to dismiss him.

Accordingly, it is my finding that the plaintiff was wrongfully dismissed from the 1st defendant University; and both the 1st and 2nd defendant are liable for the wrongful dismissal.

ISSUE 2

Whether the plaintiff is entitled to the remedies sought.

The plaintiff prayed for special damages, general damages and aggravated damages for wrongful/unlawful dismissal from the 1st defendant University.

Special damages.

It was the plaintiff's evidence that upon being dismissed from the 1st plaintiff University, he was admitted at the Jamhuri Film and Television Academy in Nairobi Kenya for a two year course of a Diploma in film and television production, which would require him to incur additional costs. He computed the said expenses which amounted to **KSH 384,000/=** and **USD 1,200/=**. Further, that the dismissal from the 1st defendant University caused him loss because the expenses he had incurred there went to waste. He claimed for **UGX 1,600,000/=** to cover the expenses at the 1st defendant University.

It was the submission of Counsel for the defendants that for the plaintiff to be able to prove the future expenses at the Jamhuri Film and Television Academy, he had to go beyond his own statements by adducing in evidence an admission letter or any other document to prove the alleged expenses.

It is trite law that special damages should be specifically pleaded and proved. (See *Adonia Tumusiime Versus Bushenyi District Local Government and AG HCCS No 32 of 2012*). In the present case, I find that although the plaintiff pleaded the special damages that he had incurred when he was allegedly admitted at the Jamhuri Film and Television Academy, no documentation whatsoever was tendered to prove the same. No effort was made by the plaintiff to prove the expenses, yet in the circumstances of this case, documentation was essential to prove the expenses. The plaintiff could not possibly contend that he was admitted to the said Academy without an admission letter or given receipt upon payments being made. However, I shall consider these expenses while making an award under general damages. I accordingly decline to award the plaintiff special damages under this head.

The plaintiff also claimed for **UGX 1,600,000/=** to cover the expenses he had incurred at the 1st defendant University. Counsel for the defendants conceded to this claim. I therefore award the plaintiff **UGX 1,600,000/=** as special damages.

General damages.

It was the plaintiff's testimony that he suffered pain, anxiety and embarrassment as a result of the dismissal from the University. Counsel for the plaintiff prayed that a combined award of **UGX 50,000,000/=** be made as general damages.

On the other hand, Counsel for the defendants submitted that the plaintiff had failed to prove that he had been shouted at, abused, and threatened, therefore, no damages for pain, embarrassment and anxiety should be awarded to the plaintiff.

The object of an award of damages is to give the plaintiff compensation for the loss he has suffered as a result of the defendant's actions, and are intended to place the aggrieved party in the same position in monetary terms, had the act complained of not taken place. (*See Robert Cuossens Versus Attorney General, SCCA No.8 of 1999*). I find that the plaintiff was indeed subjected to unnecessary inconvenience and anxiety upon being dismissed from the 1st plaintiff University. He was subjected to the inconvenience of abruptly discontinuing his course of study, and having to look for another institution where he could pursue education, which meant that he had to incur additional expenses. Accordingly, I award the plaintiff **UGX 10,000,000/=** as general damages.

Aggravated damages.

The plaintiff also prayed for an award of aggravated damages.

Aggravated damages are compensation to the plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. However, in the present case, the plaintiff failed to mitigate the damage. He was invited to resume/restart the course at the 1st defendant University since the 2nd defendant had ceased to be an employee at the 1st defendant University, but he declined to do so. He even rejected an opportunity to attend disciplinary proceedings where there would be a possibility of the wrong being rectified by the 1st defendant. It is therefore my finding that the plaintiff personally aggravated the damages instead of mitigating the same. I shall therefore make no award as to aggravated damages.

In conclusion, the suit against the defendant succeeds and awards to the plaintiff are made as follows:

1. Special damages - UGX 1,600,000/=

2. General damages - UGX 10,000,000/=
3. 10% Interest on (1) above from the date of dismissal till payment in full.
4. Interest at court rate on (2) above from the date of judgment till payment in full.
5. The 1st and 2nd defendants are to pay the above decretal amounts severally and/or jointly.
6. The plaintiff is awarded costs of the suit.

Orders accordingly.

Elizabeth Musoke

JUDGE

18/09/2015