

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO 0508 OF 2007

IRAGENA JOHN ::: PLAINTIFF

VERSUS

NATIONAL CURRICULUM DEVELOPMENT ::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA.

JUDGMENT

The plaintiff Iragena John through his lawyers M/s Mukeeri and Co Advocates instituted this suit against the defendant National Curriculum Development Centre for a declaration that he was unlawfully terminated and an order for reinstatement. In the alternative he prayed for general damages for wrongful dismissal and special damages including recovery of unpaid leave, responsibility allowance, salary arrears, underpayment, unremitted NSSF contribution, unremitted terminal benefits with NIC, general damages for loss of earnings on unremitted social security benefits and terminal benefits, interest and costs of the suit.

The defendant in its amended written statement of defence denied any wrong-doing as claimed in paragraph 3 of the amended plaint. It admitted the contents of paragraph 4 (a) of the plaintiffs amended plaint but contended that the facts stated as constituting the cause of action are not the proper reflection of the relationship between the plaintiff and the defendant.

The defendant further contended that the plaintiff could not be promoted to the post of senior executive officer (accounts) on the 15/12/1995 as alleged or at all. That the plaintiff has never been recommended for promotion to the said post since his confirmation in 1994

The Agreed facts at scheduling conference were;

1. The plaintiff was an employee of the defendant between 1988 and 2007.
2. He was suspended and later terminated
3. He entered the service as a clerical officer accounts and confirmed as executive officer accounts in the finance department.
4. The plaintiff received some payment towards his NIC benefits

Issues framed were:

1. Whether the decision to terminate the plaintiff's services purportedly made by the defendant's council in the meeting of 22.3.2007 was valid.
2. If the decision was valid, whether the plaintiff's services were wrongly terminated.
3. Whether the plaintiff was promoted to the post of senior executive officer (accounts).
4. Whether the deduction of the plaintiff from scale CD-5 to CD-6 was valid.
5. Whether the defendant's obligation to pay the retirement benefits for the plaintiff to NIC came to an end.
6. Whether the plaintiff was paid all the retirement benefits he was entitled to under the NIC scheme.
7. Whether the plaintiff is entitled to terminal benefits as provided for under the defendants financial regulations and guidelines.
8. Whether the plaintiff is entitled to salary arrears resulting from unpaid salary increment by the defendant's council in 1996/97.
9. What remedies are available to the parties?

During the trial the plaintiff was represented by Mr. Mugisha from Mukeeri and Co Advocates while the defendant was 1st represented Ms. Eve Luswata and later by Mr. Wante. Counsel for the parties were directed to file written submissions in support of their respective cases which they did.

After a careful consideration and evaluation of the evidence on both sides and the law applicable as well as the respective submissions, I will go ahead and resolve the issues as framed:

Issue 1.

Whether the decision to terminate the plaintiff's services purportedly made by the defendant's council in the meeting of 22.3.2007 was valid.

Counsel for the plaintiff submitted that the termination of the plaintiff was invalid in as far as it violated the principles of natural justice. That it contravened the disciplinary procedures enshrined in the defendants' standing orders and was made by a body which had no jurisdiction in as far as it was constituted by persons who were not members of the defendant's governing council. He contended that for the termination of the plaintiff's services to be effective it must be done by the council.

He submitted that the minutes of the council's special meeting held on 22.3.2007 which terminated the plaintiff's services were admitted as exhibit P 22 and the minutes show the persons who attended the meeting and are not members of the council within the meaning of section 7 of the NCDC Act.

He further submitted that the participation of non members in the decision of the council renders it void and of no effect for lack of jurisdiction.

Learned counsel relied on the case of *Kuluo Joseph Andrew Vs Uganda Wildlife Authority Misc Application No 106 of 2010*. Which held that:

“It is trite that when a statute authorizes a body to undertake certain tasks in our cases to manage the environment for sustainable development, it will most likely also stipulate the procedure to be followed in executing that task... the executed task will be null and void if the stipulated procedure is not followed”.

In the alternative learned counsel submitted that if the decision was not invalidated by the attendance of non members objected to and the defendant was allowed to sever them from the list of members who attended the meeting to take a decision, the remaining legitimate members would not make quorum. That Section 13 of the NCDC Act fixes the quorum of council meetings at 15 members including the chairman. He argued that if the 8 people objected to are removed there would be only 11 members which is below the quorum.

In reply learned counsel for the defendant submitted that the persons who were not members of the council but who attended the meeting did not participate in regard to the decision to terminate the plaintiff’s employment in accordance with section 13 (8) of the NCDC Act and that the plaintiff did not show to the contrary that the said persons participated in decision making. He relied on the case of *Leary Vs National Union Of Vehicle Builders 1970 2 ALLER 713 at page 724* where it was held that:

“It is common place for persons who are not members of the committee to be in attendance at a meeting or present for some limited purposes and yet nobody would suggest that this invalidates the meeting. Participation in the deliberations and decisions of the committee is another matter, if one or more of those who do this are not members of the committee then in my judgment would invalidate the proceedings”.

He contended that the director testified that Mr. John Okech and Mr. Habyalemye were permanently co opted. They came when there were issues of concern. That Habyalemye was co opted because he

is a specialist in human resource and in that particular meeting there was discussion in relation to discipline.

He submitted that the director told court that Section 13(8) of the NCDC Act provides that the chairperson may invite any person not being a member of the council to attend and speak on any relevant matter at any meeting of the council but that person shall not vote upon any matter before the council. Finally learned counsel argued that the two persons were invited at the prerogative of the chairperson to attend the said meeting.

It is an agreed fact that the plaintiff was an employee of the defendant between 1988-2007 and that his services were terminated. The plaintiff contends that the termination was invalid for participation of the non members of the council in a council meeting that terminated his employment.

Exhibit "P 22" was admitted in evidence and it comprises the minutes of the council's special meeting held on the 22nd March 2007 which terminated the plaintiff's services. From the minutes the persons who attended the council meeting included:

1. Dr C. Masembe Sebbuna, Dean School of Education Makerere University. Chairperson.
2. Dr David Onen appointed member.
3. Mr. D Weerhe representing Executive Secretary UNEB.
4. Dr Mary B Muhenda representing Director of UMI.
5. Mr. Aggrey Kibenge representing Permanent Secretary MOES.
6. Dr Jessica Aguti, Director IACE Makerere University.
7. Mr. NK Wanambi representing Permanent Secretary MOFPED.
8. Mr. Cartbert Mulyalya representing commissioner EPD MOES
9. Mr. Bake Karugaba representing Permanent Secretary MOLG
10. Mrs. Rose Bwire representing Academic Registrar Makerere University.
11. Mr. GS Kalya representing the Chairperson Association of PTC Principals.
12. Mr. EL Gumisiriza dean faculty of education Kyambogo University

13. Mr. Barnabas Igumba representing the Principal MUBS.
14. Dr John B Okech representing Dean Faculty of Special Needs Kyambogo University.
15. Mr. Dominic Hab'lyalemye representing Executive Director FUE.
16. Dr Rose Nassali Lukwago, Director ESA/MEOES
17. Mr. Edward Ssebukyu Representing Director of Education MOES
18. Dr JL Nkata, School of Education Makerere University.
19. Mrs. Rose Izizinga, Chairperson Head teachers Association (Secondary).
20. Mrs. C Kateeba, Director NCDC.

According to Section 7 of the National Curriculum Development Centre Act Cap 135, the governing body of the centre shall be the council consisting of

a) The following ex officio members.

1. He Permanent Secretary of the Ministry responsible for education;
2. The Permanent Secretary of the Ministry responsible for culture and community development;
3. The Permanent Secretary of the Ministry responsible for finance, planning and economic development;
4. The chief education officer;
5. The chief inspector of schools;
6. The principal of the Uganda Technical College;
7. The principal of the Uganda Management Institute;
8. The registrar, Makerere University

9. The dean of the faculty of education
10. The director of the National Institute of Education, Makerere University
11. The director of the Centre for Continuing Education, Makerere University;
12. The secretary, Uganda National Examinations Board;
13. The director of the National Teachers College, Kyambogo;
14. The principal of the Uganda College of Commerce;
15. The chairperson, Headmasters Association;
16. The president of the Association of Principals of Teacher Training Colleges.
17. A representative of the East African Academy;
18. A representative of the National Federation of Uganda Employees and

(b) Not more than three members appointed by the Minister shall be persons appearing to the Minister to be qualified as having experience in the practice and administration of education.

Section 13 provides that at all meetings of the council, fifteen members, including the chairperson, shall constitute a quorum. Whereas the Act provides for the delegation of the powers of the chairman it is silent on delegation of powers and duties to be performed by other members of the council.

Section 7 of the Act is couched in mandatory terms as to persons who constitute the council of NCDC and under Section 13 it is mandatory for at least 15 members to be present at the meeting of the council. The Act is very clear on who should be members of the council and the same members are the ones with powers to do any business related to the center and not any other person.

It's evidently clear from exhibit P22 that most of the persons who decided the fate of the plaintiff were mere representative and did not qualify as members in the meaning of section 7 of the NCDC Act. Even some of the representatives did not qualify by virtue of the institutions they represented as some institutions and bodies are not specified as members under section 7 of the act

Therefore the council meeting that sat on the 22nd march 2007 and resolved to terminate the plaintiff's services was unconstitutional. The members who were present did not meet the required quorum of 15 members.

Learned Counsel for the defendant submitted that the persons who were not members of the council but attended the meeting did not participate in regard to the decision to terminate the plaintiff's employment. However there was no evidence that they did not vote. To the contrary exhibit P 22 shows that the meeting was attended by 19 representatives of the supposed members of the council and the Director as number 20.

The plaintiff objected to 8 people who attended as being non members. In view of section 13 even if the 8 non members did not vote to decide the fate of the plaintiff, this would only leave 11 members. These were far below the required quorum before commencement of any business of the council

It is my finding therefore that the people who decided the plaintiff's fate had no authority to do so and as such his termination from employment was invalid.

Having resolved issue 1 in the affirmative, I will not consider issue 2 since it was argued in the alternative.

Issue 3:

Whether the plaintiff was promoted to post of Senior Executive Officer (Accounts).

The plaintiff testified that he was appointed into the service of the defendant in September 1988. He was designated Executive Officer (Accounts) in 1990. He adduced a letter to support that fact which was admitted as exhibit P1. He was confirmed in that position in 1994 and a letter to that effect was admitted as exhibit 2. In December 1995 he was promoted to the post of senior executive officer (accounts) and the letter to prove that was admitted and exhibited as P3. The plaintiff maintained this position in cross examination.

Counsel for the plaintiff submitted that the plaintiff was in the defendant's employment for 12 years following the said promotion and there were no queries until after this matter was brought. Even then they reported the matter to police for investigations and the investigations did not establish any wrong doing on the part of the plaintiff. The defendant had never questioned the plaintiff's promotion until this suit.

In reply Mr. Wante learned counsel for the defendant submitted that DW1 and DW2 testified that the promotion of the plaintiff was irregular and that there was no minute of the council to that effect.

That DW1 informed court that she has ever seen a promotion letter for senior executive officer exhibit p4 but said it was irregular because the plaintiff skipped other salary scales. That there was

no document in place indicating the decision of the council to promote the plaintiff and there was therefore no possibility for the defendant to come with the minutes of the promotion.

That DW2 the Finance Secretary and head of finance department told court that the plaintiff was never promoted to the post of senior executive officer accounts. He stated that the procedure is that the department concerned makes submission to management requesting for promotion of a particular officer, the management considers the case and refers it to appointments committee which considers the case and refers it to full council for consideration and approval. He stated that council issues a minute on which management acts and the letter exhibited fell short of the established procedure for promotion.

Learned defence counsel submitted that to find out irregularities needed due diligence and it does not matter if the matter was discovered after 12 years. What is important is that the promotion of the plaintiff was irregular. He submitted that DW1 and DW2 had established that the promotion of the plaintiff to the post of senior executive officer accounts was irregular and therefore was illegal since it was not through council.

I have looked at exhibit P3 which was admitted in this court, dated 15th December 1995 addressed to the plaintiff offering him appointment on promotion to the post of Senior Executive Officer (Accounts) in the services of the defendant. It is signed by Mr. Dan Sentamu as Director. It is the defendant's contention that the promotion was invalid for contravening the NCDC Standing orders as there was no minute of the council promoting the plaintiff.

PW1 in his testimony stated he was promoted to Senior Executive Officer in 1995 December and he tendered exhibit P3 to prove this. On the other hand DW1 in her evidence stated that she looked for a council minute promoting the plaintiff and there was none. That when she reported the matter to the council it was considered a criminal case where upon it was reported to police.

The police did investigations and the case was closed against the plaintiff as it was hard to establish the authenticity of the signature of the then director.

Minutes of the council meeting are not ordinarily within the reach and knowledge of non members. The plaintiff was not a member of the council for him to ascertain that such a minute was or was ever made. He did receive exhibit P3 that was signed by the then director and upon that letter he assumed duties as a Senior Executive Officer. He was being paid salary in the scale of the Senior Executive Officer as designated.

It would be so absurd if this court allows the defendant's argument that the promotion was irregular. Moreover the case was reported to police and the same was closed without finding the plaintiff at fault. If at all there were errors made in the promotion of the plaintiff then the defendant would be at fault and this should not be visited on the plaintiff. His salary upon that promotion was increased and the defendant for over a period of 15 years did nothing about it.

It is on that reason that I find that the plaintiff was indeed promoted to the post of Senior Executive Officer (Accounts) and the promotion was valid.

Issue 4

Whether the reduction of the plaintiff's salary from CD5 to CD6 was valid.

The director testified that the post of senior executive officer falls in salary scale CD7 and yet the plaintiff was being paid under CD5. That the plaintiff was in charge of salaries and when she called him to explain why he was being paid under CD5 he told her he was promoted and she directed him to revert to CD6 when she noticed the irregularity.

In the NCDC Standing Orders page 48 the Post of Senior Executive Officer (Accounts) which the defendant disputes the plaintiff ever legally held is at the scale of CD7.

Counsel for the defendant submitted that being in charge of the centre the director has a duty and the right to deduct or adjust the plaintiffs scale after realizing the irregularity and the plaintiffs reduction of salary scale was therefore done properly and rightly.

I am in agreement with the submissions of counsel for the defendant. The salary payments that were made to the plaintiff in CD5 were made irregularly and the director in her capacity had the duty and power to correct the error upon submission to the council. The plaintiff being a senior officer in the accounts department was well conversant with the defendant's scales and the standing orders that governed him and other employees or he ought to know. The argument that he was entitled to an increment from previous scale to CD5 is not convincing and I am therefore unable to find so.

Issue 5

Whether the defendant's obligation to pay retirement benefits for the plaintiff to NIC came to an end.

The plaintiff testified that he had never been notified that the scheme to NIC had stopped. Counsel for the defendant submitted that it is true that the plaintiff was entitled to NIC benefits from the period 1988-1999. The NIC benefits scheme started in 1988 and was terminated in 1999. He further submitted that it is not true as submitted by the plaintiff that the communication by the then finance secretary F. Nsubuga was *ultravires* because he was not communicating his position in the matter. What the finance secretary was communicating was a decision of the council which directed management of the defendant to start making contributions to NSSF only not to NIC because the defendant could not afford both schemes concurrently.

He argued that since the defendant could not provide for the two schemes that is to say NSSF and NIC concurrently due to financial constraints, the defendant council made a decision for the defendant to begin making contributions to NSSF since it was mandatory by law hence terminating the in-house scheme of NIC benefits through a council resolution.

The Plaintiff claims in the amended plaint unremitted retirement benefits with NIC of UGX 18,514 319/=. In his evidence he stated that the claim is from 1990- 2007. The plaintiff testified that he had never been notified that the scheme had stopped. That he never saw any notice on the Notice Board to that effect. However in cross examination he stated that it was true that at some point the defendant stopped deducting contributions to NIC and staff were informed and that it is true that remissions were stopped at certain point. That he would get his salary in full. In essence therefore this means that the plaintiff was getting his full salary without any deductions being made to the NIC scheme. He stated clearly that he started getting deductions from his salary to NSSF around 1999 and that when he checked with NSSF he found out that some remittances were made.

When shown by court a circular from the Finance Secretary, the witness stated that it was not addressed to anybody in particular and that he was seeing it for the 1st time.

Although DW1 did not have the minutes containing the decision of Council on the matter, he offered some explanation of the reasons behind the stoppage of the NIC scheme. The reason was stated to be the financial constraints faced by the defendant. I also note that in his testimony the plaintiff stated that he did not face any deductions at some point and that he started contributing to the NSSF scheme in 1999 which strengthens the defendant's defence that the NIC scheme stopped in 1999 and the defendant started contributing to NSSF.

From the above, the court finds that the plaintiff had notice of the stoppage of the NIC scheme in 1999, and there is no evidence that the stoppage was resisted by the plaintiff. The fact that the communication was made by the Finance Secretary as argued by counsel for the plaintiff did not affect its effectiveness since the Finance Secretary clearly indicated that he was conveying a decision of the council. The scheme to NIC was officially stopped.

Issue 6

Whether the plaintiff was paid all the retirement benefits he was entitled to under the NIC scheme.

It was counsel for the plaintiff's submission that as admitted the plaintiff received some payment towards his NIC scheme. The defendant contended that some time in 2005 the plaintiff was paid the surrender value of the policy on cheque No. 228589 drawn on Bank of Baroda. The said cheque had the value of Shs 238,036/=. The plaintiff testified that there was an under payment made for him for a short period of 1993-1997 covering 15% where the defendant remitted for him Shs 330,379/=. That the sum which was paid to him was less than what was remitted for him at one point.

In reply the defence submitted that the plaintiff admitted that he ever received his entitlement under the NIC scheme. He submitted that some time back in 2005 the plaintiff was paid the surrender value of the NIC policy on cheque no 228589 drawn on bank of Baroda. He argued that the surrender value was calculated by NIC and the plaintiff cannot hold the defendant responsible for it. The defendant fulfilled its obligation to remit the 15% to NIC on behalf of the plaintiff for the short period he contributed.

As to whether the plaintiff was paid all that he was entitled to, the plaintiff does not dispute the fact that he was given a cheque worth the value of Shs 238,036/=. His contention is that what was paid to him was an under payment made for him for a short period of 1993-1997 covering 15 % where the defendant remitted for him shs 330,379/=. That the sum which was paid to him is less than what was remitted for him at one point. I am of the view that if at all the plaintiff was paid by NIC less what was remitted for him, then his claim of the balance should have been made against NIC and not the defendant since the defendants obligation was to remit the contributions which it did. Accordingly I will resolve this issue in favour of the defendant.

Issue7.

Whether the plaintiff is entitled to terminal benefits as provided for under the defendants financial regulations.

Section 25 of the National Curriculum Development Act provides that;

“The council shall grant pensions, gratuities or other retiring allowances to the director, officers, servants and agents of the centre as may be permitted by its standing orders”.

Section 38(1) (c) provides;

“The council shall make standing orders respecting the management and conduct of the centre or any matter connected with the functions or the proper exercise, discharge or performance by the council of its functions under this Act, and the standing orders may provide for—

the provision of pensions, gratuities and other such payments for retirement”

Counsel for the plaintiff submitted that upon that authority the defendant’s financial regulations and guidelines were enacted on 1st January 2005 and by that time the plaintiff had been in the defendant’s employment for 17 years.

Learned counsel relied on the case of ***Tabaro Sinaruamagaye Ignatius Vs National Curriculum Development Center Hccs No 132 Of 2010***, wherein Elizabeth Musoke J held that:

“ the bylaws may not be retrospective and employees who had retired before it came into force cannot claim benefit there under however those employees who were still in employment had to benefit from the bylaw .the period served thereof refers to the entire period served by the employee with the defendant under permanent terms”.

The NCDC Financial Regulation 32 provides that;

“The retirement benefit of 20% of the basic annual salary of an employee for the period served shall be paid to the permanent employee under the following terms.

A member of staff shall qualify for retirement benefits after serving 5 consecutive years at the centre.

An employee whose services are terminated shall be entitled to receive all his or her benefits under his service contract up to the time of termination of services”.

On the other hand counsel for the defendant argued that the period served refers to the period only after the regulations came into effect but not retrospectively. That it was the intention of the drafters of the regulation that the staff should be able to claim for the benefits accruing after serving consecutively for a period of 5 years but not to make them benefit retrospectively. He submitted that the plaintiff quoting the *Namyalo Josephine Vs National Curriculum Development Centre HCCS No. 122 of 2008* on this matter is erroneous or misleading. In that case the court was considering whether the regulations applied to all categories of employees and not the duration or the period covered by the regulations per se. He concluded that since the plaintiff had not served for the consecutive period of 5 years when his services were terminated in 2007, then he did not qualify for the benefits under the financial regulations.

On this note I disagree with the submissions of counsel for the defendant. The catch phrase in the standing orders is for the period served. The standing orders as stated by counsel for the plaintiff gave effect to Section 25 of the NCDC Act. It would be unfair and unjust to employees who had devoted all their time to the defendant to be denied their terminal benefits on grounds that the five year period had not been served when the regulations came it force.

It's my considered view that the period served included the period that had been previously served by the employees and thus was not only limited to the period when the regulations came into effect. In any case if at all the draftsman had a contrary intention the same should have been stated clearly. I therefore find that the plaintiff is entitled to terminal benefits as provided for under the defendant's financial regulations and guidelines.

Issue 8

Whether the plaintiff is entitled to salary arrears resulting from unpaid salary increment by the defendant's council in 1996/1997.

It is the plaintiff's case that he was under paid and he claims Shs. 15,691,542/= as arrears of salary increment. The plaintiff in his testimony admitted knowing the salary structure approved by the defendant's council.

Counsel for the plaintiff submitted that the salary arrears owed to the plaintiff are already a liability to the defendant and are due and payable.

DW1 testified that he came across a document by the governing council and it was a proposal for salary increment which was approved by council for onward submission to the ministry of education and finance for funding. He stated that the Ministry of Finance and Education declined the proposal and no funds were transferred to the centre to affect the salary increments. He testified that when the government refused the proposal it was considered as a contingent liability

Counsel for the defendant submitted that it is not true that the defendant accepts owing salary arrears to the plaintiff as alleged in the plaintiffs submissions. There was an attempt or proposal to increase staff salaries by the defendant's council in 1996/97 but it was never approved by the Ministry of Finance Planning and Economic Development.

He submitted that according to the witness the contingent liability was dropped by the governing council around 2000 and it does not appear in the financial statement of the defendant and that the defendant has lost hope of ever getting release of funds for the salary increase by the Ministry of Finance. He argued that the contingent liability has never turned into a liability because government has never released funds for the proposed salary increment to date.

In *Namyalo Josephine Vs National Curriculum Development Centre Hccs Noo 122 of 2008* the court believed the explanation given by the NCDC that there was a budgetary short fall which is reflected in the audited accounts as a contingent liability. The judge on page 13 of his judgment also agreed that the contingent liability has never been converted into a liability to the NCDC as government has never released money to NCDC to pay its staff the revised salaries. That the salary increment has never been sanction by government.

The issue before me was dealt with at length in *Namyalo* case per Bamwine J (as he then was). I don't intend to delve so much in the arguments regarding this issue. I am in total agreement the decision in *Namyalo* (supra) and I don't see any reason to deviate from his reasoning. Accordingly I will disallow this claim by the plaintiff as there was no evidence produced in court to show that money was ever released by the government and the defendant failed to pay the salary increments that had been approved by the governing council. The contingent liability has never been converted into a liability to the NCDC since government has never released money to NCDC to pay its staff the revised salaries. The increment were not sanctioned by government.

Issue 9

What remedies are available to the parties.

The plaintiff claims the following reliefs:-

Payment in lieu of leave.

The plaintiff claimed for payment in lieu of untaken leave for seven (7) years. He testified that he worked for 19 years and used to take his annual leave except for the last seven years. He testified that he applied for leave but it was refused. DW2 in cross examination testified that when cross-checking the plaintiffs file he came across one application for leave and that the implication was that he never applied for leave.

Regarding this claim, the plaintiff testified that he used to apply for leave which was refused during the last seven years. He stated that he had a copy of one of the leave forms for the 2004 which was not approved. The defence argued that he applied for leave only once which was denied as per evidence of DW2.

Since there is no proof that the plaintiff used to apply for leave which was refused for seven years, I will award the plaintiff payment in lieu of leave for the only period when he applied for leave and the same was denied and that is for the year 2004. For the other 6 years I have no basis upon which to award him the claim as there was no evidence that he ever applied for leave and the same was denied.

Responsibility allowance.

He claimed responsibility allowance of Shs 21,183,760 for having held the office of marketing. The plaintiff produced documentary evidence Exh. "P 5" showing that he was assigned to be In-charge marketing and Exh. "P 6" which spelt out clearly the marketing function that the plaintiff would carry out.

According to the NCDC Standing Orders part 1 cc (1) responsibility allowance is an allowance payable to an officer of a special rank or higher who care takes the duties of a vacant specialist post or of a specialist who is a way for a period of 30 days or more.

Counsel for the defendant submitted that the substantive position held by the plaintiff was not a specialist post. However no evidence was ever adduced to prove that the marketing post was not a specialist post. It is not in dispute that the plaintiff carried out the marketing functions. He testified that he was never paid for the duties he carried out. Exhibit "P5" and "P 6" prove that indeed he was assigned the functions of the marketing officer and it is just and fair that he should be remunerated for the same. I will therefore allow this claim.

General damages

General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim. They follow the ordinary course and relate to all other terms of damages. Whether pecuniary or none pecuniary, general damages would include future loss as well as damages for paid loss and suffering. See: **Uganda Commercial Bank Vs Deo Kigozi (2002) EA 293.**

Since the termination of the plaintiff's service was invalid, court is of the view that an award of general damages would remedy the problem since court cannot order a reinstatement of the plaintiff by the defendant. The general rule is that general damages are such as the law presumes to be direct or natural and probable consequence of the act complained of. In assessing the amount of damages, court has to take into account the current value of the money in terms of what goods and services can be purchased at the present time. In this case I will award general damages of 50,000,000/=.

Aggravated damages

Aggravated damages are awarded when aggravating circumstances exist in the act or intention of the wrong doer. These are meant to deter the wrong doer from repeating the act or for wounded feelings of the Plaintiff. They result from the wanton disregard of the Plaintiff's rights by the Defendant. The circumstances of this case do not warrant the award of such damages. I decline to award the same.

Interest.

Since the plaintiff was deprived of the usage of entitlements when he was dismissed I will ward him interest at court rate from the time of judgment till payment in full.

All in all, I will enter judgment for the plaintiff as outlined herein. The plaintiff shall also get the taxed costs of this suit.

Stephen Musota

J U D G E

25.08.2015