

The Republic of Uganda
In The High Court of Uganda at Soroti
Miscellaneous Cause No. 25 of 2020

Oluka Michael Applicant

Versus

Bukedea District Local Government Respondent

Before: Hon Justice Dr. Henry Peter Adonyo

Ruling

1. Background:

The Applicant was on the 9th day of January 1989 stated to have been appointed into the Uganda civil service as the Hide Improvement Assistant in the Department of Veterinary Services under the Ministry of Animal Industry and Fisheries and was then been posted to work in Moroto , Uganda.

On the 26th day of October 1994 upon attainment of a higher qualification, the Applicant was offered appointment on promotion to the position of an Entomologist under minute extract: PSC. Minute No. 750 (i) of 1994 and was subsequently confirmed in 1998.

In 2008 the Applicant was appointed on promotion to Senior Entomologist by Bukedea District Service Commission under Minute No. 27 of 2008 owing to his wide experience in service and extra post-employment training undertaken.

On 2nd September 2013, the 24th meeting of Bukedea District Service Commission under Min. 86 of 2013 offered the Applicant an appointment on promotion to the post of Principal Entomologist Scale U2 upper.



Despite this act of the District Service Commission, it is alleged, the Respondent had deliberately refused to offer the Applicant an appointment letter in spite of the fact that others persons who had been similarly considered in a same meeting under the same minutes for various positions such as Amuya Steven Okwalinga, Alupo Ketty Leah and Akwap Marion had received theirs in time.

Furthermore, it is alleged that the Respondent had also deliberately refused to pay the Applicant an enhanced salary as per his entitlement upon his promotion from the time of the said promotion to date.

The above despondent acts of the Respondent left the Applicant with no alternative but to appeal to the Public Service Commission which then directed the Chief Administrative Officer of the Respondent to issue the Applicant with an appointment letter immediately but this request was ignored.

The situation being as then left the Applicant with no option but to resort to court action. On the 22nd day of September, 2021 the Applicant file this Application against Respondent seeking for the following reliefs: -

- a) A declaration that the continued non issuance of the letter of Appointment on promotion of the Applicant to the position of Principal Entomologist Scale U2 upper is illegal and or irregular and as such infringes on the Applicant's constitutional rights to practice his profession.
- b) An order that the Chief Administrative Officer of the Respondent issues the Applicant with appointment letter on promotion to the position of Principal Entomologist Scale U2 as directed by the 24th meeting of Bukedea District Service Commission held on the 2nd day of September 2013 vide DSC Min. No.86.2 of 2013

- c) An order that the Applicant be paid all the emoluments approximately amounting to Ug. Shs. 208, 800,000/= that is due to him from the time he was dully appointed on promotion to the post of Principal Entomologist, Scale U2 to date.
- d) General damages for inconvenience suffered by the Applicant as a result of the illegal refusal to issue appointment letter on promotion to Principal Entomologist Scale U2.
- e) Costs of this Application be borne by the Respondent.

The Applicant deposed an affidavit in support of this application on 21st September, 2020 which was replied to by the Respondent file an affidavit in reply on the 22nd March, 2021 opposing this application.

In this Application the Applicant contends that the continued non issuance of the letter of appointment on promotion to the position of Principal Entomologist Scale U2 Upper is illegal and or irregular and infringes on his constitutional rights to practice his profession as confirmed by paragraphs 2,3,4,5,6, and 7 of his affidavit in support of this Application in which he takes among others that he was appointed into the Uganda Public Service in the position of Hide Improvement Assistant and has since risen up in the ranks on promotion to the position of Principal Entomologist Scale U2 Upper in 2013 but has never been issued with an appointment letter for the latest position by the Respondent despite several requests for the same in addition to directives from the Public and District Service Commission for the respondent to do so.

The Applicant further avers that the Respondent only acted and issued him with a letter of Appointment on promotion upon the commencement of this very Application which was an attempt to remove itself of the violations it has incurred

on the Applicant's constitutional rights to practice his profession and carry on his lawful occupation in the position of Principal Entomologist Scale U2 Upper since 2013 as can be seen from paragraph 10 of the Respondent's reply and Paragraphs 4 and 5 of the Applicant's affidavit in rejoinder which clearly show that the Applicant was only issued with a letter of appointment on the 26th day of October, 2020 and not immediately or as soon after the appointment in 2013.

By that despicable act of the Respondent, the Applicant maintains that the Respondent, by not issuing to him of a letter of appointment on promotion, the respondent acted illegally and irregularly without lawful justification and as such infringed on his constitutional rights to practice his profession given that this Application is rooted in Article 50 of the 1995 Constitution which guarantees one's fundamental rights which when infringed entitles one to apply to a competent court for redress which may include compensation.

So through this application, the Applicant is contending that his rights to practice his profession and carry on his occupation was infringed by the respondent and therefore he was seeking legal redress from this court.

In his submission presented by his counsel, the Applicant avers that by the Respondent delaying and or refusing to issue him with a letter on promotion to the Position of Principal Entomologist since his appointment in 2013 and only instead electing to do so in 2020 without any lawful justification then the Respondent had violated and infringed on his economic rights to practice his profession and lawful occupation as a Principal Entomologist effective from the 27th day of September, 2013, a higher position from which he was kept away until the 26th October 2020, at a lower position of employment with a lower scale and employment opportunity as would have been available .

The Applicant further pointed out that the Respondent's affidavit in reply at paragraphs 5,6,7,8, 9 and 10 contained falsehoods and misleading information that the Respondent even after receiving a directive from the Public Service Commission following the Applicant's complaint adamantly refused to issue the appointment letter and only acted when the Applicant filed and served Miscellaneous Cause No. 25 of 2020 the Respondent which action pressurised it into issuing the belated appointment letter which was involuntary albeit with a lot of intimidation channeled onto the Applicant.

Furthermore, the Applicant pointed out that the decision by the Respondent not to issue him with an appointment letter was malicious and deliberate because other officers like Akwap Marion, Amuya Steven Okwalinga and Alupo Ketty Leah who were all considered for appointment on promotion under the same District Service Committee meeting were issued their appointment letters with the alleged seeking clearance for his appointment not the mandate of the Chief Administrative Officer as guided by the Public Service Commission decision as supported by Annexure "G" referred to in the Applicant's affidavit in rejoinder clearly showing biasness on the side of the Respondent and was in clear violation of Article 20, 28, 40 (2) and 42 of the 1995 Constitution of the Republic of Uganda.

The Applicant further averred that the court should find paragraph 11 of the affidavit in reply by the respondent to full of falsehoods given that not all his emoluments had been paid with the only payments made since filing of this Misc. Cause No. 25 of 2020 being top up arrears computed from the year 2013 as proved by Annexure "A" of the Respondent's affidavit in reply but other benefits and the promotional opportunities that were lost as a result of the Respondent's maltreatment of the Applicant have since not been paid which in the circumstances entitles the applicant is entitled to be paid the damages as pleaded to be awarded at court's discretion in light

of the evidence adduced as to the suffering and pain that cannot be computed in monetary terms and pleaded specifically.

In its reply, the respondent did not contradict the fact as presented by the Applicant but went on in addition to state that after the decision of Bukedea District Service Commission of promoting the applicant, Ministry of Public Service issued a circular barring recruitment without clearance from them and so its Chief Administrative Officer stayed the issuance of the appointment letter to the applicant pending clearance from the Ministry of Public Service or any relevant Authority and that in August 2020 its Chief Administrative Officer received a communication from Public Service Commission directing that an appointment letter be issued to the applicant which the Chief Administrative Officer complied with in October, 2020 and issued a letter of appointment to the applicant.

That after the issuance of appointment letter to the applicant it then computed and paid all the emoluments (including the salary enhancements) to which the applicant was entitled to from 2013 when he was promoted as Principal Entomologist in addition to adjusting his salary scale to that of a Principal Entomologist.

On as to whether court should issue a declaration that the continued non issuance of letter of appointment on promotion of the applicant to the position of Principal Entomologist Scale U2 is illegal and or irregular and whether there was need for an order of court directing the respondent to issue the applicant with the appointment letter on promotion, counsel for the respondents submitted that those declarations where not necessary since the letter of appointment had been issued on 26th October, 2020 as per Annexure D to the Affidavit in reply deposed by the respondent's Chief Administrative Officer.

On whether the applicant was entitled to emoluments amounting to 208,800,000/= from the respondent from the time he was promoted to the post of Principal Entomologist, counsel for the respondent submitted that it was true the applicant upon promotion was entitled to salary enhancement but that as was deposed in paragraph 11 in the affidavit in reply by the respondent, those emoluments and the salary enhancement for the applicant from the time of promotion in 2013 were computed and paid to the applicant as proved by Annexure "A" to the affidavit in reply and that apart from the salary enhancement paid to the applicant there were no other monetary entitlement which the applicant was entitled to.

Further, it was submitted that since as stated in paragraph 13 in the affidavit in reply by the respondent the applicant did perform the duties of Principal Entomologist from the time he was promoted in 2013 and had all the privileges and entitlements accorded to that position fully provided since then 2013 was proved by Annexure C to the Affidavit in reply and, therefore, there was no any other emolument which the applicant is entitled to and apart from mere allegations by the applicant that he was entitled to a sum of 208,800,000/= from the respondent, there was no evidence adduced showing how he arrived at that amount.

Therefore, according to the respondent, since the salary enhancement was paid to the applicant from 2013 when he was promoted, the respondent urged this court too find that it does not owe any money to the applicant in form of any other emoluments since he even performed all the duties of a Principal Entomologist from the time he was promoted in 2013 and had all the privileges and entitlements accorded to that position.

On whether the applicant is entitled to any general damages, counsel for the respondent submitted that the court should find that after the decision of Bukedea District Service Commission of promoting the applicant, the Ministry of Public

Service issued a circular barring recruitment without clearance from it and as such the Respondent through its organs stayed the issuance of the appointment letter to the applicant pending clearance from the Ministry of Public Service or any relevant Authority till August 2020 when Public Service Commission allowed such appointment and that was when the respondent acted accordingly in October, 2020 when it issued to the applicant a letter of appointment to the applicant.

Further to the issuance of appointment letter to the applicant, the respondent then went on to compute all the emoluments (including the salary enhancements) to which the applicant was entitled to from 2013 when he was promoted he was paid as per Annexure A to the Affidavit in reply with even his salary adjusted to the scale of Principal Entomologist as per Annexure B to the Affidavit in reply.

Further that, it was argued that since the applicant was performing the duties of Principal Entomologist from the time he was promoted in 2013, he enjoyed all the privileges and entitlements accorded to that position of Principal Entomologist from that date 2013 as proved by Annexure marked C to the Affidavit in reply.

On whether the applicant was entered to damages it was the respondent's submission that the applicant was not entitled so to it as he did not lead any evidence to show what kind suffering he incurred to entitle him to damages given the fact that even he continued executing and performing duties of a Principal Entomologist pending clearance from the Ministry of Public Service so as to issue him with the appointment letter which clearance came in August 2020 and without delay he was promptly issued a letter of appointment in October, 2020 as proved by Annexure D to the Affidavit in reply thus making the sum claimed by the applicant of 300,000,000/= to be excessive since he suffered no loss or damage which the court should find accordingly.

On whether the applicant is entitled to costs, it was the contention of the respondent that he was not so entitled since his rights had never been violated as such the court should find so and dismiss this claim for costs together with the whole application with costs.

In rejoinder, urged court to find that the respondent had distorted the facts which this court should find not to be true given the fact that the Applicant's promotion was made before any ban on recruitment by the Ministry of Public Service and the same could not be stayed pending clearance yet even the same Public Service Ministry ordered the Chief Administrative Officer of the Respondent to proceed to appoint the applicant with any claim otherwise being an egregious engineering to defeat the applicant's instant case which the court should throw out with the contempt it deserve given the fact that it was an undisputed fact that prior to filing this application, the respondent never issued the applicant with the requisite letter of appointment on promotion until the 26th October, 2020 following several requests for the same including directive from the Public Service and District Service Commission being denied yet he was appointed in 2013 with the respondent only acting and issuing the letter of appointment on promotion upon realizing that the applicant had initiated court proceedings and then acting to defeat the cause of action against it which was the violations of the applicant's constitutional right to lawfully practice his profession and to occupy the position of Principal Entomologist Scale U2 Upper since 2013 as proved by paragraph 10 of the Respondent's Reply and paragraphs 4 and 5 of the applicant's affidavit in rejoinder both of which clearly show that the applicant was issued the letter of appointment on promotion on the 26th October, 2020 and not in 2013 when he was entitled to it. Also, in the letter referred to dated 13th August 2020, the Secretary Public Service Dr. John Geoffrey Mbabazi was directing the Respondent to with immediate effect

to issue the letter of appointment on promotion to which the respondent failed to comply until when this application was filed and served.

Therefore, it was the applicant's contention that this court should find that the non-issuance of the letter of appointment when it was due was illegal and or irregular without lawful justification and as such infringed on his right to practice his profession under Act. 40 of the 1995 Constitution.

Resolution of this Application:

I have carefully considered the pleadings in this matter including all the documents attached in and submissions of counsels. What I find which is not disputed is that in 2013, the applicant was interviewed and appointed to the position of Principal Entomologist Scale U2 Upper, a position which he never received a letter of appointment until this application was filed in court.

What disturbs this court is the fact that in an attempt to pervert the cause of justice, the respondent through its officers, shamelessly and without remote, deposed to a clearly untruthful affidavit in reply to this application to support a position which was clearly illegal given the fact that in 2013 the respondent's District Service Commission carried out its constitutional duties of appointing the applicant, it did not refer to any ban to recruitment as no evidence to that fact has been tendered in court in proof of such bar meaning that prove that such a ban to recruitment was in place when the applicant was appointed. Therefore, I clearly find it offensive and criminal for the respondent to come to court and try to claim that it was barred from recruiting when such bar was non evident.

Given that clear fact I do find that the respondent acted in bad faith by denying the Applicant letter of appointment on promotion from the date of his appointment since 2013 and only acted after the applicant had instituted this instant application in court



which meant that the applicant has been kept in the state of abeyance for seven (7) years and as such his to right to work and practice his profession as provided by the Constitution was violated leading him to suffered psychological torture, stagnated career growth, lost promotional opportunities, lost emoluments, further study opportunities which cannot be reversed given the fact that the applicant is by now about to retire and over the years frustrated by the actions of the respondent.

By this application, therefore, I find a clear breach of constitutional duties by the respondent through its officers which entitles the applicant to remedies including general damages.

It is, therefore, my finding which is grounded on the facts which are not disputed, that from 27th September 2013 till 26th October, 2020, the Applicant's rights were infringed upon given that the letter of appointment, which should have been issued immediately upon the respondent's District Service Commission carrying out its constitutional duties but the same was only issued after the filing of the instant application.

I also find it as not true that that all emoluments in regard to the non issuance of the letter of appointment since 2013 has been paid to the Applicant as claimed by the Respondent. The payments which I have seen are mere top up salary arrears as computed from the year 2013 which is confirmed by Annexure A attached to the respondent's affidavit in reply. That cannot be said to be payment for all the privileges and entitlements as the respondent would want this court to believe.

The simple fact of the matter is that by the respondent failing to issue to the applicant the appointment letter when it was legally due infringed on the constitutional right to employment and other rights of the applicant rendering the respondent liable to



atone such infringement given the fact that since 2013 the Applicant was kept in a state of an employment promotional level limbo which definitely caused him psychological torture, stagnated career growth, lost promotional opportunities and a number of pessimisms all of which cannot be reversed given the time lapse and the effort made to have the respondent comply with its constitutional duties thus I would find that the applicant is entitled to an compensation as a result of the incompetent and injurious actions of the respondent.

The applicant also prayed for general damages reduced to the tune of UGX. 300,000,000/= for the loss and damage caused by the Respondent's actions.

Firstly, it must be noted by employers that employees including public servants must to be treated fairly.

In this case it is appalling that the respondent failed in its constitutional duties as an employer but instead chose the path of belligerence towards the applicant which act mentally tortured the applicant for a period of over seven (7) years without getting what was rightfully his yet the applicant had successfully been appointed on promotion to a higher post by a competent authority which is its' District Service Commission which is mandated by the Constitution of the Republic of Uganda to carry such function and which had carried out its constitutional duties leaving only an administrative act to be carried by the Chief Administrative Officer of the respondent which unfortunately arrogated itself the powers to selectively carry out the directives of the appointing authority when it issued letters of appointment for persons indicated in the same appointing authority meeting minute by leaving out the applicant out on an unproven reason of a ban on employment.

Such arrogance is not only disruptive but illegal rendering the person who was holding at the time the office of the Chief Administrative Officer of the respondent liable



to removal from the public service disgrace for incompetence given the fact that the said person arrogated constitutional powers which was not there.

Further, it is clear to me that the applicant suffered continuously damages and loss caused by the respondent's actions. Therefore, I would find that the applicant's right including all other public servants' right to enjoyment of employment and promotion must never be illegally frustrated by distressful tormentors such as the respondent.

Arising from the above, I would find merit in the claim by the applicant that he is entitled to remedies including damages, the essence of awarding of which was considered in the case of *Jennifer Muthoni & 10 Ors Vs. AG. of Kenya [2012] KLR* wherein the court while citing *Pilkington on Damages as Remedy for Infringement of Canadian Charter and Freedoms [1984] 62 Canada Bar Review 517* went on to state that;

"... the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award ought in proper cases to be made with a view of deterring a repetition of breach or punishing those responsible for it or even securing effective policing of the constitutionality enshrined rights by rewarding those who expose breach of them with substantial damages"

Compensation damages thus may be assessed on the proved loss with this being only where the victim of the violation has suffered assessable economic loss. However, where such victim has suffered loss such as loss of dignity, shame and inhuman treatment, such are not the kind of loss for which compensation may granted by court but one which would deter further violation and this is termed punitive damages which Lord Devlin in *Rookes vs. Barnard [1964] ALL ER at 410, 411* went on to recognised as damages which are granted where there has been oppressive, arbitrary or unconstitutional action by the servants of government.



The measurement for punitive damages was pointed out by Hon. Lady Justice Flavia Anglin Senoga in *Stanbic Bank Uganda Limited vs. Hajji Yahaya Sekalega & Anor HCCS No.185 of 2009* wherein the learned judge stated that;

"... it is trite law that "measurement of the quantum of damages is a matter for the discretion of the individual Judge which of course has to be exercised judicially with the general conditions prevailing in the country and prior decisions that are relevant to the case in question..."

Therefore, in my consideration to award damages including punitive damages to the applicant, I have taken into consideration the suffering the applicant has endured since 2013 in the hands of an insensitive institutions of government which chose to ignore the fact that the applicant had been employed by the proper organ of government with the mandate to do so which action resulted in the applicant being caused untold inconveniences and sufferings occasioned to him as a result of the violations of his economic rights to employment as clearly proved by paragraphs 8 and 9 of the Affidavit in support of this Application with the result that it is only befitting that he be compensated for the wrongs suffered.

Such suffering by the Applicant in the circumstance entitles him to general damages which I award at a sum of Uganda Shillings One Hundred Million Only (UGX. 100,000,000/=) in addition to other remedies which I find relevant and useful to grant and listed below in the orders of this court below.

Orders:

This court having found that this application succeeded s as against the respondent make the following orders and declarations;

- a. The continued non issuing of the letter of appointment on promotion by the respondent to the Applicant for the position of Principal Entomologist Scale U2

upper was illegal and unconscionable as it infringed on the Applicant's constitutional rights to practice his profession.

- b. For avoidance of doubt, it is hereby ordered that the Chief Administrative Officer of the Respondent issues to the Applicant an effective appointment letter on promotion to the position of Principal Entomologist Scale U2 from the date as was directed by the 24th meeting of Bukedea District Service Commission held on the 2nd day of September 2013 vide DSC Min. No.86.2 of 2013.
- c. It is also ordered that the Applicant be paid by the respondent all the emoluments approximately amounting to Ug. Shs. 208, 800,000/= that is due to him from the time he was dully appointed on promotion to the post of Principal Entomologist, Scale U2 to date the date of of this judgment.
- d. I award to the Applicant general damages as against the respondent of Uganda Shillings One Hundred Million Only (UGX. 100,000,000/=) for inconvenience suffered by the Applicant as a result of the illegal and unconscionable refusal to issue to him his rightfully deserved appointment letter on promotion to Principal Entomologist Scale U2 which was due on September, 2013.
- e. I award to the Applicant as against the respondent punitive damages of Uganda Shillings Two Hundred Fifty Million Only (UGX. 250,000,000/=) for the respondent's illegal and unconscionable act of refusing veto act within the ambit of its Constitutional Mandate.
- f. I award interest on C. above, cumulatively from 2nd September, 2013 when it arose at the rate of 8% per annum till payment in full.
- g. I award interest on general damages of 18% per annum from the date of this ruling till payment in full.



h. I award the costs of this Application the Applicant as against the Respondent

I so order at High Court of Uganda holden at Soroti this 8th day of July, 2021.



Dr. Henry Peter Adonyo

Judge

8th July 2021

Order: This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order



Judge

8th July 2021

23/7/2021
 Court: Ruling delivered via
 Email to the advocates
 Mr. Ben Ikirai of M/s Alaka & Co.
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