

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CS – 0094 – 2002

HAJI BAHADUR KHAN :::::::::::::::PLAINTIFF

VERSUS

RAFIKI COTTON INDUSTRIES LTD:::::::::DEFENDANT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

Plaintiff sued the defendant for US \$ 11,000 salary arrears, Ug. shs 400,000/= unpaid food allowance, as well as for general damages for breach of contract. Plaintiff claimed to have been an employee of defendant at the material time.

Defendant, though admitting having employed the plaintiff for some time, denied the plaintiff's claims, but instead counter-claimed against the plaintiff and one Gulam Hussein, for general damages for breach of contract, fraud and conversion as well as specific sums of money as money had and received from the defendant, in the course of their employment, but not accounted for and/or to which they were not entitled to.

The defendant apart from naming Gulam Hussein as a co-defendant in the counter claim never took any steps to properly cause the said Gulam Hussein to be added as a third party, let alone to summon him for the hearing of this case. The hearing of the case and the counter-claim to the suit therefore proceeded as between the plaintiff and the defendant only.

At the scheduling conference the following facts were agreed upon:-

- i. That the plaintiff was employed by the defendant as a field officer,
- ii. The plaintiff was receiving a monthly salary from the defendant.
- iii. The plaintiff was stationed at Aboke Ginnery
- iv. Notice of intention to sue was issued and served on the defendant.

- v. The employment contract of plaintiff with the defendant was terminated in September, 2001.

The issues framed for resolution by court were:-

1. whether the plaintiff has a cause of action against the defendant.
2. whether the plaintiff was paid the salary and allowances claimed.
3. whether plaintiff is liable for the defendants claims as stated in the counter claim.
4. Whether the parties are entitled to the reliefs claimed.

The plaintiff testified in person and called no witnesses. The defendant's chairman of the board of directors, one Hussein Mohammed, testified on behalf of the defendant.

On the first issue, the evidence adduced, establish that, at the material time, plaintiff was employed by defendant as a field officer at Aboke ginnery. By virtue of that employment, plaintiff claims salary, food allowance as well as general damages, from the defendant.

A cause of action is established once plaintiff proves being vested with a right, and that the right has been violated and that it is the defendant who is responsible for the violation:
See: *Auto garage vs Motokov (1971) EA 514*

Entitlement to salary and food allowance constituted the plaintiff's rights under the contract of employment with the defendant. Non payment thereof amount to violation of the plaintiff's right to the same. The defendant as employer in refusing to pay is thus responsible for the violation. There are the averments pleaded in the plaintiff's plaint.

The answer to the first issue therefore is that the plaintiff has a cause of action against the defendant.

The second issue is whether the plaintiff was paid the salary and allowances claimed.

Plaintiff testified that defendant's chairman, DW1 fixed his salary while working in Kampala. It was US \$ 400 per month. While in Aboke, Apac district, it was US \$ 500 per month. In addition, plaintiff was receiving a food allowance of Ug. SHs.120,000/= per month while in Kampala, and Ug shs. 200,000/= per month while in Aboke.

He worked in Kampala and was paid as above in 1995, and when later he was posted to Aboke he was paid at the stated higher rate of both salary and food allowance. For the period

December, 1999 up to September, 2001 he was in Aboke and he was never paid his salary. He was also not paid the food allowance for the months of August and September, 2001. His monthly salary whether in Kampala or Aboke was not subject to rent deduction.

Dw1, the defendant's chairman Board of Directors, testimony is that the plaintiff's monthly salary was US \$ 200, and food allowance was shs. 30,000/= per week whether in Kampala or Aboke. Under cross examination; he stated that he did not remember ever paying salary of Us \$ 500 to plaintiff. He also denied ever paying plaintiff Us shs. 50,000/= food allowance per week. Under further cross examination, the witnesses stated that he did not remember how much he was paying the plaintiff, as monthly salary, while in Kampala. He however asserted that by 31.12.1999, everything due to plaintiff had been paid to him. Plaintiff admitted that he had been forced to pay a co-employee of the plaintiff, Gullam Husein, his arrears of salary, only after court had ordered him to do so through H.C.C.S NO. 93/2002(at Gulu). The court had found that the monthly salary agreed upon by defendant to be paid to that employee was US \$ 400. In that case it was admitted by DW1 that a monthly food allowance of shs 200,000/= was payable to Gullam Husein.

In an e-mail dated 05.06.2008 to his counsel, exhibit D4, stated:

“As per our records Bahadur was withdrawing salary of US \$ 500 without my approval from Aboke Ginnery and when he came to Kampala to settle his salary account before going on leave, he lied to my son and took his salary as per US \$ 500 per month. My son paid his salary as per US \$ 500 upto August, 1999 without my approval. I had quarrel with my son because he gave his salary as per US \$ 500 per month, when Bahadur was not educated and liable for that salary”

Court notes that, on 12.05.2008, when DW1 testified in court he denied that the plaintiff had ever been paid a salary of US \$ 500, let alone that of US \$ 400 either in Aboke or in Kampala. In exhibit D4, DW1 now asserts that as from 22.10.99 the salary of plaintiff was US \$ 400 per month. He even acknowledges that some salary arrears are due to plaintiff. He also never mentioned the fact that his son had effected any payment of such salary to the plaintiff, albeit with his (DW4) consent. The son who is said to have paid this salary to plaintiff was not mentioned by any names; and never testified as a witness for the defendant. DW1 also gave no

plausible explanation as to exhibit P2 with in which he acknowledged that plaintiff's salary was more than US \$ 200 per month.

In exhibit D1 tendered in evidence for the defence cash payment voucher No. 5 dated 12.02.1998 shows that Mr. Bahadur, the plaintiff was paid:

“Being salary paid for the month of November 97 and December 97 \$ 500 @ 1000 x 1160 = 1,160,000”

The same amount is stated in cash payment voucher No. 4 dated 13.3.1998 for the months of January 98 and February 98; cash payment voucher No 3 dated 02.04.98 for the month of March , 98, cash payment voucher No. 2 of dated 02.04.98 for August, September and October, and voucher No. 4 of 30.04. 98 for April, 1998. The vouchers were prepared by a different person, approved by another and then payment was effected upon the plaintiff. It was not a one person affair. DW1 offered no plausible explanation as to these vouchers, which support the plaintiff's case that his salary at Aboke Ginnery was US \$ 500 per month.

In court the demeanour of DW4 was that of one telling half truth and creating any possible defence, however, untrue, so as to deny the plaintiff's claim.

The plaintiff on the other hand gave his evidence in a forthright manner, in spite of the vigorous cross examination he was subjected to by defence counsel.

Court therefore prefers to believe the evidence of the plaintiff to that of DW1 on the second issue.

It is the finding of court that the plaintiff was receiving at Aboke a monthly salary of US \$ 500 as well as monthly food allowance of shs 200,000/=. It is inconceivable that Gullam Hussein, the plaintiff's co-worker would receive a food allowance of shs 200.000/= per month, a fact admitted by DW in the case of Gullam Hussein and yet the plaintiff not be entitled to the same. The fact that the plaintiff asserts that this allowance was being paid to him by the defendant all along, except for the two months of August and September, 2001 and no more, tends to show the geniuses of the plaintiff's claim as regards the food allowance claim.

The answer to the second issue is that the plaintiff was not paid the salary and allowances claimed in the plaint.

The third issue is whether the plaintiff is liable for the defendants claims as stated in the counter-claim.

The defendant counter claimed as against the plaintiff shs. 3,316,444/= being value of 1,242.3 KGS OF Lint allegedly converted by plaintiff and his co-worker, Gullam Hussein, to their personal benefit. Defendant also claimed cotton seeds: 15,456 kgs equivalent to Uganda shs. 1,777, 440/= also similarly converted.

A sum of shs. 79,915,400/= was also claimed by defendant against the plaintiff and Gullam Hussein as money received for and on behalf of the defendant, in 2001 but for which no account was provided.

Ug. Shs. 49,581,340/= was also claimed by the defendant against the plaintiff and Gullam Hussein for failing to account or deliver seed cotton for the said sum, which was stated in the plaint, to be advance money received by the defendant's cotton agents. Finally, defendant Claimed in the counter-claim money, he alleged, belonged to him, of which sum of money, Gullam Hussein and plaintiff paid the same to themselves in the period January 1999 to November, 1999, that of plaintiff being shs 11,013,300/= and that of Gullam Hussein being shs 8,996,400/=.

In his evidence in an attempt to prove the counter-claim, DW1 stated to court that plaintiff had overdrawn shs 7,000,000/= had caused loss of shs 80,000,000/= and agency money given to him to buy cotton of about shs 50,000,000/= and that he demanded this money from plaintiff and Gullam Hussein. In cross examination DW1 stated that the plaintiff had withdrawn the money from the accountant DW1 did not state how much and when this money had been withdrawn. DW1 could not remember whether plaintiff withdrew money from the bank or whether the plaintiff was a signatory to the defendant's bank account. He had found out about the loss of money in April, 2001. He acknowledged that he had seen a list of agents who owe money to the defendant for the cotton season in question. DW1 further explained that the plaintiff and Gullam Hussein would choose the agents who would then come to the defendant's accountant, who would pay them the money for the cotton to be supplied.

The plaintiff denied ever being in charge of defendant's money, whether in Kampala or Aboke. He had never been a signatory to any bank account of defendant. He denied ever lending out money or authorizing any payment of money of defendant. According to him, he would go to the field looking for cotton, then the farmers with cotton would physically come to the factory to be paid, after which he would go with them and collect the cotton paid for. He denied all the claims in the counter-claim.

Court received no evidence at all other than the bare statements of DW1 to fix liability of the losses stated in the counter-claim to the plaintiff. Indeed the defendant never reported any such loss, which amounted to a crime to any police station.

As to money paid to the agents, the defendant has a list of these agents and the amount of money each one owes. There is therefore no basis for holding the plaintiff liable for such sum of money. This is the more so since it is not the plaintiff who paid the advance money to them. It is the defendant's accountant. The work of the plaintiff was to collect the cotton paid for from these agents. There is no evidence that plaintiff had failed to collect the cotton before his employment with the defendant came to an end.

Defendant adduced no evidence at all as to how the lint shortage of Ug. Shs. 3,316,444/= and cotton shortage of Ug. Shs. 1,932,000/= came about and how the plaintiff is liable for the same.

Court also finds no credible evidence in the documentary exhibits rendered in evidence by DW1 to establish the case of the defendant against the plaintiff as far as the counter-claim is concerned.

It is the finding of court that the defendant has not discharged the burden of proving any of the claims in the counter-claim on balance of probability against the plaintiff. The answer to the third issue is that the plaintiff is not liable for the defendant's claims as stated in the counter-claim.

The fourth issue is whether the parties are entitled to the reliefs claimed.

The plaintiff, having proved his case on the balance of probabilities is entitled to be paid US \$ 11,000, arrears of salary for the period December, 1999 up to September, 2001 US \$ 500 per month. He is also entitled to be paid shs. 400,000/= being food allowance for the months of August and September, 2001, at shs 200,000/= per month.

As to the claim for general damages the evidence of the plaintiff is that he has remained without being paid what is due to him since December, 1999 to date. He has by reason thereof, been greatly inconvenienced as he had not been able as he would have wished, to support the education of his children, his spouse, particularly when she was pregnant, and when he lost his father.

The defendant did not contradict the plaintiff's evidence as to the inconvenience suffered by him and his family.

In H.C.C.S No. 93/2002 (at Gulu): **Gullam Hussen vs Rafiki Cotton Industries Ltd**, whose facts are very similar to those in this case, the arrears of unpaid salary amounted to US \$ 800 and non-payment was from November, 199 up to July 2001. The court awarded US \$ 200 general damages to the plaintiff.

In this particular case, the period of non-payment is from December, 1999 up to September, 2001 and the sum to be paid is bigger, being US \$ 11,000.

Doing the best in the circumstances, court awards plaintiff US \$ 2500 as general damages.

In paragraph 8 of the plaint, plaintiff prays to be awarded interest of 18% p.a. on the sums claimed. Yet in paragraph 10 of the plaint, plaintiff prays for interest on the decretal sum at court rate.

Given the fact that the amounts due were arrears of salary and/or food allowance thus not monies used for commercial purposes, coupled with the fact that plaintiff has been awarded a specific sum of money as general damages, court finds it appropriate that the interest on the sums awarded be at court rate.

The defendant failed to prove the counter-claim against the plaintiff. The same therefore stands dismissed.

In conclusion judgment is entered for the plaintiff against the defendant for:-

- i. US \$ 11,000 or its equivalent in Ugandan shillings at the current obtaining rate as at the date of payment, being arrears of salary,
- ii. Ug. Shs. 400,000/= being food allowance;
- iii. U S \$ 2500 or its equivalent in Uganda shillings at the current obtaining rate as at the date of payment, being general damages:
- iv. Interest at the court rate, to be calculated on the equivalent in Uganda shillings, in respect of the sums in (i) (ii) and (iii) above, the interest to run as from 01.12.1999 in respect of the sum in (i) above, and as from 01.08.2001, in respect of the sum in (ii) above, and as from the date of judgment in respect of the sum in (iii) above, up to the date of payment in full.

It is further ordered that the plaintiff is to have the costs of the suit and those of the dismissed counter-claim.

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Remmy K. Kasule

Judge

31/10/2008