

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
CIVIL SUIT NO. HCT – 02 – CV – CS – 072 – 2007

M/S AKELLO BEATRICE:.....PLAINTIFF

VERSUS

WORLD VISION UGANDA:.....DEFENDANT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant for unlawful termination of an employment contract. She prayed to be awarded both special and general damages.

The employment contract was executed on 12.02.2007. Defendant employed plaintiff as a Home Based Care Services manager. The contract period being five (5) years starting 12.02.2007. Defendant was to pay a specified monthly salary to plaintiff.

After execution of the contract, plaintiff reported to her duty station and started working.

On 16.07.2007 defendant terminated the employment contract with the plaintiff. Plaintiff instituted this suit. Defendant denied liability.

Two issues were framed for trial:

- i. whether termination of the plaintiff's contract of employment was wrongful or not.
- ii. Whether the plaintiff is entitled to the reliefs sought for in the plaint.

Plaintiff testified and called no witnesses. Defendant called a witness, DW1: James Otim, Deputy Chief of Party, Northern Uganda, HIV Aids & TB, DW2 Aneno Emily, the defendant's staff welfare and benefits officer, and DW3 Regina Adiak, Defendant's Technical officer, Community service in Apac and Oyam Districts.

As to the first issue, Defendant admitted that terminating the employment contract of the plaintiff as per exhibit P3, which, inter alia, stated that plaintiff was entitled to one week's salary in lieu of notice and that payment would be processed after she had handed over.

Both plaintiff and defendant admit that the plaintiff's employment contract was governed by the **NUMAT HUMAN RESOURCES & ADMINISTRATIVE DIRECTOR POLICIES AND PROCEDURES**, admitted in evidence as exhibit P4.

The plaintiff contended both in her evidence to court and through submissions of her counsel that on termination of her employment contract she was entitled to be given two (2) months notice or to be paid two(2) months salary in lieu of notice. This was pursuant to Paragraph 3 item 1.7.5 of exhibit P4.

The defendant, on the other hand, maintained that plaintiff was only entitled to be given a week's notice of termination of contract or one week's salary in lieu thereof because, at the time of termination, plaintiff was still on probation. Paragraph 5 of Item 1.7.5 of exhibit P4 so provided. The defendant had thus acted under that paragraph and item.

Section 58 (1) of the Employment Act No 6 of 2006 obliges an employer to give notice to an employee before terminating an employment contract; unless the termination is by way of summary dismissal in case of a fundamental breach of the employment contract by the employee under section 69(3) of the Act.

Fundamental breach is such a breach of the employment contract, that is so serious that it amounts to repudiation by the employee of the employee's obligations under the contract such as disobedience of lawful orders, misconduct, drunkenness, immorality, in competency and neglect of duty, amongst others: see

ELETU VS UGANDA AIRLINE CORPORATION

(1984) HCB 39

BARCLAYS BANK OF UGANDA

VS

GODFREY MUBIRU: Supreme Court Civil

Appeal No. 1 of 1991

And

MUKASA VS UCB (1994) 1 KALR 104.

Court notes that the termination letter, exhibit P3, is not a summary dismissal of the plaintiff. None of the defendant's witnesses stated that the plaintiff was summarily dismissed.

Court, therefore, on the evidence before it holds that the dismissal of the plaintiff was not of a summary nature and as such the plaintiff was entitled to due notice or payment in lieu of notice pursuant to the terms of the employment contract and in accordance with section 58(1) of the Employment Act 6 of 2006.

Exhibit P1, the Appointment Letter, provided that:

“Your appointment will be contingent on a satisfactory performance review after a three month probation period. If the review is satisfactory, you will be confirmed as a regular, full time employee and will be subjected to annual performance review on your anniversary hire date thereafter”

The above stipulation, in the considered view of this court, placed upon the defendant an obligation to expressly inform the plaintiff, after the three months probation period had expired, that her performance was not satisfactory and her probation period was being extended for another period, and find out from her whether or not she agreed to the extension. In the absence of that express communication, plaintiff was entitled to assume, and to carry on her duties on the assumption that after the expiry of the three month probationary period, she was now a regular, full time employee subjected, like all other confirmed employees, to annual performance reviews, or such other reviews as the employment conditions of the time determined.

Court notes that the review of the performance of the plaintiff was completed between the 22.06.2007 and 26.06.2007. This is a month or so after the probationary period had ended on 12.05.2007.

It is the finding and holding of this court that by not communicating to the plaintiff that her probationary period was being extended, the Defendant acted and made the plaintiff act in such away that she was now a regular confirmed employee of the Defendant. As such the plaintiff was entitled to be given due notice of a confirmed employee and not that of one on probation. This notice is two (2) months or payment of two (2) months salary in lieu thereof in accordance with item 1.7.5 of exhibit P3.

The common law position is that an employer may dismiss an employee for any reason, such as misconduct, negligence, dishonesty and unsatisfactory performance, amongst others: see:

S.B. KIBIRIGE VS UCB: H.C.C.S. NO. 606 OF 1985

and

BARCLAYS BANK VS MUBIRU (supra)

In Uganda this common law position is now subject to Article 174 of the Constitution, in respect of Public service employees, who must only be dismissed for just cause. The exception does not however apply to the case of the plaintiff in this case.

On the evidence adduced court is satisfied that the defendant, on coming to the conclusion that the continued employment of the plaintiff was no longer in the interests of the defendant, was entitled to terminate the contract of employment. But that had to be done in accordance with the Employment Act and the terms and conditions of the contract.

The answer to the first issue is that the termination of the plaintiff's contract was unlawful in that the same was done without giving the plaintiff two (2) months notice of termination or payment of salary in lieu thereof.

The second issue is whether the plaintiff is entitled to the reliefs sought.

From the resolution of the first issue plaintiff is entitled to payment of shs. 6,630,000/= at the rate of Ug. Shs. 3,315,000/= salary per month being payment for two(2) months in lieu of notice.

The plaintiff's claim for shs. 215,475,000/= being salary for the remaining periods of the contract is not sustainable in law given the nature of the employment contract between the plaintiff and defendant.

The law is that where an employee, like the plaintiff, is unlawfully dismissed without due notice being given, then such plaintiff is entitled by way of damages to payment of salary in lieu of notice: see

**BARCLAYS BANK OF UGANDA VS GODFREY
MUBIRU (supra)**

and

**GULAB ALLI USHILLAN VS KAMPALA
PHARMACEUTICALS LTD SCCS NO. 6 OF 1998**

Court therefore holds that the plaintiff is not entitled to the claim of shs 215,475,000/= salary for the remaining period of the contract.

As to the claim for terminal benefits, the plaintiff, according to the evidence of DW2, had benefits amounting to shs 3,150,358/=. The defendant had however deducted shs 2,223,258/= being salary over pay to the plaintiff and shs 536,440/= provident over pay.

The defendant never pleaded the deductions they made from the plaintiff as a counter-claim.

The evidence on record is that on appointment, the plaintiff was told and paid by the defendant as monthly gross salary shs 3,837,527/=. This salary was later changed to shs 3,315,000/= per month as per exhibit P2. The over payment was entirely the responsibility of the Defendant. Exhibit P2 dated 28.02.2007 never required the plaintiff to make any refund of any over paid money. No communication of any refund was subsequently made to the plaintiff. DW2, under cross-examination by plaintiff's counsel admitted that she had made the calculations showing the deductions on 04.03.2008, when the hearing of this case had already started. The plaintiff had never been consulted by defendant about the same.

Court finds that the deductions made and put forward by the defendant are intended to deny the plaintiff what she is claiming under this suit. They are an afterthought by the defendant against the plaintiff solely for defeating her claims in the suit. The defendant's conduct all along was not to claim any refund and to pay full salary for every month since plaintiff started work. It is after plaintiff sued defendant that the deductions were resorted to. Court rejects the said deductions. The plaintiff is entitled to recover the shs. 3,150,358/= as benefits.

As to the claim for general damages for shs. 35,000,000/= for having not secured another job and for having suffered inconveniences, hurt feelings and mental anguish, court holds that the damages awarded to plaintiff of payment of salary for two (2) months in lieu of notice are intended to cover all that the plaintiff has suffered. The claim of shs 35,000,000/= general damages is rejected

Accordingly Judgment is entered for the plaintiff against the defendant for:-

- (a) shs 6,630,000/= payment of salary for two(2) months in lieu of notice.
- (b) shs 3,150,358/= terminal benefits
- (c) Interest on (a) and (b) at 15% p.a from 16.07.2007 the date of termination of the contract of employment till payment in full.

The plaintiff is also awarded the costs of the suit against the defendant.

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Remmy K. Kasule
Judge
28th November, 2008