

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 103 OF 2009

NAMATOME ANNET ::: PLAINTIFF

VERSUS

M/S GREAT SEAS (U) LTD ::: DEFENDANT

BEFORE: THE HONOURABLE JUSTICE ELDAD MWANGUSYA

JUDGMENT

The Plaintiff, NAMATOME ANNET, was in early 2006 employed by the defendant Company as a Sales Representative. She worked for the Company till the year 2009 when she left the employment of the defendant. The circumstances under which she left the employment of the defendant are disputed. The plaintiff claims that her services were wrongfully terminated while the defendant claims that there was no termination of the plaintiff's employment but rather that she left on her own following her suspension pending investigations into the circumstances under which the plaintiff lost a sum of shs 4.999.555= which she claimed had been robbed from her as she was taking it from the defendant's shop in Kikubo to their offices at Kyambogo as was the practice. The loss of this money was reported on 27.11.2007. The plaintiff continued working for the defendant till the 28th day of April 2009 when the management of the defendant communicated to her and informed her that she was being suspended without pay until she cleared up with the insurance or paid the money herself. The contents of the letter were as follows:-

“RE: LOST OF COMPANY MONEY_

In regards to the Company money that got lost from you in November 2007, you are hereby notified that, you have been suspended from work and the Company will only pay your salary ending this month of April, 2009.

You have been suspended from work due to the findings by the Insurance's Assessor which is pinning you to have taken the money yourself. They claimed that on two occasions, you have given contradictory statements and therefore refused paying the lost money basing on your contradictions.

You will therefore be on suspension without pay until you clear up with Insurance or pay the money yourself. Also the company reserves the right to report the case to the police in order to recover the money from you".

The plaintiff's reaction to this letter was a strong worded letter from her lawyers, M/s Kasumba, Kasule & Co Advocates (exh. P.4) in which she accused the defendant of wrongly dismissing her from employment and demanding a payment of shs 29.500.000= "being her money in addition to damages that she hereby instructs us to demand the same from you as well as shs 5.000.000/= being our professional fees so far incurred in a week's time (7 days) in any case not later than the 20th day of may 2009. We have further instructions to drag you to Courts of law at your additional costs and peril".

The above letter was followed by this suit for wrongful dismissal and/or indefinite suspensions without pay, breach of contract, special damages, general damages and exemplary damages arising out of the said wrongful dismissal and costs of the suit.

The defendant, in her written statement of defence denied all the allegations of wrongful dismissal and indefinite suspension. She denied any breach of contract contending that there was no contract executed between the plaintiff and the defendant for the 2009. The defendant also contended the plaintiff was held responsible for the loss of shs 4.999.550= after Jubilee Insurance Company (U) Ltd declined to refund the money because following investigations into the circumstances under which the money was lost it was found that the plaintiff had misappropriated it. The defendant made a counterclaim to recover the disputed sum from the plaintiff, general damages for loss of business use of the money, interest at 30% from 27.11.2007 till payment in full and costs of the counterclaim.

At the scheduling conference held on 11.03.2010, the following points were agreed upon:-

- 1) ***That at the time of the alleged loss in November 2007 the plaintiff was an employee of the defendant.***
- 2) ***That at the time of the suspension, she was working for the defendant.***
- 3) ***That at the time of the loss of the money the plaintiff was in possession of shs 4.999.550= belonging to the defendant.***
- 4) ***That the said loss was occasioned in November 2007 and she was suspended on account of that loss on 28.04.2009.***

The issues framed for determination were as follows:-

1. ***Whether the plaintiff was dismissed from the employment of the defendant.***
2. ***Whether the parties are entitled to the reliefs claimed.***

On the first issue the defendant raised the issue of whether or not there existed a binding contract of employment between the plaintiff and the defendant that was enforceable by this Court. This arose out of the fact that unlike in previous years when both the plaintiff and the management of the defendant had signed contracts of service the one of the year 2009 had only been signed by the plaintiff. She signed it on the 30th January 2009 but the management of the defendant had not signed it by the time the plaintiff left their employment on 28.04.2009. The delay to sign the contract was attributable to the defendant who despite the absence of a signed contract continued to use the services of the plaintiff and now turns around and says that there was not contract. According of section 2 of the Employment Act “Contract of Service” means any contract whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship. In this case the plaintiff had worked continually for the defendant from the year 2006 up to April 2009. She was working for remuneration. All the agreements the plaintiff had signed were dated the 2nd of

January but were signed months later on. As an example the one of 2006 was signed on 3rd August 2006. I, therefore would not dwell so much on the unsigned contract of 2009 which was the fault of the defendant but on the undisputed fact that the plaintiff was working for the defendants which the defendants themselves acknowledge. This brings me back to the issue as to whether or not this relationship was terminated and by who. This arises out of the contention by the plaintiff that her services were terminated by the defendant while the defendant contends that the plaintiff was only suspended from her job which she abandoned on her own volition.

The Employment Act (Act 6 of 2006) makes provision for both Suspension and Termination. Section 63 of the Act provides as under:-

“63. Suspension.

- (1) Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay.**

- (2) Any suspension under Sub Section (1) shall not exceed four weeks or the duration of the inquiry whichever is the shorter.**

S. 64 complaint by employee.

(1) Where an employee believes that an employer was not justified in imposing a disciplinary penalty on him or her or in imposing a suspension with half pay, the employee may within a period of four weeks after the imposition of the penalty or suspension, make a written or oral complaint to a labour officer.

(2)

S.65 Termination.

(1) Termination shall be deemed to take place in the following instances

(a) Where the contract of service is ended by the employer with notice.

(b) where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same term or terms not less favourable to the employee;

(c) Where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee; and

(d) Where the contract of service is ended by the employee has received notice of termination of the contract of service from the employer, but before the expiry notice.

As far as the suspension is concerned Section 63 of the Employment Act was not followed in three aspects. First of all when the defendant purportedly suspended the plaintiff, she was not conducting an inquiry. According to the letter of suspension the inquiry had been concluded and the plaintiff was being asked to sort out the matter with the insurers or refund the money that she allegedly took and reported the case as a Theft. Secondly the suspension pending an inquiry was supposed to be on half pay which the plaintiff was not paid in this case. Thirdly the suspension is supposed to be for a definite period not exceeding four weeks or the duration of the inquiry whichever is the shorter. If as I have already observed there was no inquiry going on the period of four weeks stipulated in the Act would not even arise.

So the so called suspension of the plaintiff was in contravention of the law. The provision of S. 65 on Termination was not followed either. The question that arises from the non compliance with the is as to whether the purported suspension of the plaintiff amounted to a termination of her contract as she interpreted it. In my view the plaintiff was right to interpret the unlawful suspension as a termination of her contract. She was given two conditions for her return to work but for all intents and purposes the relationship between the plaintiff and the defendant was no more and Court would safely say that the plaintiff was dismissed from her employment.

On the remedies available to the plaintiff Mr. Pope Ahimbisibwe counsel for the defendants cited the case of Bank of Uganda versus Betty Tinkamanyire where His Lordship Justice Kanyehamba JSC as he then was made the following pronouncement:-

“The contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly claims of holidays, Leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

I would confine the compensation for unlawful dismissal of the appellant to the monetary value of the period that was necessary to give a proper notice of termination which is commonly known in law as compensation in lieu of notice. The principles established by this Court in Barclays Bank of Uganda vs- Godfrey Mubiru (supra) remain good law that governs the relationship between an employer and employees with regard to termination of the latter’s employment”.

Applying the above principal, the plaintiff is entitled to one months’ salary in lieu of notice as stipulated in her contract. Going by the terms of the 2008 contract this translates into shs 300.000=.

In the case of Bank of Uganda vs- Betty Tinkamanyire (supra) the Court awarded the respondent General and aggravated damages because of the manner her services were terminated. The instant case is a demonstration of how an employee is thrown out of her employment at the whims of an employer in complete disregard of the Employment Act which is supposed to govern the relationship. For flouting the law the way the defendant did I would order for compensation the equivalent of three months’ salary which translates into 900.000= plus punitive damages of shs 1.000.000=.

Judgment is entered in favour of the plaintiff for a total of shs 2.200.000= of which the breakdown has been given. She is also awarded costs of the suit.

On the counterclaim I have already explained the circumstances under which the plaintiff is alleged to have lost the money being claimed by the money was stolen from her while the counterclaimant claims that she fabricated the theft in order the basis for the counterclaim is that the police report which was exhibited indicated that there was nobody at the scene when it was visited and that the plaintiff/Counter-defendant gave contradictory stories to the Insurers who were investigating the theft. First of all I do not know how the police officer visiting a scene in a city would expect to find persons who might have been present at the time of theft too place would still be available. Secondly I do not understand as to how long the Insurers established that the plaintiff had told them contradictory version of the story when following the incident the plaintiff/counter-defendant confirmed carrying the money in the same manner that would have exposed it to the same risk at the hands of the same person.

I do not find this a sufficient basis for making a finding that the plaintiff/counter-defendant was responsible for the loss of the money and for which reason the counter-claim against her is dismissed with costs.

Eldad Mwangusya

J U D G E

28/11/2011

29.11.2011

Michael Kintu for plaintiff

Plaintiff in Court

Pope Ahimbisibwe for defendant

Clerk – Milton

Judgment read in open Court (Chambers)

Keitirima John Eudes
DEPUTY REGISTRAR
29.11.2011