

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 1152 OF 1998

1. WEKHASO FRED
2. CHRISTOPHER SEMAKULA
3. SENJUBA ERISA
4. MUSINGUZI ROBERT
5. MASSAJA R
6. KAKIIZA MARGARET

} **PLAINTIFFS**

VERSUS

THE DIARY CORPORATION DEFENDANT

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

JUDGMENT

The plaintiffs numbering six are former employees of the Dairy Corporation which at the time of their employment was a parastatal created by an Act of Parliament. Their contracts were terminated under the ordinary standing regulations instead of the retirement scheme that had been designed around 1993 where various staff were paid meaningful retirement package in preparation for the corporation's subsequent privatisation. It was during the subsistence of this suit that the dairy corporation was eventually privatised wherein the dairy corporation, now the defendant took over its liabilities. The plaintiffs claim is that they should have been paid the same retirement package.

The defendant however denied the plaintiffs' claim and contended that the plaintiffs were not entitled to be retired and paid under the said scheme and some of the claims under the standing orders maintaining that the plaintiffs were paid their due terminal benefits.

At scheduling, the parties agreed that;

- a) all the plaintiffs were employees of the defendant
- b) The salary scales claimed by the plaintiffs are not denied
- c) The plaintiffs ceased to be employees of the defendant between 1995 and 1996
- d) The services of the plaintiffs were terminated by the defendants
- e) Fred Wekhaso, 1st plaintiff was appointed on 31.10.1983 and confirmed on 11.2.1983. His probation and/temporary and confirmation appointment was tendered as an exhibit and marked Exh. PVII. His services were terminated on 9th February 1996 because the handling of Corporation crates which was his brief as a Clerical Officer became the responsibility of the supervisor. His termination letter was tendered as Exh. P.I
- f) Christopher Semakula, 2nd plaintiff was appointed with effect from 1.05.1983 (no probationary appointment in this case) as a general hand and later designated watchman on 23.05.1994. His letter of appointment was tendered as Exh. PVIII. At the time his services were terminated on 15.12.1995 he was a night watchman at Rwashamaire Depot. His services were terminated because the security situation had improved and the corporation carried out financial transactions through the Bank. The letter of termination was exhibited as Exh. PII.
- g) Senjuba Erisa, 3rd plaintiff was appointed with effect from 2.02.1984. The letter of his temporary appointment was tendered as Exh. PIX. His services were terminated with effect from 27.12.1995 vide his letter tendered as Exh. PIII. No reason was given for termination.
- h) Robert Musinguzi, 4th plaintiff was appointed on 8.11.1999 without any temporary appointment. Letter of appointment was tendered as Exh. PX. His services were terminated with effect from 15.12.1995 on the ground that security situation had improved and all financial transactions were done through Banking at Buremba, Mbarara. His termination letter was Exh. PIV.
- i) Masajja 5th plaintiff was appointed on 27.09.1976 on temporary terms as was allegedly confirmed. He claims that his documents were looted in 1999 and so could not tender them. His services were terminated on 29.12.1995. No reasons were given for termination. Termination letter is Exh. PV.

- j) Margaret Kakiiza, 6th was confirmed on 21.09.1973. Letter of confirmation is Exh. PXII. Her services were terminated with effect from 22.11.1995. No reasons were given for her termination.

Three issues were framed for determination and these were;

- a) Whether the plaintiff were entitled to be retired under the defendant's retirement scheme
- b) Whether termination of the plaintiff's employment by the defendant was lawful
- c) Whether the plaintiffs are entitled to remedies claimed.

Parties filed written submissions. M/s Kawanga & Kasule Advocates, counsel for the plaintiff contended that each of the plaintiffs' employment contracts with the defendant was governed by its standing orders that came into force on 27th/04/1995. The basis for contention was that prior to these terminations, the defendant's management had during July, 1993 designed a retirement scheme to enable its employees, who would be laid off, to retire with a living retirement package. This proposal was followed up with management's detailed worked out figures of the emoluments that would be paid to each of the employee to be laid off. It was later presented to the board of the company for approval of implementation, which the Board did. They maintained that the plaintiffs' claim is not based on termination under the defendant's corporation standing orders but under the retirement benefits scheme that was put in place for the restructuring of the corporation which necessitated improved payments under the said scheme.

They further contended that a wrong termination of employment is illegal, that the plaintiffs were discriminated against in the process of termination of their employment. He thus sought to rely on the authority of **WILLIAMS V COMPAIR MAXN LTD (1977) 1 RLR 83** for the principles of termination of an employment contract on grounds of redundancy thus;

- i) The employer should give the employees ample notice of the impending redundancies

- ii) The employer should consult the union as to the best means by which the desired management result can be achieved jointly and with little hardship to the employees as possible. The employer should seek to agree with the union as to the selection criteria to be applied
- iii) The selection criteria should be objective and set against such things as attendance record, efficiency at the job, experience and length of service
- iv) Selection should be made fairly in accordance with that criteria
- v) Before taking the decision to terminate the contract, the employer should first consider the possibility of offering the employee alternative employment

Counsel for the plaintiffs maintained that the defendant took a decision to reduce its workforce by reason of redundancy; it was therefore incumbent on the defendant to act reasonably in implementing the decision by ensuring that ample notice is given, a fair selection criteria put in place and followed strictly during the exercise. It was his contention that the disparity in payments made to the employees as between the plaintiffs and the rest is unjustified. That whereas the rest of the employees benefited under the special retirement scheme the plaintiffs did not, rather their assessments were done in accordance with pre-revised position of the terms and conditions of service. He invited this court to find that the termination was unlawful.

On the issue of remedies, counsel reiterated the claims as stated in paragraphs 8, 9, 10, 11 and 12 of the plaint and thus maintained that the plaintiffs were entitled to general damages, interest and costs for the suit

M/s Katende, Ssempebwa & co advocates who represented the defendant however did not agree with the plaintiffs contentions, They maintained that the defendant never paid out to various staff a meaningful or any retirement package in preparation for the corporation's subsequent privatisation; that the plaintiffs were never discriminated against, as over 90 of their fellow employees had their employment terminated under the same terms as the plaintiffs. It was their contention that the law governing the plaintiffs' employment was the

Diary Corporation Standing Orders, made on 27th 1995. He further contended that for an employee of the defendant corporation to qualify for the retrenchment benefits under clause 54 of the standing orders, one would have to cease being an employee in the defendant corporation by virtue of the repeal of the Diary Industry Act No.4 of 1967. The said Act was repealed by Diary Industry Act No. 8 of 1998 long after the plaintiffs' employment had been terminated and as such the plaintiffs do not qualify for retrenchment benefits. Qualification of an employee under clause 10 is limited to those aged 60 and above; none of the plaintiff satisfied this requirement and they instead qualified for terminal benefits under clause 8, which were duly paid to them.

It was their contention that the 2nd, 4th, 5th and 6th plaintiffs did not qualify for payments under clause 53 since the retirement scheme is only open to employees of grade D and above to which only the 1st and 3rd plaintiffs were eligible and that the other plaintiffs are covered by NSSF to which the defendant has no jurisdiction. They further maintained that there was no discrimination as a total of 93 employees were terminated in a bid to ease the financial difficulties in the company; they are not entitled to any retirement benefits and the remedies sought are unfounded. He invited this court to dismiss the suit with costs.

I have perused the evidence on the record and the submission of learned counsel on either side; I am persuaded by the submission of counsel for the defendant on the issue that there was no discrimination as regards the termination of the plaintiffs. The corporation experienced financial difficulties due to an economic downturn and competition from rival companies to which the posts of night watchman, General Hands, turn men were abolished while the staff of posts such as askaris, clerks and office messengers were reduced, thus a total of 93 were terminated/ dismissed inclusive of the plaintiffs.

I have considered the able arguments of counsel on either sides as regards the issue of the retirement scheme and the payments made to the plaintiffs and I am inclined to find as I hereby do that PW 1 during re examination confirmed that those who were terminated were not paid in accordance with the terms of service, it is those that remained in service that were paid in accordance with the terms of service. The document that the plaintiffs seek to rely

upon was prepared way after they had left, the same does not apply to them as such the defendant rightly terminated the plaintiffs under clause 8 of the said standing orders. Thus the plaintiffs are not entitled to the remedies sought but the admission made by counsel for the defendants about the unpaid sums should be accordingly paid. The case is thus dismissed with costs.

Eldad Mwangusya

J U D G E

09.07.2012

09.07.2012

Mohammed Ali Kajubi for Plaintiffs

Plaintiff 1 absent

Plaintiff 2 in Court

Plaintiff 3 in Court

Plaintiff 4 in Court

Plaintiff 5 in Court

Plaintiff 6 not in Court

Tarja Mbabazi for defendant.

Clerk – Milton

Court:

Ruling read in open Chambers

Keitirima John Eudes

DEPUTY REGISTRAR

09.07.2012

