

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 372 OF 2007

BATULI GEORGE WILLIAM:::PLAINTIFF

VERSUS

NAKASONGOLA DISTRICT LOCAL COUNCIL:::::::::::::::::::::::::DEFENDANT

BEFORE: THE HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The plaintiff brings this suit against the defendant for inter alia; a declaration that he was wrongly and or unlawfully dismissed from public service. The plaintiff was under the employment of the defendant as the District Education officer (DEO) from September 20th, 2000 until 16th February, 2004 when he was interdicted on allegations of causing financial loss, abuse of office and uttering false academic documents. As a result, he was put on half pay. Criminal proceedings were commenced against the plaintiff in the Chief Magistrate's court of Nakawa vide NAK-C0-0042 of 2004 (Uganda Vs G.W.Batuli) which were later determined and the plaintiff was acquitted on all the charges.

The plaintiff alleged that as the criminal trial was going on, the defendant on more than three occasions summoned him for a disciplinary hearing basing on the same facts that constituted the charge in the criminal matter and requested him to avail his academic documents which were at the same time presented before the court. In response, the plaintiff informed the defendant that the documents requested for

had been deposited in court; and further that it was contrary to the sub-judice rule for the defendant to make an investigation in a matter pending before court. The defendant dismissed the plaintiff albeit the matter instigated, prosecuted and moved by them that was by then pending for court's decision.

In his defense, the defendant alleged that the plaintiff was interdicted on a charge of causing financial loss of Shs. 43Million Ugandan shillings, abuse of office and uttering false documents. The plaintiff continued to receive half pay of his salary. The District Service Commission through its Secretary wrote to the plaintiff to appear before the Commission on 13th October 2005 with his original academic transcripts. The plaintiff later appeared before the District Service Commission and was later dismissed for uttering false academic documents.

At scheduling, the only agreed facts were that:

1. The plaintiff was employed by the defendant as the Nakasongola District Education Officer between 20th September, 2000 and 30th December 2005.
2. On the 16th day of February 2004, the plaintiff was interdicted pending criminal proceedings' in Nakawa Court.
3. The plaintiff was dismissed from service of the defendant on 30th December 2005.

The agreed two issues were;

1. Whether the plaintiff was wrongfully and unlawfully dismissed.
2. If so, whether the plaintiff is entitled to the reliefs sought.

The plaintiff was represented by Mr. David Sempala from KSMO Advocates while the defendant was represented by Mrs. Nabasa Charity.

Issue No. 1; Whether the plaintiff was wrongfully and unlawfully dismissed;

In regard to issue 1, Counsel for the plaintiff relied on Article 28(1) of the 1995 Constitution of the Republic of Uganda that in determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. He further relied on Article 42 which provides that:

“Any person appearing before any administrative officer or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her”.

Further Section 66 of the Employment Act No.6 of 2006 provides that:

“Notwithstanding any other provision of this part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation”.

Counsel added that it is not discretionary or directory but rather a mandatory requirement for an employer to conduct this hearing before an employee is dismissed and whatever falls short of this automatically becomes an unlawful and wrongful dismissal from employment which gives the aggrieved employee a right of redress before the courts of law as enshrined in Article 42. He added that the only circumstance where an employer is at liberty to dismiss an employee without a hearing is in instances of summary dismissal.

Counsel contended that the ground for the plaintiff's dismissal as indicated in the dismissal letter from Public Service Commission and admitted in court as **Exhibit P.8**, paragraph 2, was uttering false documents. The Chief Administrative Officer while giving evidence as DW2 during examination in chief reiterated the same thing.

It was Counsel's further contention that the ground for the dismissal did not fall within the ambit of conduct that warrants an employer to dismiss an employee summarily and further, the procedure followed by the District Service Commission in terminating the employment of the plaintiff was not as stipulated by the law. Further, the District Service Commission held a meeting in which it was resolved that the plaintiff be dismissed from Public service on allegations that were neither brought to the attention of the plaintiff nor an opportunity to appear and defend himself. The decision taken in the defendant's absence was unfair because no opportunity was availed to him to defend himself against the ground for dismissal which is the appropriate procedure that ought to have been taken. The commission did not inform the plaintiff of the report from the University in order for him to be availed an opportunity to appear and defend himself and further that, the personal defense that the plaintiff was asked to submit was a defense to the grounds on which his interdiction were based, to which the plaintiff had complied. Further still, the signature alleged to belong to the plaintiff was denied by him and the copies that were investigated were denied by the plaintiff; and according to the plaintiff, his correct documents were in the custody of the IGG pending the determination of the criminal matter which was determined and the plaintiff acquitted of all the charges brought against him which included uttering false documents.

Counsel submitted that the allegation of uttering false documents against the plaintiff was wrong and very mistaken and it is for this reason that the plaintiff should have been informed of the investigations against him and allowed an opportunity to appear and defend himself before that information was relied on to dismiss him.

Counsel concluded that there is no way the defendant ought to have lawfully carried out the investigation when the matter was pending in courts of law without offending the sub-judice rule yet it is settled law that when a matter is pending before courts of law, no body or person or entity has powers to investigate the same.

In reply, Counsel for the defendant relied on the testimony of the different defence witnesses to support his defense to wit: **DW1, Vincent Ekwang**, the former Deputy Registrar of Makerere University testified that the student number on the plaintiff's documents belonged to a student of Dental Surgery. Further **DW2, Kayise Christen**, the CAO of Nakasongola District at the time of the plaintiff's employment testified that the plaintiff was dismissed for having submitted false documents and he was advised to appeal the termination decision to the Public Service Commission which he did not do. Further, **DW3, Lukyamuzi Agapitus**, who was the caretaker of the office of the District Service Commission, testified that the plaintiff was asked to come for a hearing which he did and he signed in the register book. **DW4, Namanya Catherine**, the Government Analyst who questioned the documents testified that they were similar samples of the signatures to the exhibit shown.

Counsel further relied on Regulation 31 of the Public Service Regulations S.I 288-1 which provides that;

Regulation 31-2: Notwithstanding the institution of criminal proceedings in any court against any public officer under sub regulation (1) of this regulation, proceedings for dismissal upon any grounds in a criminal charge may be taken against that officer, and the decision of the commission under this sub regulation shall not in any way be influenced by the decision of the court.

Counsel added that the dismissal of the plaintiff was due to uttering of false academic documents, and the criminal case which had been lodged against him for causing financial loss did not in any way influence the decision of the Public Service Commission. He concluded that the Public Service Regulations, the Public Service Standing Orders and the laws that governed the employment of the plaintiff were followed and the District Service Commission followed the procedure as per the law, therefore, the dismissal was neither wrongful nor unlawful as alleged by the plaintiff.

In rejoinder, counsel for the plaintiff reiterated his earlier submissions that their major point of contention arose from the nature, manner and procedure by which the dismissal was done as the plaintiff was not given a chance to defend himself as per the known procedures of a fair hearing and this was a violation of his constitutional right for which he has to be compensated.

I have considered the submissions on either side.

The plaintiff was summarily dismissed. Counsel for the defendant submitted that the dismissal was in order because the evidence from Makerere revealed that the plaintiff had uttered false documents.

Under the Employment Act 2006, the law on summary dismissal is as follows:

- i) Summary dismissal means a dismissal without notice or with less notice than the employee is entitled to under the contract or under the Act.
- ii) Summary dismissal is justified when an employee, by his conduct shows that he has fundamentally broken the contract of service. See Section 69 of the Act.

The phrase fundamentally broken as used in Section 69 is not defined in the Act. However, under common law, which applies to this contract by reason of the provisions of the Judicature Act, the law on summary dismissal is, like in ***Barclays Bank Vs Mubiru a*** dismissal without notice (and without a hearing) and it is reserved for serious misconduct.

There is no exhaustive list of the misconduct that justifies summary dismissal, but according to ***Laws Vs London Chronicle [1959] 1 WLR 698*** one isolated act of misconduct is sufficient to justify summary dismissal. The test is stated in the above case to be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.

Be the above as it may, it is important to note that the post 2006 Employment Act position is that there is a mandatory right to be heard now reserved by Section 66 of the Act for every form of dismissal, a right not available in summary dismissals previously (***Godfrey Mubiru Vs Barclays Bank (supra)***) otherwise, the rest of the

common law meaning of summary dismissal as stated above was substantially left intact by the Act. This of course excludes only the probationary contracts (S. 67 of the Act).

Therefore, even if the plaintiff's conduct (or misconduct) was regarded as one that amounted to disregarding the essential conditions of the contract of service such as to be regarded as having fundamentally broken the contract of service and therefore justifying summary dismissal, the plaintiff had to be accorded the right to a hearing. The right to a hearing is guaranteed by the Constitution of the Republic of Uganda under Article 42 as follows:

“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect to any administrative decision taken against him or her.”

Article 44 (c) also provides that the right to a fair hearing cannot be derogated from.

The supreme court of Uganda has held in ***Barclays Bank of Uganda Vs Godfrey Mubiru SCCA NO.1 of 1998*** that; (Kanyeihamba JSC, as he then was);

“where a service contract is governed by a written agreement between the employer and the employee, as in this case, termination of employment or service to be rendered will depend both on the terms of the agreement and on the law applicable”.

In this case, the employment contract between the plaintiff and defendant was governed by the appointment letter, **Exhibit P1**, which provided under paragraph 2 that:

“This appointment is subject to the Constitution of the Republic of Uganda, the Public Service Act, and the Regulations made there under, the Public Service Standing Orders...”

The above laws are to the effect that the plaintiff had to be given an opportunity to be heard on any allegations made against him.

Section 66 of the Employment Act No. 6 of 2006 is to the effect that;

S. 66(1) notwithstanding any other provision of this part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any other provision of this part, an employer shall before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance and the person if any chosen by the employer under subsection (1) may make.

(3) The employer shall give the employee and the person if any chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).

The evidence of the plaintiff in his written witness statement uncontroverted by the defendant reads in part as follows;

“When I appeared on the first occasion, I served the DSC with the letter from my lawyers. I was not interviewed because the DSC recognized fact that the matter was before court. When I went on the same occasion, the DSC told me my case was still in court. Nothing went on. On the third occasion, the DSC asked me to produce photocopies of my testimonial, if I had any. I did not have any but they had them in their files. The last occasion I did not attend because I was appearing before the Magistrate’s court. In December 2005, I received a dismissal letter”.

Further DW3, on cross examination testified that;

“We did not tell the plaintiff that we had a report from MUK.we did not give the letter from MUK to the plaintiff. When we invited him on 5th October 2005, he was not told about the letter from Makerere. The DSC acted upon advice from Public Service Commission. The plaintiff appeared very many times. Whenever he would be asked to produce the originals, he would say they were in court. The DSC ignored the request to await the outcome of court process”.

The letter from MUK Exhibit D4, reads in part as follows;

“RE: verification of the qualifications of Batuli George William.

We can therefore conclude that Mr. Batuli George William was not our student and any academic papers uttered purportedly from Makerere University is forged”

From the above evidence, it is clear that the plaintiff did not defend himself as he was not given an opportunity to know and verify the evidence against him. He was never served with the letter from MUK which was the main basis of his termination from employment.

It was the evidence of **DW4, Namuwooya Catherine**, a document examiner working with the Government Analytical Lab that:

“According to the report, there was no request for specimen signatures”.

The handwriting report, **Exhibit D8**, it reads in part as follows;

“I have observed very many fundamental differences between the questioned signatures on exhibits C –R2 and the sample signatures of one BATULI GEORGE WILLIAM given on exhibits A and S.

The differences observed are very fundamental and I have found sufficient evidence to indicate common authorship. I am therefore of the opinion that the questioned signatures on Exhibits C-R were not signed by the same person whose sample signatures have been given on Exhibits A and S in this case”.

A clear analysis of the above report, I find that **Exhibits C-R2** are the purported photocopies of the forged academic documents which the plaintiff is alleged to have affixed his signature and **Exhibit A** is the photocopy of the statement of personal defense of the plaintiff whereas **Exhibit S** is the original Commercial

Bank Ltd cheque book in the names of the plaintiff. From the evidence of DW4 in cross examination, she confirmed to court that relying on a photocopied document as a specimen had its limitations and she did not know whether the author of the report ascertained that the cheque book belonged to the plaintiff. From the above, I can rightly conclude that the defendant has failed to prove to court that the signature on the forged academic documents (exhibits C-R2) is similar to that affixed on Exhibits A and S. This implies that it was not proved that the plaintiff was the author of signatures on Exhibits C-R2.

In *Jabi Vs Mbale Municipal Council (1975) HCB 191*, it was held that it is a fundamental requirement of natural justice that a person properly employed was entitled to a fair hearing before being dismissed on charges involving a breach of a disciplinary regulations or misconduct. The court further held that it was perhaps a different case if the employee was on temporary terms, but an employee on permanent terms is entitled to know the charges against him and to be given an opportunity to give any grounds on which he relied to exculpate himself. Where that was not done, it could properly be said that the dismissal was wrongful.

Further in *Ridge Vs Baldwin & Others [1964] A.C 40*, one of the leading authorities on termination of employment relationships, it was held, and I agree that even if the respondents had power of dismissal without complying with the regulations, they were bound to observe the principles of natural justice. It was held in that case that a decision reached in violation of the principles of natural justice, especially the one relating to the right to be heard, is void and unlawful.

In *Eng. Pascal R. Gakyaro Vs Civil Aviation Authority CACA No. 60/2006*, Court of Appeal observed that the principles of natural justice demanded that he be given

an opportunity to be heard in his defense for whatever worth it might be. That the overall effect of a denial of natural justice to an aggrieved party renders the decision taken void and of no effect.

Relating the same principles to the instant case, it is in my view immaterial that the defendant was convinced that the plaintiff was guilty of uttering false academic documents justifying dismissal. He was condemned unheard. Since the defendant saw it fit to give reasons for termination of the plaintiffs' services as per the letter of termination, it is clear that the defendant considered the accusations against the plaintiff proved and yet he had not had the opportunity to defend himself before any properly constituted body. The implication is that he was condemned without his matter being heard by an independent and impartial body.

Basing on the evidence adduced, I find that though the defendant informed the plaintiff of the allegations against him, he was not accorded a right to respond to them nor was he given a right to question the people who made the allegations and examine the evidence against him.

I hold that the termination of employment of the plaintiff was done without affording him an opportunity to be heard and therefore he was not given a right to defend himself or comment on the allegations nor was he given an opportunity to know the evidence brought against him.

On the evidence adduced, I have come to the conclusion that the decision to terminate the plaintiffs' services was null and void. Accordingly, the answer to the first issue is in the negative.

Issue 2; Whether the plaintiff is entitled to the reliefs sought;

The plaintiff in his plaint and evidence prayed for a declaration that his dismissal from Public Service by the defendant was wrongful and unlawful and a declaration that by refusing to remit the plaintiff's salary as required, the defendant acted unlawfully and in breach of the employment contract. The plaintiff prayed for special damages of Ug. Shs. 35,373,032= (Thirty Five Million, Three Hundred Seventy Three Thousand, Thirty Two shillings only) being salary arrears and the pension entitlement to be assessed by court. He further prayed for exemplary damages for the unlawful acts of the defendant in dismissing the plaintiff. General damages for the wrongful and unlawful dismissal, interest at 25% per annum from the date of filling this suit till payment in full and costs of the suit.

Counsel submitted that the plaintiff's monthly pay was Ug. Shs. 1,500,000/= and in the circumstances invited court to award sufficient damages using a multiplier of 25 as the plaintiff has over the years since his wrongful and unlawful dismissal struggled to provide for his family especially given the fact that it was impossible for him to find employment elsewhere.

Counsel for the defendant on the other hand submitted that the claim for salary arrears and special damages after the dismissal cannot stand as the position of the law is that after dismissal, an employee is not entitled to salary arrears as stated in ***Kengrow Industries Vs Chandran SCCA NO.7 of 2001*** which cited the authority of ***Ushillani Vs Kampala Pharmaceuticals- sup ct civil appeal 6 of 1998 reported at page 84 of Vol. (1999)***, S.C.D civil in which Mulenga JSC stated:

“Where a contract of employment is repudiated by the employer through dismissal of an employee, even in a case of employment for a fixed period,

the employee cannot insist on continuing to be provided with work and payment. If the dismissal, be it express, implied or even constructive, is unequivocal, then the only remedy available to the wronged employee is damages”

In regard to general damages, it was the case for the defendant that the plaintiff had not proven wrongful/ unlawful dismissal and therefore not entitled to any of the remedies sought and counsel relied on ***Borham Carter Vs Hyde Park Hotel Ltd [1984] 4 TLR 177***, where Berko J (as he then was) stated;

“Plaintiffs must understand that if they bring action for damages it is for them to prove their damages”.

In regard to interest, counsel relied on ***ECTA (U) LTD Vs Geraldine and Josephine Bamukasa S.C.C.A No.29 of 1994***, where it was held by Odoki Ag.C.J that;

“Court has discretion to award reasonable interest. A distinction however has to be made between awards that arise out of commercial transactions, which would normally attract a higher interest, and awards of general damages which are mainly compensatory”.

Counsel concluded that the plaintiff was lawfully dismissed for just cause and is therefore not entitled to the remedies sought.

A principle has been developed by the courts over time in cases of unlawful dismissal. It is to the effect that courts where appropriate, in exercise of their discretion, may award damages which reflect the courts disapproval of a wrongful dismissal of an employee. In regard to general damages, Justice Remmy Kasule in ***Issa Baluku Vs SBI INT Holdings (U) Ltd HCCS NO.792 OF 2005***, held that;

“However, another additional principle has been developed by courts overtime in cases of unlawful dismissal. This is the principle that courts, where appropriate in exercise of their discretion, may award damages which reflect the courts disapproval of a wrongful dismissal of an employee. The sum that may be awarded under this principle is not confined to an amount equivalent to the employees’ wages”.

In the case of ***Bank of Uganda Vs Betty Tinkamanyire SCCA No. 12 of 2007***, Tsekooko JSC (as he then was), expounding on the above principle, considered the supreme court of Ghana case of ***Nortey- Tokoli & Others Vs Volta Aluminium Co. Ltd [1990] LRC pages 579 and 599***, where the supreme court of Ghana justified the principle on the ground that;

“A Ghanaian who has suffered a wrong expects redress and our law of wrongful dismissal should reflect it”.

In ***Charles Lwanga Vs Centenary Rural Development Bank, CA CA NO. 30/1999***, it was held that general damages are awarded to an employee, whose employment has been unlawfully terminated, if that employee proves facts that call upon court’s disapproval of the employer’s conduct in terminating the services of the employee.

Taking the decisions referred to above in consideration and other factors relating to the case, I award the plaintiff general damages of Ug. Shs. 50,000,000/= for the embarrassment of being portrayed as a fraudulent and incompetent person as well as the resultant inconvenience and suffering without giving him a chance to exculpate himself. The sum awarded as general damages shall carry interest at court rate per annum from the date of judgment till payment in full.

The prayer for special damages is not sustainable because though pleaded by the plaintiff, they have not been specifically proved. I also agree with the defendant's Counsel that a claim for salary arrears and special damages after termination cannot stand since after dismissal, an employee is not entitled to salary arrears. (See *Kengrow Industries Vs Chandran (supra)*).

Exemplary damages have not been proved as well. In the case of *Rookes Vs Barnard [1964] 1 ALLER 367*, it was stated that there are only two categories of cases in which an award of exemplary damages could serve a useful purpose and these are; In the case of oppressive, arbitrary or unconstitutional action by the servants of the government and in the case where the defendants' conduct had been calculated to make a profit for himself which might well exceed the compensation payable to the plaintiff. None of these ingredients was in existence in the present case. For this reason, the prayer for exemplary damages fails.

The plaintiff will have the costs of this suit.

In conclusion, the case against the defendant succeeds in the respects stated above.

The plaintiff is awarded the following:

1. Decision to terminate the plaintiff services was null and void.
2. General damages of Ug. Shs. 50,000,000= (Fifty Million only).
3. The sum on general damages shall carry interest at court rate per annum from the date of judgment till payment in full.
4. Plaintiff will have the costs of the suit.

Elizabeth Musoke

JUDGE

9/03/2015