

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**(CIVIL DIVISION)**

**CIVIL SUIT NO. 152 OF 2010**

**SSEMALWADE WASSWA MICHEAL-----PLAINTIFF**

**VERSUS**

**UGANDA COFFEE DEVELOPMENT AUTHORITY-----RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The facts of the plaintiff's case are that, he was employed by the defendant since 1991 in various posts on permanent and pensionable terms until 1998. The defendant's board of directors restructured the terms of employment from permanent to contractual basis wherein the plaintiff was retained as Principal Administration Officer on a continuous three year contract which was last renewed on 1<sup>st</sup> October 2008.

The plaintiff continued in employment without his contract being renewed since the defendant did not have a board of Directors. He was reappraised on his job performance and was assessed as good by the defendant's Performance Committee on Appraisal and his three year contract was retrospectively renewed.

The plaintiff's contract of employment was summarily terminated on grounds of unsatisfactory performance.

The plaintiff filed this suit seeking general and exemplary damages arising from breach of contract of employment.

## **AGREED FACTS**

According to the record of proceedings, the following are the agreed facts;

- The plaintiff was an Employee of the defendant in various positions since 1991.
- By a contract dated 31<sup>st</sup> December 2005, the plaintiff worked as a Principal Administrative Officer on a three year contract till the 31<sup>st</sup> day of September 2008.
- By a letter dated 10<sup>th</sup> February 2010, the plaintiff services with the defendant were terminated.
- The plaintiff was paid terminal benefits to wit; 3 months' salary in lieu of notice, one month's salary in lieu of notification and hearing before termination, PAYE, NSSF, accrued leave and retirement benefits scheme as per the computation of final benefits.
- Statutory Demand Notice was served onto the defendant.

## **AGREED ISSUES.**

(1) Whether or not the plaintiff's services were lawfully terminated?

(2) What are remedies available to the Plaintiff?

At the trial both parties led evidence of one witness each in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

The case proceeded by way of witness statements which were admitted on record and the witnesses were cross-examined on their witness statements admitted as evidence in chief.

## **Issue 1**

### ***Whether plaintiff was lawfully terminated from employment by the defendant?***

The plaintiff in his evidence in chief/witness statement stated that he diligently carried out his duties to the satisfaction of the defendant and the employer had at no particular moment complained about the plaintiff's performance and his last performance assessment he was rated as 'Good'.

The plaintiff further lead evidence to show that his services were summarily terminated purportedly for unsatisfactory performance only six months after the said assessment and renewal of his contract and was never given a chance to defend himself against the accusations.

The plaintiff contended that during his 18 years of service with defendant he had never been warned of poor performance. The new Board of the defendant that terminated his services had been appointed 6 months had only interacted with the plaintiff only once.

The plaintiff's counsel further contended that he was never given a hearing or an opportunity to defend himself against the accusations.

On the basis of the above testimony, the plaintiff counsel submitted that the plaintiff was unfairly terminated since the Board relied on allegations made by the managing director and Board Secretary.

The defendant contended that the plaintiff's contract of employment was terminated by the Board of Directors of the defendant based on the contract of employment.

The defendant in its evidence testified that the plaintiff expressed his interest to renew his contract on the 10<sup>th</sup> July 2008 which was replied by the defendant on the 30<sup>th</sup> July 2009 that his contract had been renewed for a further 3 years effective 1<sup>st</sup> October 2008. The plaintiff in his response to the Managing Director on 10<sup>th</sup> August rejected the 3years and requested for a 5 year contract.

The Managing Director sought the intervention of the board to renew the said contract of employment of the plaintiff. In the board meeting held on 17<sup>th</sup> September 2009, the board members resolved to refer the exercise of valuation for renewal of staff contracts. Based on the review and appraisal of the plaintiff's performance, the committee declined to renew the contract of the plaintiff due to unsatisfactory performance.

The defendant contended that the plaintiff was not a star performer and did not have good attitude towards work which was wanting on supervision of service providers, property and vehicle maintenance, writing and submission of management minutes. The plaintiff admitted these faults and promised to improve by doing his level best.

The defendant submitted that it was not necessary to give the plaintiff a hearing because the evidence of his poor performance was already recorded by the management committee on performance appraisal during 2008 and he admitted in writing. The decision not to renew his contract was part of the process of dealing with his proposal of 5 year contract which the plaintiff was waiting for.

After due consideration of the facts and the submissions in support of the respective parties case, the court is satisfied that the plaintiff was still in lawful employment when he continued to work since the expiry of his contract of employment in 2008.

The plaintiff legitimately expected that his contract was to be renewed for a further term of three years and this explains why he was proposing that the said term of his contract should be harmonised with other persons in similar positions to a 5 year term. He continued to work and receive a salary in accordance with the original terms and conditions of service of his employment.

The argument that the contract had expired by effluxion of time cannot stand when the plaintiff was left to continue work until a retrospective renewal of the contract by the Managing Director.

It is true that the defendant is empowered to disappoint as provided by the Uganda Coffee Development Authority Act and the Interpretation Act but the exercise of any power to terminate must be in accordance with other laws.

Otherwise the defendant would not have written such a letter of termination if the plaintiff's contract of employment had indeed expired as counsel for the defendant would like this court to believe.

The plaintiff had a legitimate expectation that his contract would be renewed and was indeed made to believe that since he was being offered work and was also paid the salary for the said period after expiry when the original contract had expired, he legitimately expected to be treated fairly before the employment was terminated.

It is the finding of this court that the plaintiff was an employee of the defendant by conduct after the expiration of the renewed 3 year contract. He was therefore entitled to the terms and conditions of his earlier contract.

Therefore before the contract of employment could be lawfully terminated the defendant had to comply with the provisions of Employment Act.

***Section 65 of the Employment Act provides;***

*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 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 terms or terms not less favourable to the employee;*

***Section 66 provides;***

*(1) Notwithstanding any other provision of this Part, an employers 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 employee under subsection(1) may make.*

**Section 68 also provides;**

*(1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of section 71.*

*(2) The reasons or reasons for the dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss.*

**Section 71 further provides;**

*(1) An employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination, shall have the right to complain that he has been unfairly terminated.*

The defence witness confirmed that the plaintiff was not given a hearing before the dismissal and neither was he explained to the reasons for his dismissal and the defendant failed to prove the reason or reasons for dismissal.

It can be deduced that the termination of the plaintiff's employment was unfair and wrongful since the letter of termination did not give the plaintiff a hearing and the defendant failed to prove the reasons for the dismissal or termination of

the contract of employment on the premise of unsatisfactory performance after 19 years as alleged in the letter of termination.

This issue is resolved in the negative.

### **ISSUE 3**

***What are remedies available to the Plaintiff?***

***Section 71(5) of the Employment Act*** provides;

*If the court finds that a dismissal is unfair, the court may-*

- (a) Order the employer to reinstate the employee;*
- (b) Order the employer to pay compensation to the employee*

#### ***General damages***

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

In the present case, the plaintiff has sought general damages for unlawful termination of employment. Since the plaintiff's termination is only unfair because the employer failed to follow a procedure. Considering the circumstances

of the case, the plaintiff is awarded a sum of 15,000,000/= as damages for unfair termination of his contract of Employment.

### ***Exemplary***

The plaintiff also sought exemplary damages for unfair termination.

Exemplary/Punitive damages are intended to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. See ***Rookes vs Barnard & Others [1964] AC 1129***

In the case of ***Obongo vs Municipal Council of Kisumu [1971] EA 91*** the court held that; “ ***It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive***”.

The plaintiff failed to show any justification for the award of exemplary damages and the defendant attempted to comply with the provisions of law before termination.

### **Interest**

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

***“ A just and reasonable interest rate, in my view, is one that would keep the awarded interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”***

General damages shall attract an interest of 10% from the date of filing until payment in full.



Costs

The plaintiff is awarded costs of the suit.

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**17<sup>th</sup>/09/2018**