

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
Civil Suit No.310 of 2012**

1. RITA ATUKWASA]
2. SYLVIA OMOLO] ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS
3. MARIA GORETTI KABASOMI]

-VERSUS-

**UGANDA WOMEN PARLIAMENTARY ASSOCIATION LTD]
(UWOPA)]::::::::::::: DEFENDANT**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The Plaintiffs are all former staff of the Defendant organization (a Company limited by Guarantee) where, -the first Plaintiff served as Coordinator/CEO, the second as Advocacy & Communications Officer, and the third as Administrative Assistant. The said Plaintiffs commenced service with the Defendant, start of 2011 each with a separate six (06) year contract expiring at or about the end of 2016 whereby each one of them was entitled to three months' notice for termination.

Sometime on 24th May 2012 with the coming into office of a new Executive leadership for the Defendant organization and, without regard to the contracts of service the Plaintiffs already had with the Defendant organization, the three Plaintiffs were dismissed from their employment with the Defendant. The new leadership of the Defendant organization asked the Plaintiffs to immediately handover their respective offices and vacate by the end of that same month to allow fresh recruitments.

The defendant's chairperson through an advert informed the concerned members about the job vacancies held by the plaintiffs and invited applications from interested contenders to occupy the said positions

At all material times while in the service of the Defendant, the Plaintiffs performed their tasks with a high degree of dedication which tremendously improved the financial standing of the Defendant. However, by the time of their unlawful dismissal, each of the Plaintiffs was owed unpaid salary arrears amongst claims.

AGREED FACTS

According to the Court record following are the agreed facts;

- The plaintiffs were involved with the defendant organisation for sometime during which time they undertook numerous assignments for and on behalf of the defendant.
- The plaintiffs drew money in allowances/emoluments from the defendants as facilitation and or for the services they rendered during their stay with and at the defendants work place.
- The plaintiffs were registered with NSSF as being involved with the defendant organisation and for which the defendant made monthly contributions for the benefit of the plaintiffs.

AGREED ISSUES.

1. Whether the Plaintiffs were engaged by the defendant as employees or as volunteers.
2. Whether the termination of the plaintiffs' services was wrongful.
3. What remedies are available to the parties.

I note that the plaintiffs' counsel has set out 5 issues but the court record indicates only 3 issues. They are similar in substance and this would not prejudice the determination of the case.

At the trial the plaintiff led evidence of 5 witnesses in proof of their case while the defendant led 2 witnesses and other evidence was by way of documentary evidence that were exhibited at trial. The plaintiffs were represented by *Senior Counsel Mr Kyerere Bruce* and the defendant was represented by *Mr Mwebe Henry*.

Issue 1

Whether the Plaintiffs were engaged by the defendant as employees or as volunteers.

The plaintiffs' counsel submitted that that the Plaintiffs were employees of the Defendant each upon a valid and running contract of service. In brief the Plaintiffs' contends that the uncontroverted evidence on record which shows that all the Plaintiffs:

- a) attended job interviews and not volunteer interviews;
- b) were each given job appointment letters signed by the Chairperson of the Defendant;
- c) were each given a service contract signed by the Chairperson of the Defendant;
- d) at some point, each received remuneration as a salary, not volunteer allowances;
- e) received Employer's contribution to NSSF (which fund is strictly for employees). This is an agreed fact under the joint scheduling memorandum;
- f) each of the Plaintiffs are substantively listed and or described in the Defendant's Strategic Plan booklet as employee staff of the Defendant's with specific job titles and quite distinct from those described as Volunteers.

Section 2 of the ***Employment Act, 2006*** defines a “contract of service” to mean “...***any contract...where a person agrees in return for remuneration to work for an employer...***”. - We here submit that, the respective Letters of appointment offered by the Defendant to the Plaintiffs and, the contracts of service thereby signed by the Plaintiffs indicated that each was working for a salary as remuneration for their work/ service to the Defendant;

The same section of the Employment law defines an “employer” to mean “***any person... including a company...for whom an employee works or has worked...under a contract of service...***” The same provision goes ahead to define an “employee” to mean “...***any person who has entered into a contract of service...***”

It was further submitted that each of the Plaintiffs duly entered into a contract of service with the Defendant organization and the Defendant was the Plaintiffs’ employer as was indicated under the said Letters of appointment and Contracts of service.

The plaintiffs’ counsel contended that the defendant’s is only denying employment of the plaintiffs through mere oral assertions about the engagement of the Plaintiffs as volunteers, no credible shred of evidence has been produced by the Defendant to prove that the Plaintiffs were volunteers.

On the contrary, all the Plaintiffs and those who were involved in interviewing them e.g PW5, have testified that they were engaged as employees and letters of appointment and employment contracts are on record to prove their employment. Besides, the Defendant’s own revelations contained in the Appreciation Page 27 of their own document titled ‘*Strategic Plan 2011-2016*’ (***Exhibit DW1***) which describes each of the Plaintiff’s in the positions of employment each held as distinct from the Volunteer position of one other person specifically described as such, betrays the Defendant’s contention that the Plaintiffs were also Volunteers!

The defendant's counsel submitted that the plaintiffs were volunteers and not employees of the defendant. All the defendants' witnesses gave very clear uncontradicted and unchallenged evidence that:

(a) There has never been any recruitment process leading to the recruitment of the plaintiffs as employees of the defendant.

(b) The Chairperson of UWOPA did not have powers to recruit employees or bind the Organisation.

(c) The plaintiffs were duly paid their volunteer allowances. See the payment vouchers which are D3 in the defendants trial bundle.

(d) The purported employment contracts were a forgery and were never issued by the defendant. The terms therein which are the basis of the plaintiff's claims are a concoction and there is no explanation where they arose from.

(e) Even if the purported contracts had been genuine, which is denied, article 7 thereof provides that employment can be terminated by giving a three months notice or payment in lieu of notice.

(f) All the plaintiffs admitted and had no evidence that they have ever gone through any recruitment process, have never applied for the positions in issue, or did any interviews.

Resolution

The plaintiffs provided labour services to the defendant which according to them was on volunteer basis initially but the said services were changed to proper employment.

The closer look at the agreed facts makes it clear that the plaintiffs were indeed employees and the so called dichotomy being drawn between Volunteer or employee is a mere splitting of hairs.

It was agreed as follows;

- The plaintiffs were involved with the defendant organisation for sometime during which time they undertook numerous assignments for and on behalf of the defendant.

- The plaintiffs drew money in allowances/emoluments from the defendants as facilitation and or for the services they rendered during their stay with and at the defendants work place.
- The plaintiffs were registered with NSSF as being involved with the defendant organisation and for which the defendant made monthly contributions for the benefit of the plaintiffs.

The plaintiffs were indeed earning a salary and upon the said salary being drawn by them, as a result a percentage was being remitted to NSSF.

The plaintiffs were deemed employees since the defendant was making contributions on their behalf as such. ***See Section 6 & 15 of National Social Security Fund Act.***

There is no better evidence than a party's own admission like in this case. The issue of whether they were volunteers or employees was resolved at the stage of admitting payment of NSSF contributions in accordance with the law.

Secondly, the defendant has attached receipts which she claims were an indication of receiving volunteer allowances. A close scrutiny of the said receipts- Exh D3 it shows on two of them as payment of salary. "Being salary paid the month of April 2012" "Being the salary for the month of March 2012" for all the plaintiff.

The defendant's strategic plan for 2011-2016 Exh D1 equally lists the plaintiffs as employees holding the said positions and therein is only one volunteer-Maria Harriet Lamunu.

The

The defendant's counsel has submitted that the letters of appointment the plaintiffs are holding are forgeries. This submission is devoid of any merit and it is not derived from the evidence and neither is it from the pleadings. It is unsupported by any evidence on court record.

The defendant's argument is that they were issued without authorization and lack of authorization would not amount to the said letter of appointment being forgeries. If at all they wanted to allege forgery, they ought to have pleaded the same and also proved the same by evidence and failure to do this, the court would take them to be genuine letters of appointment.

The defendant's counsel relied upon the Human Resource Manual of July 2012-Exh D2. It clear that by the time this manual was made the plaintiffs were already in employment and the same could not be made retrospective to affect the plaintiffs who were already in employment.

The Human Resource Manual should only bind the plaintiffs if the same had made reference to in their letter of appointment or if introduced later, they have signed and agreed that the same forms part of their employment. I find no relevance of the said Human resource manual to the present case to support the defendant's case.

The defendant has argued that the Chairperson of UWOPA, Hon. Alisemera, did not have lawful authority under the Defendant's Constitution and or Human Resource Manual to appoint the Plaintiffs as employees as her term had expired. The Chairperson term of office according to the evidence on record was 28th February 2009- July 2011.

The defendant contends that the under the Constitution of UWOPA, the Chairperson had no authority to appoint staff. The said Constitution was not exhibited in court and this court has not had the benefit to confirm this position rather than the oral evidence.

This court agrees with the submission of plaintiffs' counsel that whether as claimed, the practice of the Defendant was to recruit only following an advert and or, whether or not the outgoing Chairperson didn't have the power/ authority to appoint and sign contracts of service; - Such were matters internal to the Defendant organization out of the Plaintiffs' knowledge. At the time of their

recruitment, the Plaintiffs were outsiders who dealt innocently with the Defendant and cannot be faulted for internal lapses if any, in the enforcement of internal rules and regulations by the Defendant's servants.

And again, whether or not the then Chairperson had actual authority to recruit employees is immaterial provided that she had ostensible authority to steer the organization as she did. The outsiders such as the Plaintiffs dealing with a corporation such as the Defendant are not bound to ensure that all the internal regulations of the corporation as regards exercise of authority have in fact been complied with and, Hon. Alisemera's appointment of the Plaintiffs as employees could neither be vitiated nor voided under the law.

Section **53 of Companies Act, 2012**, provides that there is no duty on a party to a transaction with a company to inquire into whether it is permitted to do such a transaction or as to the limitation on powers of the directors to bind the company or to authorize others to do so.

This court finds that the plaintiffs were engaged as employees of defendant Organisation and not as volunteers.

This issue is resolved in the affirmative.

ISSUE TWO

Whether the termination of the plaintiffs' services was wrongful?

The plaintiffs' counsel submitted that the Plaintiffs' services were wrongfully terminated by the Defendant. Under the **Employment 2006**, the term "wrongful termination" is not defined. However, according to **BLACK'S LAW DICTIONARY, Seventh Edition**, "*wrongful termination of employment*" is means ***the act of ending one's employment (complete severance of the employer-employee relationship} characterized by unfairness or injustice and or where such termination is in violation of the terms of one's work contract.***

He further submitted that the Defendant's act of terminating the Plaintiffs' employment lacked due process and was in violation of the terms of their respective employment contracts.

Clause 7(a) in each of the Plaintiffs' respective work Contracts, provides for a '**three (03) months' notice of termination**' OR, '**payment in lieu of notice**' but were not adhered to.

Clause 7(b) further provides for summary dismissal for serious offences as mentioned in Clause 6(b) to include theft of office property or fighting with employees. Since the facts, as contained in **paragraph 18 of PW1 Witness Statement, and the Termination Letter/ Notice to Vacate office.**

It was the contention of the plaintiffs that the manner of termination amounted to **unjustified summary dismissal** as understood under **S.69 of the Employment Act, 2006** which we here fully reproduce for ease of reference:

"S.69. Summary termination

(1) Summary termination shall take place when the employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(2) Subject to this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(3) An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service."

The general rule under S.69(2) above is that no employer should terminate an employee summarily unless, justified to do so under S.69(3) where such summary dismissal could only be termed justified, if the employee had, by their conduct fundamentally violated their service contracts, i.e.: in our case where and only if the Plaintiffs are shown to have acted in violation of Clause 6(b) of their contracts, fought with staff, or stolen office property, or committed any other reprehensible acts of that kind.

In giving the Plaintiffs shorter notice of termination than the three months as required under their respective contracts of employment, the Defendant dismissed the Plaintiffs summarily by virtue of S.69 (1) above but never gave any reasons falling within the requirements of S.69(3) of the Employment Act, 2006 to justify the Plaintiffs' summary termination.

In fact the Plaintiffs were so perplexed by the Defendant's move to summarily terminate them that they appealed to each of the Defendant's Executive and also unsuccessfully appealed to the Speaker of Parliament for her intervention in their matter about in an attempt to avert the impending gross infringement of their employment rights but the defendant's new chair Person did not heed to their pleas.

The Plaintiffs were not accorded the due process of the law before being terminated making their termination wrongful.

Section **S.66(1) of the Employment Act 2006** read together with **subsection (4)** thereof demands that an Employer shall accord an employee a fair hearing before summary dismissal however justified the reasons for the dismissal may be. No reason(s) were assigned for the Plaintiffs' summary dismissal and, despite the fact that the grieving Plaintiffs appealed to the Executive members and later to Speaker of Parliament as the Patron of the Defendant for their interventions, no hearing was granted.

The defendant's counsel submitted that according to section 2 of the Employment Act, 2006, termination of employment means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as, expiry of contract, attainment of retirement age, among others.

Termination shall be deemed to take place in the following instances as provided by **section 65 of the Employment Act, 2006** as below:

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

Where a contract of service, being a contract for a fixed term or task ends with 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 favorable to employee.

Where the contract of service is ended by the employee in circumstances where the employee has received notice of termination of contract from the employer, but before expiry of the notice.

The defendant's counsel further reiterated his contention that the plaintiffs have never been employees of the defendant, there isn't any contract of service between the plaintiffs and the defendant nor has the same ever existed. They could not terminate what does not exist.

The plaintiffs were volunteers and their tenure as volunteers simply lapsed when the defendant decided to recruit substantive employees.

Resolution

This court has already found that the plaintiffs were employees of the defendant and therefore the main contention under this issue is whether their contracts were properly terminated.

It can be seen that the defendant's Chairperson terminated the plaintiffs' contracts of employment under a mistaken belief that they were volunteers and to them they had no rights under the Employment Act.

In light of the above finding of court that they were employees, their termination was therefore wrongful and did not comply with the provisions of the Employment Act.

Section 69 of the **Employment Act** provides for summary termination as follows;

(1) Summary termination shall take place when an employer terminates the service of an employee without notice or with less than that to which the employee is entitled by any statutory provision or contractual term.

The termination of the plaintiffs' employment was wrongful since it was summary termination/dismissal. They were not accorded any notice in accordance with their contracts of employment.

This issue is resolved in the affirmative.

What remedies are available to the parties?

The plaintiffs sought three months payment in lieu of notice.

Three months' Payment in Lieu of Notice

All the Plaintiffs are entitled to payment in Lieu of three months' notice of termination. The monthly salaries of Plaintiffs 1, 2, and 3 according to their respective employment contracts were UGX 3,500,000, UGX 2,100,000 and UGX 900,000 respectively. The plaintiffs' are awarded ***three months' pay in Lieu of Notice*** as follows:

- 1stPlaintiff- **UGX 10,500,000/= (Shillings Ten million five hundred thousand);**
- 2ndPlaintiff- **UGX 6,300,000/= (Shillings Six million three hundred thousand);**
- 3rdPlaintiff- **UGX 2,700,000/= (Shillings Twomillion seven hundred thousand).**

Salary arrears

The Plaintiffs claimed salary arrears and the same was uncontroverted by pleadings or any evidence or through cross examination. The same stands proved to the satisfaction of court.

- **1stPlaintiff, Rita Atukwasa for 14 months - UGX 49,500,000/=**
- **2ndPlaintiff, Sylvia Omolo for 12 months - UGX 25,200,000/=**
- **3rdPlaintiff, Maria G. Kabasomi for 14 months - UGX 12,600,000/=**

Reimbursement for expenses incurred at work

Each of the Plaintiffs has made a claim for refundable expenses incurred by them in performing their duties for the Defendant.

The 1stPlaintiff has claimed **UGX 550,000**, the 2ndPlaintiff has claimed **UGX 590,000** and the 3rdPlaintiff has claimed **UGX 300,000**

Before their termination, all the Plaintiffs have stated to have submitted and filed claim documents with the Accounts department of the Defendant but none was refunded.

The court is satisfied that the said reimbursable claims for expenses incurred while at work are due to the plaintiffs and the same is awarded.

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 cases such as this, the consideration of Courts in awarding General damages was set down by the Supreme Court of Uganda in ***BANK OF UGANDA - vs - BETTY TINKAMANYIRE, SCCA No.12 OF 2007*** where Tsekooko JSC at page 16 held that;

“...the reasoning of the Court of Appeal in Agabeth-vs- Ghana Cocoa Marketing Board (1984-86) GLRD 16, should be followed so that courts are able to award damages which reflect their disapproval of a wrongful dismissal and the sum is not confined to an amount equivalent to the worker’s wages.”

Relying on the above Supreme Court Authority, this Honorable Court in the case of ***OYET OJERA -vs- UGANDA TELECOM LIMITED (CIVIL SUIT NO. 161 of 2010)*** went further to add that:

“It follows therefore that general damages may be awarded to an employee whose employment has been unlawfully terminated if that employee proves facts that result in court’s disapproval of the employer’s conduct in terminating the services of the employee.”

In the present case and based on the available evidence on the court record, the plaintiffs have sought general damages for the wrongful dismissal. Considering the circumstances of the case, the plaintiffs are each awarded a sum of 10,000,000/= as general damages.

Interest

The plaintiffs have also sought interest on the awards made of 20% since 2012 when their contracts of employment were terminated.

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 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”

The salary arrears and the payment in lieu of notice together with reimbursement for expenses incurred at work shall attract shall attract an interest of 10% from the date of filing the suit until payment in full.

General damages shall attract interest of 8% from the date of this Judgment.

Costs

The plaintiffs are awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA
JUDGE
21st/06/2019