

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 244 OF 2017

1. JIMMY MAVENJINA
2. SANTOS AMACA:.....PLAINTIFFS

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

JUDGMENT

BEFORE HON. JUSTICE SSEKAANA MUSA

On 14th October 2013, the Plaintiffs were offered employment contracts in the Ministry of Local Government as Civil Engineers under the project for Restoration of Livelihoods in Northern Uganda (PRELNOR) which was funded by the International Fund for Agriculture Development (IFAD) which contracts were to run until June 2015.

On 30th March 2016, the plaintiffs were interdicted from duty on allegations that they had engaged in and/or benefited from corrupt practices which interdiction has not been lifted by the defendant up to date. There were further allegations that the plaintiffs had engaged in and benefited from a systematic and fraudulent scheme of soliciting bribes, using coercive and threatening practices, from DLSP contractors for awarding contracts.

The plaintiffs alleged that the interdiction was unlawful, illegal, high handed, oppressive and malicious intimating that the Ministry of Local Government did not investigate anything whereas the Inspector of Government to whom the allegations were referred failed to investigate due to lack of evidence.

However, the defendant states that the plaintiff was lawfully interdicted. The defendant stated that they are waiting for a no objection from IFAD regarding the plaintiff's reinstatement as the project manager and the defendant's actions were bonafide.

The plaintiffs sought a declaration that the standing interdiction on them by the government is invalid and illegal, an order lifting the interdiction and resumption of duty, payment of their salary arrears, general damages for wrongful interdiction, punitive damages, interest on damages awarded and costs of the suit however the defendant contended that the plaintiffs were not entitled to any of the orders or declarations sought.

In the joint scheduling memorandum, the parties framed the following issues for determination by this court.

- 1) **Whether the Plaintiffs' interdiction was legally justified or proper.**
- 2) **Whether the Ministry of Local Government's Permanent Secretary's conduct was malicious and/or highhanded.**
- 3) **What remedies are available to the parties in the circumstances?**

I shall now proceed to determine the issues as framed by the parties. Both parties filed final written submissions as directed by the court.

Issue 1: Whether the Plaintiffs' interdiction was legally justified or proper.

The plaintiffs claim that their interdiction was illegal, unjustified and improper hence seeking a declaration of the same whereas the defendant contends that it was legal justified and was done in accordance with the provisions of the Public Service Commission Regulations and the Uganda Government Standing Orders, 2010.

The plaintiffs' counsel submitted that this interdiction was premised on **Regulation 38 of the Public Service Commission** which provides that *the responsible officer must interdict the officer for a period not exceeding three months in cases that don't involve police, a period not exceeding six months in cases that involve the police and prosecution, make a detailed*

report regarding the investigations and make appropriate justification and recommendations to the commission on the lifting of the interdiction.

In their testimony, the plaintiffs testified that they had since been on interdiction for a period of 38 months, no decision had ever been communicated to them regarding the outcome of the investigation and that no person ever interviewed or interrogated, other than the preliminary defence that they were required to file within 14 days of their interdiction which they did.

That the delay in having the plaintiffs investigated and punished or subjected to the disciplinary committee was prejudicial to the plaintiff's right to a fair and just treatment on interdiction and delay caused thereby illegal.

In conclusion while praying that this court answer this issue in the negative, counsel for the plaintiffs submitted that while the responsible officer has every right to interdict any employee and while interdiction does not fall within the fair hearing remit, the entire process once commenced, it must be in accordance with the law however the permanent secretary's conduct was clearly not within the law.

For the defence, **DW1 Mr. Patrick Okello** the commissioner Human Resource in his witness statement stated that in February 2015, IFAD had received information that the plaintiffs and some of the former DLSP staff were involved in corrupt practices in connection with procurement processes for the access roads component of the program including bid advertisements and evaluations, contract awarding and payments to contractors. That IFAD conducted its own investigation, which found that the plaintiffs had engaged in and/or benefited from the above corrupt practices. It was further indicated that the plaintiffs and others had engaged in and benefited from a systematic and fraudulent scheme of soliciting bribes, using coercive and threatening practices, from DLSP contractors for awarding contracts.

That on the 22nd day of March 2016, IFAD wrote objecting to employment of the plaintiffs under the new PRELNOR Project. In light of the gravity and seriousness of the above-named allegations, the Permanent Secretary of the Ministry of Local Government as the responsible officer interdicted the plaintiffs from duty to pave way for further investigations into the allegations. Upon interdiction, the Permanent Secretary requested the plaintiffs to submit their defence to the above allegations within two weeks from the date of interdiction.

Counsel for the defence submitted that it ought to be noted that interdiction is not in itself a form of disciplinary sanction but is a first step taken towards possible disciplinary sanctions. The Plaintiffs at the stage of interdiction were only entitled to being given reasons for the interdiction and this was done.

Having lawfully interdicted the plaintiffs, the responsible officer was required under Regulation 38 of the Public Service Commission Regulations to cause an investigation to be conducted into the conduct of the Public officer. In the instance case, as stated by DW1, given the fact that the Ministry of Local Government lacked the technical capacity to adequately investigate the matter, the matter was forwarded to the Inspectorate of Government to investigate it to its conclusion. The matter was investigated by the Inspector General of Government and a communication on the matter was received on 19th January 2017.

The witness went ahead to state in cross-examination that the plaintiffs were informed of the outcome of the said investigation which in essence was clearing them of the allegations levied against them for lack of evidence. The DW1 also stated that the Ministry of Local Government communicated the outcome of the said investigation to IFAD and requested for a No-objection for the Plaintiff's re-employment under the donor funded project but IFAD declined to grant the said no-objection.

Counsel for the defendant submitted that the plaintiffs were employed under an IFAD funded project and their salary and emoluments were all drawn from the said donor funded program and their continued employment was subject to a no-objection from the IFAD. Therefore without the said no-objection there is no way that the Ministry of Local Government could continue to employ the plaintiffs. The Permanent Secretary's hands were therefore tied because he could not re-engage the plaintiffs without the said non-objection from IFAD.

Counsel further submitted that the plaintiffs' contracts of employment expired before the said no-objection could be granted therefore the interdiction was overtaken by the expiry of their contracts which fact is admitted by the Plaintiffs at Page 7 of their submissions where they state *"An order lifting interdiction and resumption of duty; this has been overtaken by events given that the Plaintiffs' contracts have since lapsed and their employment terminated."*

Counsel prayed that the court takes cognizance of the fact the plaintiffs' contract of employment lawfully expired and that their interdiction was overtaken by this fact. The contracts having lawfully terminated, the plaintiffs were only entitled to be paid their remaining half pay for all the months that they were on interdiction and their entire gratuity. The half pay amounting to USD 19,800 and gratuity amounting to Shs.45,700,560/= was paid to the Plaintiffs accounts.

Counsel for the defendant concluded that the plaintiffs' contracts having legally terminated and the fact that there were paid all their dues including terminal benefits, the defendant discharged all its obligations to the plaintiffs and prayed that this Honorable court holds accordingly.

Determination

Public Service Standing Orders of Uganda (2010 Edition) under Regulation (f-s) 8 thereof; defines Interdiction as *“temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out”*

It further provides as follows;

“this shall be carried out by the Responsible Officer by observing that;-

- The charges against an officer are investigated expeditiously and concluded;
- Where an officer is interdicted, the responsible officer shall ensure that investigations are done expeditiously in any case within (three) 3 months for cases that do not involve the police and courts and 6 months for cases that involve the police and courts of law”

The standing orders envisage an investigation after an interdiction which must be done expeditiously.

Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction.

To that extent this court concurs with counsel for the defendant that interdiction is not in itself a form of disciplinary sanction but is a first step taken towards possible disciplinary sanctions.

Seeing that there is no contention there, court will now analyze the events that followed to determine whether the interdiction was lawful or not.

From the plaintiffs’ evidence and submissions, other than the preliminary defence that they were required to file within 14 days of their interdiction they had been on interdiction for a period of 38 months, no decision had ever been communicated to them regarding the outcome of the investigation and that no person ever interviewed or interrogated. Counsel for the plaintiff submitted that the delay in having the plaintiffs

investigated and punished or subjected to the disciplinary committee was prejudicial to the plaintiff's right to a fair and just treatment on interdiction and delay caused thereby illegal.

The standing orders expect the responsible officer to carry out investigations and inquiries into the matter before a final decision is taken within given time limits of 3 months or 6 months. This would involve collecting information with a view to decide whether to take further course of action to meet a given situation or to find correctives to a given problem.

The defendant in this case led evidence to show that the Ministry of Local Government lacked the technical capacity to adequately investigate the matter, the matter was forwarded to the Inspectorate of Government to investigate it to its conclusion. The matter was investigated by the Inspector General of Government and a communication on the matter was received on 19th January 2017.

However from the documents tendered into this court by the defendant, there was actually no investigations carried out by the IGG due to repeated failure by the Ministry of Local Government to provide the relevant documents to cause an investigation hence they were terminated with no investigations carried out.

As submitted by counsel for the plaintiffs that while the responsible officer has every right to interdict any employee and while interdiction does not fall within the fair hearing remit, the entire process once commenced, it must be in accordance with the law. I don't find the failure to investigate, punish or exonerate the plaintiffs in reasonable time to have been with accordance of the law.

In *Barugahare v Kampala Capital City Authority & Another* (Miscellaneous Cause No. 413 of 2019) Justice Ssekaana Musa held;

“Delay can cause a good deal of practical difficulties to the concerned person, and may even be regarded as amounting to a hidden form of arbitrariness. Therefore to hold that inordinate delay like in the present case will invalidate an administrative action is one way of promoting administrative efficiency which will be for the public good. Where a statute does not prescribe any time-limit for the administration to take decisions, the courts have insisted that the decision maker ought not to delay its decision for an unduly long time. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the court particularly when public interest suffers thereby.”

On that premise, I find that the essence of an interdiction was tainted by the unnecessary delay to investigate the plaintiffs thereby making it unlawful.

Issue 2: Whether the Ministry of Local Government’s Permanent Secretary’s conduct was malicious and/or highhanded.

Counsel for the plaintiffs submitted that the letter by the Permanent Secretary Ministry of Finance dated 14th March, 2016 from which the interdiction emanated made specific mention that the principal culprit in the matter was Mr. Lawrence Kasinga who in turn may have implicated the plaintiffs in the commission of the alleged offences. That the said letter was emphatic that investigations be carried out to establish the truth.

Counsel further submitted that in the letter from the Ministry of Local Government that referred the investigations to the Inspectorate of Government Lawrence Kasinga was deliberately left out. That the investigations would have implicated or exonerated the said Lawrence Kasinga whom IFAD was interested in.

The Inspectorate of Government requested for information from the Ministry of Local Government to assist in investigations of the plaintiffs however none was provided. Upon failure to avail the information, the Inspectorate of Government wrote to the PS

Ministry of Local Government stating that the failure to provide information had made it impossible for the inspectorate to carry out investigations.

The defence witness Mr. Patrick Okello who was the Head of Human Resources testified that he was not aware of any investigations into Mr. Lawrence Kasinga which makes it clear that the Permanent Secretary Ministry of Local Government deliberately and willfully omitted to investigate Mr. Lawrence Kasinga a fate that he was well aware would adversely affect the lives and employability of the plaintiffs.

Counsel submitted that it is inconceivable that the Permanent Secretary did not know or understand was required of him or the consequences that would have on the plaintiffs. That even when the letter from IFAD to the Permanent Secretary Ministry Local Government where IFAD was clear that they would only proceed to exonerate the plaintiffs after the PS Ministry of Local Government had done what was reasonably expected of them.

In conclusion, counsel for the plaintiffs submitted that by willfully refusing and/or neglecting to carry out the instructions of IFAD adversely affected the reputations of the plaintiffs and defamed them and as a consequence they can never be employed in an IFAD funded project, World Bank or European Union. Counsel closed submissions on this issue submitting that malice can be inferred from deliberate or reckless or even negligent ignoring of facts and invited court to answer this issue in the affirmative.

On the other hand counsel for the defendant submitted that there was nothing malicious and/or highhanded about the Permanent Secretary's actions owing to the fact that the Permanent Secretary was acting on allegations made against the Plaintiffs which necessitated him to take the action he did.

Counsel further submitted that the plaintiffs were interdicted on their accord and had their own allegations against them. Counsel referred court to a letter from the IFAD

country representative which raised the allegations against the Plaintiffs, there is no mention at all of Lawrence Kasinga where it was stated;

“According to the IFAD investigations findings, there are strong indications that the then DLSP programme engineers Mr. Jimmy Mavinjina and Mr Santos Amaca, may have engaged in and/or benefited from corrupt practices in connection with the procurement process for the access to roads component of the Programme. The above-mentioned engineers have been recruited as project engineers for PRELNOR as per IFAD No objection of 16/11/2015”.

That it was from the allegations in the above letter that subsequently led to the plaintiffs’ interdiction on 30th March 2016 hence the plaintiffs’ attempt to attribute their woes to a one Lawrence Kasinga is quite frankly absurd and an attempt to generalize the matter so as to divert the court’s attention from the core reason for their interdiction.

Furthermore, counsel submitted that each of the plaintiffs were investigated by the IGG and not the Permanent Secretary and were both exonerated from any wrong doing. Having been cleared of any wrong doing, the Permanent Secretary Ministry of Local Government communicated the outcome of the said investigation to IFAD and requested for a No-objection for the Plaintiff’s re-employment under the donor funded project but IFAD refused to grant the said no-objection. Counsel submitted that when the plaintiffs were cleared of any wrong doing, it was the Permanent Secretary that applied for their re-instatement but this was subject to IFAD’s no-objection which was not granted. Therefore one cannot fault the Permanent Secretary for this.

Counsel concluded that there was nothing malicious or highhanded about the Permanent Secretary’s actions as they were based on the law and followed the procedures laid out under the Public Service Commission Regulations and the Public Service Standing Orders.

Determination

I have reviewed the circumstances surrounding the interdiction and subsequent “exoneration” of the plaintiffs.

According to the letter from the associate president of IFAD that resulted into the interdiction of the plaintiffs, the main culprit of the corrupt practices was Mr. Lawrence Kasinga who from the evidence of DW1 was never interdicted or investigated. An excerpt from that letter reads that;

...According to the investigation findings there are strong indications that;

- I. Mr. Lawrence Kasinga engaged in corrupt practices by soliciting bribes in the form of cash and/or cheque payments from DLSP contractors for the awarding of contracts and*
- II. Mr Lawrence Kasinga engaged in coercive practices by delaying, deducting and threatening to withhold payments due to said contractors (who had completed works) if they did not pay him requested bribes.*

In addition, we have some indicators that Mr. Jimmy Mavunjina and Mr. Santos Amaca both programme engineers may have engaged in or benefited from these corrupt practices...

The letter further indicated that IFAD trusted the government to give the matter high priority, investigate the allegations in accordance with the national laws and looked forward to receiving an update on the measures taken not later than 1st June 2016.

The Permanent Secretary was therefore aware of the stakes involved for the plaintiff in regard to the allegations that were being levied against them. It is quite absurd that the PS went ahead to interdict the plaintiffs but abandoned the crucial culprit of the IFAD communication on whom investigations had been carried out. The plaintiffs from that communication had not been investigated but rather there had been indicators that raised suspicions that they might have participated or benefited from the same corrupt practices. Furthermore the failure to avail the IGG with the necessary documents to commence investigations against the plaintiffs indicated laxity on the PS Ministry of

Local Government to have the allegations completed to their logical conclusion. Even after the plaintiffs' "exoneration", IFAD was still emphatic on investigating Mr. Lawrence Kasinga which the PS still adamantly omitted to do.

It was incorrect for counsel for the defence to submit that the plaintiffs' allegations were investigated on separate suspicions of engaging in corrupt practices; I have reviewed the back and forth communications between IFAD and the Ministry which have led me logically conclude that the suspicions against the plaintiffs stemmed from allegations against Mr. Kasinga who was never investigated hence IFAD's objection to the plaintiffs reemployment under IFAD funded projects.

These actions lead this court to find that PS acted highhandedly when it came to the plaintiffs but completely omitted doing the same with IFAD's major concern the one Mr. Lawrence Kasinga.

Issue 2 is therefore resolved in the affirmative.

Issue three: What remedies are available to the parties?

The plaintiffs sought the following remedies;

- a. A declaration that the standing interdiction on them by government is invalid and illegal**
- b. An order lifting the interdiction and resumption of duty**
- c. Payment of salary arrears**
- d. General damages for wrongful interdiction**
- e. Punitive damages**
- f. Interest and costs of suits**

Remedies a. b. and c. sought have since been overtaken by events. The plaintiffs contracts have since lapsed, their contracts terminated and their salary arrears paid in full. The interdiction thereto was also lifted.

Considering my findings above, I find that the interdiction although lifted now was unlawful and illegal.

The plaintiffs are each awarded **UGX 60,000,000** as general damages.

The actions of the PS against the plaintiffs as found in issue 2 have also warranted the award of **UGX10,000,000** as punitive damages.

The plaintiffs are awarded **15%** interest on the amounts granted as well as costs for the suits.

It is so ordered.

SSEKAANA MUSA
JUDGE