

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 147 OF 2011**

**SAMUEL WUMA:.....PLAINTIFF**

**VERSUS**

**UGANDA RAILWAYS CORPORATION:.....DEFENDANT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The plaintiff was an employee of the defendant. He sought and was granted study leave without pay with effect 1<sup>st</sup> from May 1995 to 25<sup>th</sup> January 1998. The study leave was cancelled by the defendant on 5<sup>th</sup> August 1996.

The plaintiff filed this suit seeking general damages due to pain, suffering and financial embarrassment occasioned to him after having worked for the defendant for over 21 years, unlawful cancellation of his leave and threats to evict him from the house he is occupying, the plaintiff seeks interest on special and general damages at bank rate from the date of filing this suit until payment in full. The plaintiff also seeks costs of costs of the suit and any other reliefs this court may deem fit.

The defendant in their written statement of defence stated that the plaintiff's study leave was duly cancelled in accordance with Uganda Railways Corporation Staff, 1994 (hereinafter referred to as the URC Staff Rules). The plaintiff was obliged to report back for duty as instructed by his employer. In failing to do so, the plaintiff thereby forfeited his appointment and all benefits attached thereto. In any event at the time when the plaintiff's leave was cancelled he was not studying.

Alternatively but without prejudice to the foregoing, if the plaintiff's leave had not been cancelled, the same would have expired on 25<sup>th</sup> January 1998. The plaintiff returned from the USA in October 2003 and submitted to the defendant an application to resume duty dated 29<sup>th</sup> October 2003 almost six (6) later.

In the circumstances, with or without cancellation of the plaintiff's study leave, the plaintiff abandoned his job and accordingly forfeited the same. Under the terms of the URC Staff rules, the plaintiff was deemed to have been dismissed from the defendant's employment and was thus not entitled to any benefits.

The defendant also filed a counterclaim stating that the plaintiff occupied House No. MB/1 Mbuya Flats as a tenant of the defendant. As such, the plaintiff was obliged to pay rent in the sum of UGX200,000 per month from 1<sup>st</sup> August 2010. With effect from 1<sup>st</sup> March 2010 the monthly rent was revised to UGX240,000. The plaintiff is said to have defaulted on payment of rent of UGX 200,000 per month for seven months August 2006 to February 2007 and August 2006 to February 2007 both months inclusive. The defendant claims UGX 1,400,000.

The plaintiff has further defaulted on payment of rent of UGX 240,000 per month since 1<sup>st</sup> April 2011 to date. The defendant thus claims UGX 240,000 per month from April 2011 until the plaintiff vacates the defendant's said house at Mbuya Flats.

The defendant further claims an order of termination of the plaintiff's tenancy on the defendant's said property, an order for eviction of the plaintiff from the said property, general damages, interest on general and special damages and costs of the counterclaim.

In response to the counterclaim the plaintiff alleged that while he was away in the USA, his wife was forced to pay rent which was contrary to his terms and conditions of work.

The plaintiff further alleged that he occupies the defendant's premises as he awaits payment of his terminal benefits, and not as a tenant. That as an employee awaiting his benefits, he had no obligation to pay rent and as such he did not breach the tenancy agreement.

That until the plaintiff's terminal benefits are paid, the defendant has no right to evict him from the defendant's said house.

The parties filed a joint scheduling memorandum wherein the following issues were framed for this court's determination;

- 1. Whether the plaintiff's suit is time barred.**
- 2. Whether the plaintiff is entitled to payment of the claimed benefits by the defendant.**

3. **Whether the defendant/counterclaimant is entitled to the orders sought.**
4. **What remedies are available to the parties?**

The parties filed final written submissions which were considered by this court.

### **Court's determination**

#### **Issue 1: Whether the plaintiff's suit is time barred.**

The defendant submitted that plaintiff's suit is time barred citing **section 3(1) (a) of the Limitation Act** which provides that the limitation period for actions based on breach of contract is six years.

The plaintiff alleges that his contract was terminated or ended on 25<sup>th</sup> January 1998 when his official study leave ended whereas the defendant states that the employment was ended by his dismissal on 25<sup>th</sup> October, 1996 when the defendant regarded the plaintiff as having deserted his employment when he deliberately stayed away in the USA after being recalled from his leave. The defendant was deemed to have been dismissed in accordance with **section G.14 of the URC Staff Rules**.

Counsel for the defendant submitted that the plaintiff filed his suit on 14<sup>th</sup> July, 2011 without pleading any ground from the law of exemption under Order 7 Rule 6. Counsel further added that whether the plaintiff was dismissed on 25<sup>th</sup> October 1996 or 25<sup>th</sup> January 1998 (as conceded by the plaintiff) his suit is time-barred and invited this court to dismiss it.

The plaintiff's counsel on the other hand submitted that the suit is not time barred alluding to the fact that up until 2007, the plaintiff was negotiating his benefits with the defendant albeit with no positive response.

I have perused **Exhibit P26 (a) and (b)** of the plaintiff's bundle of exhibits correspondences between the plaintiff and the defendant dated 20<sup>th</sup> April 2004. It is satisfactory evidence that the plaintiff was in communication with the defendant requesting reinstatement into URC before the expiration of the limitation period.

Being in negotiations for employment benefits is not a ground for extension of the limitation period. The plaintiff should have filed a suit as he continued to negotiate for his benefits.

Where negotiations are going on as the limitation time continues to run it is still incumbent upon those who need to file documents to do so within the time allowed, they are at liberty to seek adjournments for purposes of negotiations once the suit is filed. See *Peter Mangeni t/a Makerere Institute of Commerce v Departed Asians Property Custodian Board SCCA No. 13 of 1995*.

This court will proceed to determine the suit in case the above finding is wrong and since there is a counterclaim to the suit.

**Issue 2: Whether the plaintiff is entitled to payment of the claimed benefits by the defendant.**

The evidence on record shows that the plaintiff was employed by Uganda Railways Corporation from 29<sup>th</sup> January 1976 to 25<sup>th</sup> January 1998.

The plaintiff was granted study leave for 4 years effective 1<sup>st</sup> May 1995 to 31<sup>st</sup> May 1998 however the same was cancelled and the plaintiff was asked to return and re-assume his duties which the plaintiff did not adhere to. Counsel for the plaintiff submitted that there was no justification/any exigencies for the cancellation of the leave. Counsel cited **section D 2 (a) of the URC Staff Rules** which provides that leave may be taken at the discretion of the Managing Director and subject to the exigencies for the corporation the Managing Director or any person authorized by him in that behalf may refuse, vary, defer or cancel leave of absence of any description at any time or may grant it subject to such condition as he may think fit. Counsel submitted that the unlawful cancellation and desertion of the plaintiff set in the confusion which kept the plaintiff away from his work.

Counsel submitted that with the changed circumstances the plaintiff could not abandon his studies where he had already paid fees and met other costs. The plaintiff also alleged that the Managing Directors of the defendant in the names of Engineer Kwesiga and David Murungi subsequently advised the plaintiff to complete his studies and then return to work.

Counsel for the plaintiff submitted that in 2004 the defendant's Administration Manager wrote advising the Managing Director to consider the plaintiff for termination effective 1998 and payment of benefits therefore considering that the plaintiff was not dismissed, he is entitled to terminal benefits.

On this issue, counsel for the defendant submitted that the plaintiff's claim borders on abuse of court process. Counsel submitted that the plaintiff was recalled from leave by a letter from the Managing Director dated 5<sup>th</sup> August 1996 which letter he acknowledged receiving after graduating from Citrus College but before enrolling for further studies at Southwest Missouri State University in August 1996.

The plaintiff was informed by a letter dated 25<sup>th</sup> October 1996 that he was deemed to have deserted his employment and in effect the defendant enforced **Section G.14(e) of the URC Staff Rules**; the plaintiff was deemed to have been dismissed on the ground of his absence from duty without leave. The plaintiff states that he received the desertion letter in 1997 however there is no communication whatsoever from the plaintiff to the defendant until October 2003. Counsel submitted that the plaintiff received the said letter and kept quiet for a whole five years.

Counsel further submitted that the plaintiff graduated from Southwest Missouri State University on 18<sup>th</sup> December 1998 but still did not return for duty and instead enrolled for a master's program, graduated on 17<sup>th</sup> May 2002 however he did not return from the USA until October 2003.

Counsel submitted that the plaintiff abandoned his job for over five years without leave or any communication whatsoever from him and returned to Uganda at his own convenience.

It was submitted by the defence counsel that the plaintiff's suit was brought in bad faith. This was owed to the fact that the plaintiff did not explain to court his failure to return to duty after his study leave expired, deliberately absconding from duty for over five years.

### ***Court Analysis***

After analysing the events resulting into the filing of this suit as well as the submissions of counsel, this court resolves this issue as follows;

The plaintiff was duly granted study leave effective 1<sup>st</sup> May 1995 to 31<sup>st</sup> May 1998 which was however cancelled upon due consideration by the defendant. The defendant further informed the plaintiff's continued absence from duty resulted into desertion by the defendant which was also communicated to the plaintiff. He appealed against the decision to cancel his leave and did not return to the country to report back to duty.

The plaintiff rather decided to enroll for another course that he completed in December 1998. Upon completion of this course he enrolled for a master's program that he completed in 2002.

Aside from the appeal against the cancellation of his leave dated **24<sup>th</sup> December 1996**, there is no further communication between the plaintiff and the defendant not until **29<sup>th</sup> October, 2003** when the plaintiff made an application to resume duty.

This hiatus in communication from the plaintiff for six years showed laxity in pursuing his job. He took his time pursuing his academic goals with no due regard to the employer's instruction. The bare minimum expected from the plaintiff was to report for duty upon the expiration of his designated official study leave which he did not do. This behavior amounted to abandonment of duty which warranted the defendant to take the next appropriate action. The plaintiff's allegation that he was granted permission to continue pursuing his studies despite the cancellation and expiration of his study leave by the former Managing Directors of the defendant holds no water in this court as there is no evidence to support the same.

As submitted by defence counsel, the plaintiff's employment relationship with the defendant under the URC Staff Rules could be ended by dismissal as a punishment **Section G10(a)ii** and under **Section G.14(e)**.

**Section G.14 (e)** provides; *an employee must not be absent from duty without permission or reasonable excuse, and if he so absents himself for a continuous period of more than seven days, he may be regarded as having forfeited his appointment with effect from the date of such absence.*

*An employee who is regarded as having forfeited his appointment under the provisions of this paragraph shall be deemed to have been dismissed in accordance with these rules.*

The plaintiff's refusal to report back to work even after 1998 warranted dismissal.

We now turn to whether the plaintiff is entitled to terminal benefits.

**Section G.3(d)** provides; *subject to the provisions of any law for the time being in force, an officer who is dismissed shall forfeit all rights or claims to a pension, gratuity or other retiring benefit.*

Under **Regulation 4 of the Pension Regulations, 1970**; *no pension, gratuity or other allowance shall be granted under these regulations to any officer except upon his retirement from the public service in one of the following cases-*

- a) *On or after attaining the retirement age of fifty years*
- b) *In the case of transfer to other public service, in circumstances in which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity*
- c) *On abolition of his office*
- d) *On compulsory retirement for the purpose of facilities improvement on the organization of the department to which he belongs, by which greater efficiency or economy may be affected*
- e) *On medical evidence, to the satisfaction of the corporation that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent*
- f) *On termination of service in public interest*
- g) *On retirement in accordance with any approved special retirement scheme*

From the above excerpts of the defendant's laws, it is quite clear that the plaintiff's circumstances of termination of his employment by the defendant do not warrant grant of any terminal benefits.

**Exhibit P.26(a)** in my opinion and considering the facts surrounding the plaintiff's absence from work by the defendant's Chief Administration Manager was made in error since at that moment there was no existing employment relationship between the plaintiff and defendant hence was not considered by this court.

This issue is therefore resolved in the negative.

**Issue 3: Whether the defendant/counterclaimant is entitled to the orders sought.**

The defendant sought the following orders in the counterclaim;

1. **An order for termination of the plaintiff's tenancy**
2. **An order for eviction of the plaintiff from the suit property**
3. **Special and general damages**
4. **Interest on the sums sought**
5. **Costs**

At the time the plaintiff left for the study leave, the plaintiff and his family were occupying one the defendant's houses in Nsambya allocated to him by the defendant as it was the defendant's policy to provide free housing to its employees. The plaintiff

requested the defendant to allocate him House MB1/Mbuya Flats that he was allocated with effect from 1<sup>st</sup> August 2006.

The defendant submitted that with effect from September 2005, upon implementation of consolidated staff emoluments whereby basic salary and conservancy, cost of living, entertainment, transport, professional, telephone, housing and productivity allowances; the defendant stopped providing free housing to the employees hence the defendant's employees stopped occupying the houses by virtue of their employment but as tenants on a purely commercial basis.

The defendant submitted that the plaintiff's allegation that he applied for House MB/1 as an ex-employee awaiting terminal benefits is false since by 28<sup>th</sup> April 2006 when the plaintiff applied for the house, the defendant was no longer providing free housing to its employees.

Counsel submitted that at the time the plaintiff was allocated the house he was a full time employee of the Uganda Railway Workers Union as General Secretary and invited court to find that the plaintiff occupied the house as a tenant to the defendant who is obliged to pay rent.

DW1 testified that the plaintiff defaulted payment of rent of UGX 200,000 per month for seven months from August 2006 to February 2007 both months inclusive. The defendant claims UGX 1,400,000 which testimony was not controverted by the plaintiff.

DW1 further testified that the plaintiff further defaulted on payment of rent of UGX 240,000 per month from April 2011 until the plaintiff vacates the defendant's said house which evidence was also not controverted.

The defendant refused to vacate the house under the false claim that he is entitled to payment of terminal benefits hence continuing to occupy the house without paying rent for over 7 years.

The defendant also sought general damages of **UGX 100,000,000** as well costs for the counterclaim.

Counsel for the plaintiff on the other hand submitted that under **Section 43(s) of the Employment Act, 2006**; where the employee is being housed by the employer, the employee shall not be required to vacate the premises until he or she has been paid his



or her terminal benefits. The plaintiff stated that he relocated from the house in Nsambya to the one in Mbuya because of the bad state of the Nsambya house.

Counsel submitted that the defendant's claim was in error and should be dismissed with costs. Counsel cited **Rule C15(c)** which stipulates that employees retiring from the service of the corporation shall be permitted to retain their quarters while awaiting their settlement dues. Counsel also cited the case of *Augustine Kwoba & 8 others vs Uganda Railways Corporation Civil Suit No. 708 of 2002*, where the court confirmed an arbitration award in which the plaintiffs were entitled to remain the defendant's houses until settlement of their terminal benefits.

In reference to issue 2, this court has determined that the plaintiff is not entitled to any terminal benefits from the defendant. This therefore means that the plaintiff cannot continue to occupy the defendant's housing as provided for under **Section 43(s) of the Employment Act, 2006**.

However considering that the plaintiff was under the misguided impression that he was entitled to terminal benefits and the defendant's laxity in exercising their legal rights against a non-paying tenant for over seven years and further providing plaintiff with another house in 2006 upon his application as an ex-employee of the defendant shows this court that the counterclaim was an afterthought by the defendant to which it is just and fair that the same be dismissed with no order as to costs.

#### **Issue 4: What remedies are available to the parties?**

On the basis of my findings above, both parties are denied the remedies sought and the resultant claims thereto are dismissed. The court however grants the defendant/counterclaimant's order for the plaintiff to vacate the defendant's premises that he currently occupies.

In the result this suit fails, the subsequent counterclaim is dismissed.

Each party shall bear its own costs.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**18<sup>th</sup> December 2020**