

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 387 of 2017

KAKOOZA JONATHAN:PLAINTIFF

VERSUS

WAKISO DISTRICT LOCAL GOVERNMENT:DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff claim against the defendant was for a declaration that his indefinite interdiction is illegal, an order lifting his illegal interdiction, a declaration that he is still an employee of the defendant, an order for payment of all his full salary from the date of interdiction to date of judgment, an order for his immediate reinstatement on duty, general damages, punitive damages, interest and costs of the suit.

The plaintiff was on 12th day of June 2015 was interdicted from duty by the defendant's Chief Administrative Officer on allegations of financial loss and gross negligence in the performance of his duties. While the interdiction was to last for six months, the plaintiff remained out of office for over two years.

The plaintiff contended his interdiction was selective and malicious since the Chief Administrative Officer left out a number of key officers listed by the Permanent Secretary for interdiction. In addition, the defendant has

kept the plaintiff outside office despite advise from its lawyers that the plaintiff's continued interdiction beyond six months was unlawful.

The defendant made a technical defence and denial by contending that the suit is premature and misconceived. Further, denied plainly that the plaintiff's interdiction is illegal, in bad faith or selective.

Representation

The plaintiff was represented by *Counsel Sam Sserwanga* while the defendant was represented by *Counsel Nambale David and Counsel Katono James*.

Partial compromise of the suit.

When the matter came up for hearing on 11th-06-2019, the parties sought an adjournment to confirm the new developments which had occurred. Indeed on 09th 07-2019, it was confirmed that the plaintiff's interdiction had been lifted and a letter was written to effect.

When the matter came up for hearing on 2nd-09-2019 it was confirmed that the plaintiff had been re-instated and had assumed duty. The court ordered the plaintiff should be paid all his salary arrears.

The suit was compromised on all the main orders sought apart from the general damages and costs of the suit.

The suit was set down for hearing to determine the general damages and costs of the suit. One issue was framed for determination:

Whether the plaintiff is entitled to general damages?

The plaintiff's counsel submitted that the evidence of the plaintiff and several correspondences on record indicate that the interdiction was meted

out on the 12th June 2015 and it continued until July, 2019 without any reasonable explanation. It was counsel's submission that the interdiction though was intended to pave way for investigations by Inspectorate of Government, it became illegal when it exceeded the six months prescribed by the Uganda Public Service Standing Orders.

Counsel further submitted that the defendant high handedly managed the interdiction, on two occasions ignored the advice of the Inspectorate of Government in order to avoid violating the plaintiff's rights when it advised the defendant to rescind the letters of interdiction.

The plaintiff testified that he was servicing a loan which he had secured with the recommendation of the defendant's officers which he failed to pay and accumulated interests and penalties.

The plaintiff's counsel prayed that the court awards the plaintiff a befitting amount of money in general damages, 152,000,000/= as punitive damages, interest and costs of the suit.

The defendant's counsel submitted that the 6 months period cited under the Public Service Standing Orders is neither a legislative provision in an Act of Parliament, nor Statutory instrument with a force of law. They are merely directory guideline for the better management of the service by a responsible officer. It was counsel's contention that the matters for which the defendant was directed by its superiors to interdict the plaintiff to pave way for investigations were serious-Corrupt manipulation of the payroll.

Counsel contended that the requirement is to ensure investigations are done within the timelines. Nowhere do the cited sections of the Standing orders require that an interdicted officer be re-instated in office within those timelines as an automatic right.

The evidence of DW1 Mathias Katamba was to the effect that the plaintiff was interdicted on a directive from the chief executive of the parent

Ministry-Permanent Secretary of Local Government. The duration of those investigations were wholly outside the control of the defendant to ensure that they done expeditiously and the defendant kept inquiring from the IGG as to the status of investigations.

That the IGG only directed the CAO to lift the interdiction by letter dated 21st January, 2019 after completing investigations, which was immediately implemented by the defendant. The plaintiff was reinstated to his work, paid his salary arrears and even his application for early retirement accepted with full pension rights.

In response to the plaintiff's claim for aggravated & punitive damages arising out of the allegedly purported selective and malicious interdiction, counsel submitted that the plaintiff has not tendered an iota of evidence. There are no aggravating factors to justify an award of aggravated and punitive damages, or any damages at all. The defendant implemented a lawful directive from the Permanent Secretary to interdict the plaintiff to pave way for investigations.

Analysis

This court with the greatest respect does not agree with the defence counsel submission that the standing orders are merely directory and are neither a legislative provision nor a statutory instrument without any force of law and do not confer any rights from which the cause of action can arise.

The Public Service Standing Orders have the force of law and they confer both rights and obligations to every public servant. They can trigger the suspension or removal of any rights from a public servant if not complied with.

The *Public Service Standing Orders* are a Statutory Instrument made under the **Public Service Act cap 288, Section 13** which provides;

The Minister may make standing orders providing for the administration and conduct of the public service and the terms and conditions of service including training, of public officers. See also Section 14 of the Interpretation Act

Section 1 and 3 of **Public Service Standing Orders**: provide for applicability, powers of interpretation, waiver and amendment;

1. *All public officers are bound by these standing orders.*
2. ..
3. *Ignorance of any provision(s) of these Standing Orders cannot in itself, be accepted as an excuse for the infringement of any part of the Standing Orders by any public officer.*

The interdiction of every public officer should be in accordance with the public service standing orders otherwise every supervisor may become law unto themselves by acting whimsically and without circumspection in respect of any interdiction of the junior officers or public officers lower in rank. The continued interdiction of the plaintiff without any criminal charges being preferred against him for over two years was illegal.

The plaintiff is seeking general damages for the prolonged interdiction of the two years. The power to award damages by the trial court is exercised in the circumstances of a judicious estimation of the loss to the victim once the breach of contract or injury has been established.

The principle of assessment of damages for breach of contract generally is *restitutio in integrum*; that is the plaintiff should be restored as far as money can do it, to the correct position he would have been had the breach or injury not occurred. The court has discretion as to the quantum of damages it would award in a claim of damages. The assessment does not depend on any legal rules, but the discretion of the court is however limited by usual caution or prudence and remoteness of damage when considering the award of damages.

In awarding general damages, the court would simply be guided by the opinion and judgment of a reasonable man in determining what sum of money will be reasonably awarded in the circumstances of the case.

General damages are losses which flow naturally from the defendant's act. Therefore, general damages are damages which the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result, or the necessary result of the wrong complained of.

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant. *See Lydia Mugambe v Kayita James & Another HCCS No. 339 of 2020*

In the circumstances of this case, the plaintiff is awarded a sum of 10,000,000/= as general damages. The plaintiff has not made any case or proved any justification for aggravated and punitive damages

The plaintiff is awarded 50% of costs of the suit since the plaintiff failed to exhaust the existing internal remedies provided under the Public Service Standing Orders.

It is so ordered.

SSEKAANA MUSA

JUDGE

16th June 2023