

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM  
CIVIL CASE NO. 243 OF 1994  
GODWIN NGAO ————— PLAINTIFF  
VERSUS  
THE ATTORNEY GENERAL ————— DEFENDANT

JUDGEMENT

KALEGEYA, J

The Plaintiff, Godwin Ngao, having been swept by the the civil service redundancy exercise carried out by the Government in 1994, and feeling that this act was "illegally and unlawfully" carried out on him, sued the Attorney General, praying for judgement, among others, for,

- "(a) A declaration that the Plaintiff's retrenchment is unlawful and illegal.
- (b) Immediate reinstatement of the plaintiff to his post with all his dues, entitlements and rights which have accrued since the day of retrenchment to the date of judgement and he is still a lawful employee of the Defendant.
- (c) General damages of Tshs 10 million
- (d) Special damages totalling to Tshs 2 million
- (e) Interest on the damages claimed in (c) and (d) above at the court rate from the date of judgement to the full settlement of claim.
- (f) Costs of this suit "

Plaintiff is represented by Mrs Makalle, Advocate. The defendant having failed to file the required statement of defence the plaintiff was allowed to prove his claims ex parte by affidavit hence this judgement.

In his pleading and affidavit the plaintiff established that at the time of his retrenchment he was working with Morogoro Regional Director as a Technician surveyor, Grade 11; that he was first employed by the government on 8/7/77 as an Assistant Technician in land surveying and gradually got promoted up to the post he held at the time of his retrenchment. He tendered his letters of appointment and promotions. He established also that the authority which employed him and later retrenched him conceded that his termination was wrongful. This was in response to his various letters of complaint. For clarity let his employer's letters speak for themselves. The first to admit the error was one J.A Mwakiluma who responded on behalf of the Morogoro Region Development Director. The letter is Ref. S. 46 / 128 dated 9.11. 1994 and which runs as under :-

" Katibu Mkuu,  
Idara kuu ya UTUMISHI  
S.L.P 2483,  
Dar es salaam.

YAH: LALAMIKO LA KUPUNGUZWA  
KAZINI KWA UONEVU -ND,  
GODWIN NGAO

Barua yako kumb. Na .Muf. 6 / 45 / 097 / 020 ya tarehe 26 oktoba, 1994 yahusika.

Baada ya kufanya uchunguzi yakinifu na kuzungumza na Mkuu wa Idara ya ardhi Mkoani imebainika kwamba ni kweli Nd . Ngao alipendekezwa kupunguzwa kazini kwa makosa.

Taarifa zake za utendaji kazi ni nzuri na ki-ukubwa kazini ni Afisa wa nne kati ya survey Technicians kumi na mbili (12) katika Idara hiyo.

Dosari hiyo ilijitokeza kutokana na muda mdogo tuliopewa kukamilisha zoezi hilo.

(J.A Mwakiluma)

k.n.y Mkurugenzi wa maendeleo (m)  
Morogoro

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The second letter was authored by the Permanent Secretary himself. It is letter Ref. Muf. 6 / 45 / 097 / 020 dated 6 / 6 / 96. It states,

"Ndugu Godwin Ngao ,  
Ofisi ya mkuu wa mkoa ,  
Idara ya Ardhi, Mkoa,  
S.I.P 1285,  
Morogoro

**YAH: MALALAMIKO YA KUPUNGUZZWA KAZINI  
KWA UONEVU**

Tafadhari rejea barua yako barua ya tarehe 04 Mei , 1996 uliyomwandikia Waziri wa wa nchi, Ofisi ya Rais (UTUMISHI) .

2. Napenda nikujulishe kwamba wakati wa kujadili mapendekezo ya kurudishwa kwako kazini , Kamati ya kusimamia Utekelezaji wa Mradi wa kuboresha Utumishi wa serikali (Civil Services Reform Programme steering Committee) ilikubali kwamba ulipunguzwa kwa uonevu. Hata hivyo, Kamati iliona vigumu kukurudisha kazini kutokana na ukweli kwamba hivi sasa serikali inalazimika kupunguza watumishi wake wengine 20,000.

3. Nasikitika kukufahamisha kwamba kwa msingi huohuo , rufaa yako kwa mheshimiwa Waziri wa nchi , ofisi ya Rais (UTUMISHI) imekataliwa . Nakushauri ujaribu kutafuta kazi mahali pengine nje ya utumishi wa serikali.

(J.A Rugumyamheto)  
Katibu Mkuu (UTUMISHI)

Regard being had to the nature of the claim only two main issues come to the fore -whether the plaintiff was illegally and unlawfully retrenched and ,if the answer is positive ,what relief is he entitled to .

In view of the clear admissions by his employer as displayed in the two letters quoted above issue one should automatically be answered in the positive . Next is what should be his reliefs.

The plaintiff prays for Tshs 2 million as special damages , Tshs 10 million as general damages, and wants to be reinstated to his post "with all his dues , entitlements and rights which have accrued since the date of retrenchment till judgement" .However he did not elaborate on dues , entitlements and rights. One must assume that these include salaries he would have received if he had remained in employment .

The law is very clear regarding unlawful termination. This can best be illustrated by quoting the decision of the Court of Appeal of Tanzania in Civil Appeal No.36 of 1987, Kihanila Kilunge Kibaya versus United Africa Company of Tanzania Ltd (Dsm registry)

"What are the legal consequences of this wrongful termination of employment ? There can be no doubt that a wrongful termination of employment has no effect in law. Therefore ,the letter dated 11th November ,1983, had no legal consequences , and did not bring the contract of employment of the appellant to an end . In other words , the appellant continued and still continues to be the employee of the respondent , notwithstanding the fact that up to now he has been prevented from performing his duties as a result of the conduct of his employer.He will continue to be the employee of the respondent until such a time that his employment is lawfully terminated " .

Regarding general damages , the Court went on ,

"As to the prayer for general damages , it is also obvious that the appellant is entitled to be paid arrears of remuneration which was payable to him under this contract of employment at the time when it was wrongfully terminated . In computing the amount payable to the appellant allowance must be made for any amounts already paid ----- by way of terminal benefits ."

Now, applying these principles to the present case there is no doubt that the letter of termination of the plaintiff's employment dated 26/6/94 is of no effect . As the termination was unlawful he is still considered an employee of the Government . This finding answer<sup>s</sup> prayers (b) positively - that he should be reinstated . As regards prayer C, general damages -Tshs 10 million claimed is unjustified . He should only be paid his due remuneration since termination to date . Concerning prayer (d) of special damages , the law requires that they should "be pleaded and proved " .However "where facts show that they were indeed suffered the court can allow them though not pleaded or proved ." (Z. Augustino vs A. Mugabe ( 1992) TLR 137 ). Plaintiff pleaded shs 2 million . He did not venture to establish how he reached that sum. However , being unlawfully made redundant for almost 5 years , cannot be underestimated in unleashing mental anguish to the victim and family let alone material sufferings. In the premises I award him shs 1,500,000 /= . For all his entitlements in terms of payment , all payments made to him following his wrongful termination, should be deducted. Judgement entered for plaintiff in terms expressed above, with costs .

Kalegeya ,  
Judge.

*Delivered on*