**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**CIVIL SUIT NO. 513 OF 2004**

**GIDEON KISUULE :::::::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**NATIONAL DRUG AUTHORITY :::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

The plaintiff in this suit, GIDEON KISUULE was employed as Head of Drug Registration with the NATIONAL DRUG AUTHORITY now the defendant in this suit. He resigned his job and the defendant accepted his resignation in a letter addressed to him and dated 6th March 2002. The defendant paid him all his terminal benefits but retained a sum of shs 6.250.00= which the plaintiff had incurred when the plaintiff was charged with a criminal offence and the defendant allegedly met his legal fees. The plaintiff contested the recovery of this money from his terminal benefits because he had engaged his own lawyers to defend him during his trial at the Chief Magistrates’ Court Buganda Road and that if the defendant engaged any other lawyers he had done so without consulting him and was therefore not liable for payment of their fees.

In their defence the defendants contended that they were entitled to recover the money from the plaintiff on the ground that he was the one who enjoyed the services of the legal counsel instructed by them in the belief that the plaintiff who was their employee was entitled to those services. The plaintiff fully co-operated with the lawyers instructed by the defendant and the advice of the Solicitor General was to the effect that the defendant were not liable to pay for legal services in a Criminal trial where the plaintiff was being tried.

At the scheduling conference conducted on 5th April, 2006 the parties agreed that the plaintiff had been employed by the defendant as Head Drug Registration Department, resigned on 6th March 2002, was paid his terminal benefits from which a sum of 6.250.000= was retained as legal fees paid to M/s Buwule & Mayiga Co. Advocates for representing the plaintiff in a criminal trial and that although the plaintiff did not agree to the retention of the said sum because he had not been consulted before the said lawyers were engaged the defendant went ahead and deducted it.

The following issues were raised for determination of this court.

1. Whether the defendant was entitled to retain the said money
2. Remedies.

At the conclusion of the trial Mr. Muyonjo for the plaintiff made his final submissions in open Court while Mr. Bwanika was allowed to submit written submissions to which Mr. Muyonjo also filed a reply. Apart from the two issues raised at the scheduling conference, Mr. Bwanika raised an additional issue as to whether the suit was bad in law for failure to serve a Statutory Notice in accordance with Section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act (cap 72).

It provides as follows:-

**“*2. Notice prior to suing.***

1. ***After the*** ***coming into force of this Act, notwithstanding the provisions of any other written law, no suit shall lie or be instituted against-***
2. ***the Government***
3. ***a local authority; or***
4. ***a scheduled corporation,***

***until the expiry of forty five days after written notice has been delivered to or left at the office of the person specified in the First Schedule to this Act, stating the name, description and place of the intended plaintiff, the name of the court in which it is intended the suit be instituted, the facts constituting the cause of action and when it arose, the relief that will be claimed and so far as the circumstances admit, the value of the subject matter of the intended suit.***

1. ***The written notice required by this section shall be in the form set out in the second schedule to this Act, and every plaint subsequently filed shall contain a statement that such notice has been delivered or left in accordance with the provisions of this section.”***

In the instant case there is no doubt that the defendant is a Scheduled Corporation to which this provision applies. The dispute is as to whether a Statutory Notice in the Form prescribed by S. 2(2) was served on the defendant. There are two documents tendered in the trial that point to the fact that a Notice of Intention to sue was served on the defendant. The first document is a letter from Jombwe and Company Advocates dated 7th January 2004 in which a reference is made to a notice of intention to sue of 18th December 2003 which was tendered in court and marked Exh. P. 3. In response to this letter the Executive Secretary/Registrar of the defendant through a letter addressed to M/s Jombwe & Co Advocates dated 23rd January 2004 and tendered in Court as Exh. D. 1 had this to say:-

**“We acknowledge receipt of your latter Ref: JCA/JSLM/GEN/O4/04 dated 07.01.04 and the notice of intention to sue ref: JCA/LSLM/GEN/09/03 dated 18th December 2003 and we wish to reply as follows............”**

The letter of the Executive Secretary/Registrar was tendered as a defence exhibit and if the letter acknowledges receipt of a Notice of intention to sue which is also referred to in M/s Jombwe & Co Advocates letter of 04.01.2004 this court believes that a Notice of Intention to sue was served on the defendant. This fact was stated in the plaint and although the defendant denied having received the notice, the document tendered by them points to the contrary. I therefore find that a Notice of Intention to sue was served on the defendant and the suit is competently before this court.

The main issue is as to whether the defendant is liable to meet the expenses of M/s Muwema & co Advocates whose lawyer Mr. Buwule (PW. 2) was one of the lawyers who represented the plaintiff in the criminal trial. The plaintiff testified that he instructed his own lawyers to represent him in the criminal trial. According to Mr. Buwule NDA instructed his firm to represent NDA. He acknowledged that the plaintiff was represented at the trial by Mr. Muyonjo and Mr. Kiapi which would make three counsel representing the plaintiff at the trial. The plaintiff denies having given instructions to Mr. Francis Buwule to represent him and if as an accused in a criminal trial he did not give instructions to Mr. Buwule I do not understand the role Mr. Buwule played at the trial that warrant recovery of shs 6.250.000= from the plaintiff and if the same amount was recovered from the plaintiff’s two co-accused it would mean that a total of shs 18.750.00= was paid to Mr. Buwule on top of the instruction fees the plaintiff might have paid to Mr. Muyonjo and Mr. Kiapi. If the plaintiff did not instruct Mr. Buwule and did not negotiate the fees with him, I do not see how he can be held liable for the payment of the instruction fees even if it was to be assumed that he enjoyed the services of the counsel which Mr. Bwanika refers to as unjust enrichment. To me the issue of unjust enrichment does not arise. The issue is as to who between the plaintiff and the defendant meets the cost of a lawyer that received instructions from the defendant who according to Dr. J. C Lule was mistakenly instructed by the defendant before receiving instruction from the Solicitor General that the plaintiff should meet his own costs of a counsel defending him in a criminal matter. By the time this mistake was realised the plaintiff had instructed his own lawyers. I do not think the plaintiff is liable for the mistake committed by the defendant and the role of the counsel instructed by the defendant was not clearly defined in the trial. The answer to the issue is that the defendant was not entitled to retain the money.

In the circumstances judgment is entered for the plaintiff for recovery of shs 6.250.000= retained by the defendant.

(2) Interest at Court rate on the above sum from the date of filing the suit till payment in full.

(3) Costs of the suit

**Eldad Mwangusya**

**J U D G E**

**20.04.2012**

20.04.2012

Diana Namulondo for the defendant

Plaintiff in Court

Clerk – Milton

Court:

Judgment read in open chambers

**Keitirima John Eudes**

**DEPUTY REGISTRAR**

**20.04.2012**