

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 193 OF 2017

1) ANNET NAMUYOMBA MUKISA

2) GEORGE WILLIAM KATO

VERSUS

CHINA COMMUNICATION
CONSTRUCTION COMPANY LIMITED



PLAINT

1. The 1st Plaintiff is a female adult Ugandan of sound mind whose address of service for purposes of this suit shall be c/o **Taslaf Advocates**, Plot 1 Wampewo Close, Kololo P. O. Box 28392 Kampala.
2. The 2nd Plaintiff is a male adult Ugandan of sound mind whose address of service for purposes of this suit shall be c/o **Taslaf Advocates**, Plot 1 Wampewo Close, Kololo P. O. Box 28392 Kampala.
3. The Defendant is a body corporate that can sue and be sued upon whom the Plaintiff's Counsel undertakes to effect service.
4. The Plaintiff's claim against the Defendant is for the declaratory orders and damages for the infringement of the Plaintiffs Human rights to privacy, equality and freedom from discrimination, unlawful and unfair termination from employment on the grounds of being HIV Positive, **UGX 400,000,000** (*Uganda Shillings Four Hundred Million*) as special damages, general damages, interest at 23% per annum from the date of the suit until payment in full and costs of the suit.
5. The Plaintiffs cause of action against the Defendant arose as follows:
 - a) The Plaintiffs were employees of the Defendant at different levels of administration.
 - b) The 1st Plaintiff was employed by the Defendant from 1st August 2015 up to 1st April 2016 as a cleaner at the Defendant's offices in Bukasa.
 - c) The 2nd Plaintiff was employed by the Defendant from 14th October 2015 up to April 2016 as a Driver in the Mechanical Department at the Defendant's Office in Kajjansi.
 - d) On the 31st day of March 2016 at about 3:00pm, the Plaintiffs along with several others were picked abruptly from the Bukasa Subgrade Office by the Defendant under the pretext that they were being taken to the Head Office on an unidentified project.

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- e) The Plaintiff along with several others were surprised to be dropped at Doctor's Clinic-Seguku and forcefully subjected to a medical checkup under the strict supervisor of one of the Defendant's Managers. The process involved drawing the Plaintiff's blood without their consent and using it to do several tests.
 - f) The Defendant's Manager of the 2nd Plaintiff's station insisted that if they refused to undergo the tests, they would be terminated from employment.
 - g) The Plaintiffs requested for the medical examination results and was informed by the doctors as well as the medical staff at the Doctor's Clinic informed the Plaintiffs and several other employees of the Defendant Company that the results of the Medical tests would be shared with the Office Manager.
 - h) The Plaintiffs were never fully informed of the reasons for the medical check-up nor was the Plaintiff's consent sought for HIV-medical screening.
 - i) On the 1st day of April 2016 the Plaintiffs on different intervals were summoned by Mr. Wang, the Bukasa Office Manager, who informed the Plaintiffs that the medical test results that were taken at Doctor's Clinic- Seguku showed that the Plaintiff and several others were HIV positive.
 - j) The Plaintiffs were immediately forced to sign resignation letters by Mr. Wang- the Bukasa Office Manager but the Plaintiffs refused.
 - k) The Plaintiffs were immediately terminated from employment on the same date on medical grounds as the medical tests revealed that the Plaintiffs were HIV Positive.
 - l) The Plaintiffs were never given a fair hearing on the matter before their employment was terminated by the Defendant.
 - m) The impugned actions of the Defendant were in breach of the Plaintiff's Human rights to privacy, equality and freedom from discrimination based on one's HIV status and amounted to unfair and unlawful termination from employment.
6. The Plaintiff avers that the Defendant without any notice or valid reason terminated the Plaintiff from employment which has exposed the Plaintiff to stigma from former workmates, have also failed to find any other form of employment because they are HIV Positive, mental anguish and distress for which the Defendant is liable for in Special and general damages.

PARTICULARS OF SPECIAL DAMAGES

- a) Failure for the Defendant to acquire the Plaintiff's consent for a Medical HIV test screening which amounted to a Human Rights Violation.

- b) Loss of lively hood and employment arising out of the Defendant's discrimination on grounds that the Plaintiffs were HIV Positive.
- c) Causing mental distress and exposure to stigma upon termination from employment on grounds of being HIV Positive.
7. That the Plaintiff accordingly served a Demand Notice/ Notice of intention to sue on the Defendant.
8. That the Plaintiff's cause of action arose at Kampala within the jurisdiction of this Honorable Court.

WHEREFORE THE PLAINTIFF prays for judgment against the Defendant as follows;

- a) A declaration that the actions of Defendant in conducting medical tests and procedures upon the Plaintiff without their informed consent was an infringement on the Plaintiff right to privacy in contravention of Article 27(1)(a) of the 1995 Constitution.
- b) Declaration that the actions of the Defendant in dismissing the Plaintiff from employment deprived the Plaintiff of their sources of livelihood and infringed their right to life and to work in contravention of Articles 22(1) and 40(2) of the 1995 Constitution.
- c) Declaration that the actions of the Defendant in carrying out medical procedures without the Plaintiff informed consent and dismissing the Plaintiff from employment on grounds of health status traumatized and stigmatized the Plaintiff and infringed their right to equal dignity and freedom from cruel, inhuman and degrading treatment in contravention of Articles 24 and 44(a) of the 1995 Constitution.
- d) Declaration that the impugned actions of the Defendant are additionally in contravention of the obligations regarding rights guaranteed under international human and labour rights instruments ratified or acceded to by Uganda, including the African Charter on Human and Peoples' Rights, the UN Covenant on Civil and Political Rights; the UN Covenant on Economic, Social and Cultural Rights; and the ILO conventions, codes and recommendations.
- e) Declaration that the impugned actions of the Defendant in dismissing the Plaintiffs without a fair hearing amounted to unfair and unlawful termination.
- f) Payment in lieu of notice of termination from employment, unpaid leave during the year of employment as well as severance allowance
- g) Special damages of **UGX 400,000,000** (Uganda Shillings Four Hundred Million) unfair dismissal from employment and compensation for infringement of their fundamental rights and freedoms.
- h) Aggravated and General Damages

- i) Interest in a) & b) above at 23% per annum from the date of judgement until payment in full.
- j) Costs in the suit

DATED at Kampala this 2nd day of may 2017

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Z. M. M. M. M.

COUNSEL FOR THE PLAINTIFF

Drawn and filed by:
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CIVIL SUIT NO. 195 OF 2017

- 1) ANNET NAMUYOMBA MUKISA
2) GEORGE WILLIAM KATO PLAINTIFFS
VERSUS

CHINA COMMUNICATION
CONSTRUCTION COMPANY LIMITED DEFENDANT

SUMMARY OF EVIDENCE

The Plaintiffs will give evidence at the trial that the Defendant violated their fundamental rights to privacy, equality and freedom from discrimination, unlawful and unfair termination from employment on the grounds of being HIV Positive.

LIST OF WITNESSES

- 1) The Plaintiffs
2) Saidi Salim
3) Lawrence Kalunga
4) Others with leave of court

LIST OF DOCUMENTS

- 1) Work IDs
2) Medical Reports

LIST OF AUTHORITIES

- 1) Constitution of the Republic of Uganda, 1995
2) African Charter on Human and Peoples' Rights
3) UN Covenant on Civil and Political Rights
4) UN Covenant on Economic, Social and Cultural Rights
5) ILO conventions, codes and recommendations
6) Employment Act
7) Others with leave of court

DATED at Kampala this 3rd day of may 2017

[Signature]
COUNSEL FOR THE PLAINTIFF

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