

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 79 OF 2003

(Arising out of Civil Suit No. 12 of 2001)

5 **ATTORNEY GENERAL===== APPELLANT**

VERSUS

FLORENCE BALIRAINÉ ===== RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA.
HON. LADY JUSTICE L.E. TIBATEMWA, JA.
10 **HON. MR. JUSTICE KENNETH KAKURU, JA.**

*(Appeal from Judgment of the High Court at Kampala by His Lordship Yorokamu Bamwine, J
dated 2nd July, 2002 in Civil Suit No. 12 of 2001).*

15 **JUDGEMENT OF HON. KENNETH KAKURU, JA**

This is an appeal from the judgment of His Lordship Y. Bamwine, J as he then was) dated 2nd July, 2002.

The appellant was sued by respondent in a representative capacity. The respondent was employed under a contract by a government project known
20 as Rural Water and Sanitation Project (RUWASA). The contract which began in 1996 was renewable yearly. On 3rd May 2000 her contract was

renewed and extended to 31/12/2000. On 12th July 2000 her contract was terminated by a letter dated 12/7/2000. She successfully sued the appellant. The learned trial judge found that the contract had been unlawfully terminated. He awarded her 10.000.000/= as general damages.

5 The appellant being dissatisfied with the judgment brought this appeal.

When the appeal first came for hearing before this court on 09/07/2007, Ms. Alziik Namutebi was holding brief for Mr. Mohamed Mbabazi. The respondent was unrepresented. She appeared in person.

10 The matter proceeded with counsel for the appellant making oral submissions. Upon closure of the appellants' submissions, the respondent briefly attempted to reply. However court sensing the danger of allowing an unrepresented litigant to proceed with her own appeal advised her to instruct counsel. The matter was adjourned on that account.

15 The appeal did not come up for hearing again until 6th September 2013 more than six years later. When the appeal was called for hearing Ms. Namutebi was in court appearing for the appellant. The respondent was not in court. This court decided to deliver judgment since the appeal had been argued albeit in part by the respondent but more so because the respondent had not instructed counsel to represent her more than seven
20 years after this court had ordered her to do so. The court record did not show any notice of instructions. The court then decided to proceed with writing judgment based on what was on record, as the respondent had

failed to comply with the court order issued on 9/7/2007, directing her to instruct counsel.

The appellants set out four grounds in their Memorandum of Appeal. They are;

1. *That learned trial judge erred in law and fact when he misdirected himself and failed to properly evaluate the evidence.*
2. *The learned trial judge erred in law and in fact when he misconstrued the law relating to termination of employment.*
3. *The learned trial judge erred in law and in fact when he found that the respondent was sexually harassed.*
4. *The learned trial judge erred in law and fact when he awarded 10.000.000/= as compensation embarrassment, mental torture, inconvenience and as damages for wrongful dismissal after finding that the respondent was not entitled to anticipatory damages.*

Am at loss as what the appellant's complaint is, in ground one. It seems to me that it is now a practice that every memorandum of appeal must begin with such a general ground. Am unable to ascertain from this ground the judge's alleged error in law or fact. Am unable to ascertain how the judge misdirected himself and how he failed to properly evaluate the evidence.

Am still unable to ascertain how the error and the misdirection effected the judgment or led to a wrong conclusion. Am inclined to think that both grounds 1 and 2 offend the provisions of ^{Rule} ~~Order~~ **86(1)** of the Rules of this Court.

5 That Rule provides as follows:-

86(1). *A Memorandum of Appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make. (Emphasis mine)*

10 The grounds of appeal must therefore concisely specify the points which are alleged to have been wrongly decided. General grounds such as
15 grounds 1 & 2 which do not concisely specify the points of objection offend the provisions of **Rule 86 (1)** of the rules of this court, above cited

This practice of advocates setting out general grounds such as grounds 1 & 2 in this appeal that allow them to go on a general fishing expedition at the hearing of the appeal hoping to get something they themselves do not
20 know, must end.

On that account I would strike out both grounds 1 and 2.

See **Katumba Byaruhanga Vs Edward Kyewalabye Musoke**, (CACA 2 of 1998) reported in (1999) KALR P.621.

In that case the appellant had set out two grounds of appeal in his Memorandum of Appeal as follows;

5 1. The learned judge erred in and in fact in ordering the result of the election of LCV Chairperson, Kiboga be cancelled, the election as LCV Chairperson Kiboga be set aside and consequently that fresh elections be held.

10 2. The learned judge erred in law and in fact in passing judgment after the starting period of ninety days thereby rendering the judgment of the lower court null and void.

At the commencement of the hearing counsel for the respondent raised
15 objection to ground one above. He contended that it was too general and offended the provisions of Rule 85 (now 86) of the Rules of this Court. The objection was upheld by a full bench of this court. (Berko, Twinomujuni and Okello, JJA). The above decision and others notwithstanding, advocates still continue to frame general grounds of appeal that clearly offered the
20 provisions of Rule 86. This must stop.

Even if I had allowed both grounds to stand I would still have dismissed them on account that they were both not proved.

I have read the pleadings, the proceeding at the lower court, the judgment of the learned trial judge. I have also read the submissions of counsel for the appellant in this court. I have found nothing to remotely suggest that the learned trial judge misdirected himself or any issue of law or fact, or that he failed to evaluate the evidence.

On the contrary I think he did properly evaluate that evidence on record.

I must add that evaluation of evidence usually ^{entails} ~~entitles~~ court looking at evidence as adduced by both sides and contrasting it with the law.

In this case it is only the respondent who was the plaintiff at the High Court who offered evidence in support of her case. Although the appellants had filed a Written Statement of Defence, they did not appear in court when the matter was called for hearing. They offered no evidence at all at the trial.

The only evidence available for evaluation was that of the respondent. The learned trial judge evaluated it well and in my view came to the correct conclusion.

It is common ground that the respondents' contract was renewed on 3rd May 2000 and terminated on 12/7/2000. That it was extended or renewed after a comprehensive evaluation. If therefore there was any reason for termination it ought to have occurred between 3rd May and 12th July 2000.

There was none. The written statement of defence was brief. It was a general denial. Paragraph 4(i) of the WSD in fact admits that that the respondent's contract was terminated under **Clause 16.2, 16.3 and 19.1** of the terms and conditions of service, it states in part;

5 *"At no time were the terms and conditions of service as contained in S.16.2, S.16.3 and S.19.1 breached in relations to the plaintiff..."*

We know now that the above conditions were breached because none of the circumstances for termination set out in 16.2 applied to the respondent
10 at all. When the respondent in writing requested for the reasons for her termination, the employer failed to provide any.

I find absolutely no reason to fault the judgment of the learned trial judge in this regard. I agree with him entirely. As I have already stated grounds one and two must fail.

15 As regards ground 3 of the Memorandum of Appeal. The respondent testified in court. She gave a very detailed account of persistent sexual advances by her boss. The trial judge who saw her and heard her testimony believed her. The appellant elected not to attend the trial so the respondent was never cross examined. Her testimony stands
20 unchallenged. This is how the trial judge narrated the respondents' ordeal – at page p.3 of his judgment:-

"The plaintiff gave a heart rendering account of how the said Ssozi for a long time demanded to have a good time with her, how he demanded to have sex with her on the eve of the referendum election day and how he grabbed keys to her home, how she asked for one day leave to pray for salvation and how upon her return she was terminated on claims that she had failed to trace a personal fax message to Mr. Ssozi's wife."

The learned trial judge correctly found that the respondent had been sexually harassed. I agree with him. Accordingly ground 3 must fail.

Ground 4 in my view is misconceived as the learned trial judge awarded Shs. 10.000.000/= as general damages. He was entitled to do so. The amount was not awarded as anticipatory damages as counsel for the appellant contends.

Having found that the respondents' employment was unlawfully terminated the trial judge rightly in my view went on to find that she had suffered mental torture, embarrassment and inconvenience. The appellant is not challenging the quantum of damages but the principle upon which they were awarded. I find that the learned trial judge applied the correct principle.

This ground must also fail.

Had the respondent filed a cross appeal seeking to enhance the award of damages, i would not have hesitated to award her at least Shs.30.000.000/=. However she did not cross appeal and I have no basis upon which to interfere with the discretion of the learned trial judge.

- 5 Accordingly this appeal fails and it is hereby dismissed with costs in this court and in the court below.

Dated at Kampala this.....^{27th} day of ^{Sept}..... 2013.

.....^{Kakuru}

KENNETH KAKURU

JUSTICE OF APPEAL.