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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CIVIL APPEAL NO. 48 OF 2010

(An Appeal against the High Court at Kampala Judgment (Mugamba, J.) dated 27.03.2009 in HCCS No. 93 of 2001)

15 **J.B. Kabuye ::::::::::::::::::::::::::::::::::::::: Appellant**

VERSUS

Bank of Uganda ::::::::::::::::::::::::::::::::::::::: Respondent

**Coram: Hon. Justice Remmy K. Kasule, JA
Hon. Justice Kenneth Kakuru, JA
Hon. Justice Geoffrey Kiryabwire, JA**

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JUDGMENT OF THE COURT

Background:

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The appellant was employed by the respondent from 13.11.1987 up to 30.04.1995 when he was retired at the level of Principal Banking Officer, Building Section, under the respondent's involuntary retirement scheme, where an employee would be compulsorily retired by the respondent.

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30 The respondent represented to the appellant that, pursuant to
the resolution of the respondent's Board, he, as a pensionable
staff retired under the involuntary retirement scheme, was to
receive a severance package, similar in all respects, to that
awarded to staff retired under the voluntary termination
35 scheme, (VTS) in December 1994. Under the VTS an employee
voluntarily chose to retire or to remain in employment and if the
employee had been advance a housing loan, then same where a
housing would not be deducted from the retirement package but
would continue to be settled under the original terms.

40 The appellant, by 30.04.1995, the retirement date, had taken
up a housing loan and another personal loan from the
respondent. On retirement the respondent deducted all his loan
amounts from the retirement package, which consumed all the
money and left the appellant still indebted to the respondent.

45 The appellant lodged **HCCS No. 93 of 2001**, against the
respondent seeking to be re-paid the sum deducted as housing
loan from his retirement package and to be awarded general and
special damages. The High Court dismissed the suit with costs
on 27.03.2009. The appellant lodged this appeal.

50 **Grounds of Appeal:**

*1. The learned trial Judge erred in law and fact when he
dismissed the plaintiff's suit without proper evaluation
of the evidence.*

*2. The learned trial Judge erred in law and fact when he
held that there was no agreement that the plaintiff's
55 outstanding loan would not be deducted from his*

severance package all at once at the time of termination.

Legal Representation:

60 Learned Counsel John Matovu represented the appellant, while Timothy Masembe Kanyerezi was for the respondent.

Submissions of Counsel for Appellant:

65 Counsel submitted on the two grounds together, that the trial Judge failed in the Judgment to appreciate the evidence of the appellant and exhibit D1 dated 01.11.1994 whereby the respondent set out the details of the compensation package that the appellant was offered including para 5 thereof. In the said para 5 the respondent undertook not to set off the housing loan from the compensation package. The appellant's evidence that
70 only the sundry loan amount, and nothing more, should have been set off from the compensation package was not appreciated by the trial Judge.

Relying on **Supreme Court Civil Appeal No. 3 of 1998: Bank of Uganda vs Masaba & 5 Others**, Counsel submitted that the
75 facts in that appeal were somehow similar to those of the appellant's case and as such the appellant is entitled to damages, like was the case in the referred to case. Counsel prayed for the appeal to be allowed.

Submissions of Counsel for Respondent:

80 Opposing the appeal, Counsel submitted that exhibit P1 the respondent's communication of 24.04.1995 to the appellant specifically stated that it was the "Severance Package" availed

under the voluntary retirement scheme and not the whole
"Compensation Package" under Exhibit D1 that the appellant
85 was entitled to enjoy. The "severance package" did not include
the non-deduction of the housing loan from the compensation
package payable to the appellant.

Further, the appellant's leasehold, which he had tendered to the
respondent as security for the loan had expired and so there is
90 no way a mortgage could have been executed whereby the
appellant would pay the instalments originally agreed upon with
the respondent.

In respect of civil **Appeal No. 3 of 1998: Bank of Uganda vs
Masaba & 5 Others (Supra)**, Counsel submitted that the facts
95 were dissimilar to those of the appellant's case and, in any case
as regards damages, the said case had been decided in 1999,
and the awards of damages therein no longer represented the
true correct position.

Resolution by Court:

100 The duty of this Court, as a first appellate Court, is to re-hear
the case by re-evaluating and re-appraising the evidence and
the materials availed to the trial Court and then draw our
inferences, if any, on issues of law and/or fact. We carry out
this duty conscious of the fact that we did not observe the
105 demeanour of witnesses at the trial, and if a question is to
depend on demeanour, then we are to be guided by the
observations of the trial Court. See: **Rule 30(1) of the Rules
of this Court** and also **Civil Appeal No. 17 of 2002: Fr.
Naransio Begumisa & 3 Others vs Eric Tibebaga (SC)**.

110 **Ground 1:**

The learned trial Judge is faulted for not having properly evaluated the evidence before him, thus arriving at the wrong decision of dismissing the appellant's suit.

115 The evidence before the trial Judge was that of the appellant (Pw1) and Dr. Tibamwenda (Dw1), the respondent's Deputy Director, Human Resource testified to Court. Through their evidence, two documentary exhibits, namely the Bank of Uganda Restructuring Programme: Early Retirement Voluntary Termination of Service dated 01.11.1994, was tendered as
120 exhibit D1 and second: the Bank of Uganda Restructuring Programme: Staff Retrenchment-Phase II; dated 24.04.1995 addressed to the appellant, was tendered in as exhibit P1 with an attachment addressed to the appellant titled: Bank of Uganda-Terminal package.

125 An analysis of exhibit D1 shows that, the respondent, as employer, offers the employee an option to choose to voluntarily retire from employment on condition that the retiree is given a compensation package which has an express provision No. 5 termed: **"Staff Indebtedness to the Bank"** and stating that:

130 *"The Bank shall have the right to off-set all personal loans, other than housing loans, granted to employees leaving the Bank under this compensatory package. However any housing loan, which is currently secured by hypothecation of mailo land certificate or leasehold deposited with the Bank,*
135 *shall be registered as a legal mortgage loan to be repaid over*

a period to be agreed between the Bank and each employee concerned before departure”.

As to Exhibit P1, the same was specifically was specifically addressed to the appellant by the respondent to the effect that
140 161 of the staff had been compulsorily retrenched and that the appellant was one of them and that:

“Under a resolution made by the Board, all pensionable staff retired under the involuntary retirement will receive a severance package similar, in all respects, to that awarded to staff retired under the voluntary termination scheme (VTS) in December, 1994”.
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Then there followed the following paragraph:

“Accordingly, I wish to advise you that after taking into account all the debts, the net amount you owe to the Bank is”.
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We find no evidence that before making the deductions, the respondent first contacted the appellant as regards the housing loan of the appellant being deducted from his terminal package. Indeed, since there was already an executed arrangement
155 between the appellant and the respondent as to the repayment of the housing loan by agreed upon instalments up to the year 2010, natural justice demanded of the respondent to first interact with the appellant before taking the decision to deduct the whole housing loan at one go from the appellant’s retirement
160 package.

Further, in our considered view, the terms of the severance package similar in all respects, **“to that awarded to staff who retired under the voluntary termination scheme (VTS) in December, 1994”**, that the respondent awarded to the appellant under exhibit P1, could not have been exclusive of paragraph 5: **“Staff indebtedness to the Bank”** of exhibit D1. Were the said paragraph 5 to be excluded, then the severance package under exhibit P1 would not be “similar in all respects” with the compensation package under exhibit D1.

Our re-evaluation of the evidence leads us to conclude, for the reasons given above, that the compensation package set out under paragraphs 1 to 6 of exhibit D1 is what the respondent awarded to the appellant as a “severance package” in paragraph 4 of Exhibit P1.

Accordingly the respondent was not entitled to just arbitrarily decide to recall the housing loan to be repaid at one go, to the prejudice of the appellant, without first giving any hearing to the appellant.

It has been submitted for the respondent that since the leasehold, that the appellant had submitted as security for the loan to the respondent had expired, a mortgage could not be executed whereby the appellant would continue repaying the loan under the originally agreed upon repayment instalments. We do not accept this submission because the respondent, never demanded of the appellant to execute the mortgage and he failed to do so by reason of failure to renew the lease whose term expired in April, 1996; and yet the title to the leasehold

had all along been in the respondent's possession from 1991. The respondent adduced no evidence at all that the lessor ever refused to renew the lease and to have a mortgage executed over the said lease. The mortgagee, the respondent in this case, had a right and duty to extend the lease as the title certificate was in its possession and the mortgage was still in force. The lease could have been extended or renewed by the respondent, subject to the mortgage.

The appellant explained how he executed an arrangement with the respondent that the housing loan would be paid in 240 instalments from January, 1991 up to September, 2010. He was never challenged about this assertion and he was never questioned whether or not he could not execute a mortgage with the respondent by first renewing the lease and then execute a mortgage, or even by providing other security for that purpose.

The learned trial Judge, with respect, did not consider the above evidence with the attention that it deserved. He thus, in error, concluded that the appellant was not offered to enjoy the terms of severance of those who had retired voluntarily. With respect, we find that His Lordship was in error in holding that the severance package stated in paragraph 4 of exhibit P1 was different from the one constituted by paragraphs 1 to 6 of exhibit D1, particularly paragraph 5 that specifically excluded the housing loan from being set off from the retirement package. We thus find no basis for the trial Judge's holding that:

"A perusal through all the evidence on record would show that an agreement such as one suggested in issue (a) above never

215 *existed and given that position the answer to issue (b) is inevitably in the negative also”.*

We accordingly allow both grounds of the appeal.

220 The appellant in the plaint in **HCCS No. 93 of 2000** claimed to be refunded the deducted amount of the housing loan and to be paid general damages. It is not disputed that the appellant had to pay the housing loan in full by December, 2010. Since the said period of the loan repayment long expired, this Court cannot now grant a relief that the respondent refunds the said loan amount to the appellant. It is money that the respondent was entitled to receive from the appellant within that period up to December, 2010 by way of loan repayment, though in monthly instalments. The said prayer is thus refused.

230 We have already held that the respondent breached his contractual relationship with the appellant when he arbitrarily deducted at one go, all the housing loan amount from the appellant’s compensation package, contrary to the agreement that the loan was to be repaid in instalments from 1991 up to December, 2010, and without first requiring the appellant to take steps to execute a mortgage to ensure repayment of the loan.

240 The law is that where two parties have contracted and one of them breaches that contract, the damages that the other ought to receive for such a breach, are those that are fairly and reasonably considered either arising naturally according to the usual course of things from the breach, or as may be reasonably taken to have been in contemplation of both parties at the time

they made the contract as the probable result of the breach of the contract: See **V.R. Chande v East African Airways Corporation [1964] EA 5** and also **Bank of Uganda vs Masaba & 5 Others (Supra)**.

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The above two cases are also authority that, though in the normal course of things, damages for breach of contract are those in respect of pecuniary loss, where circumstances so dictate, damages may also be awarded for social and psychological suffering resulting in disappointment and/or physical inconvenience arising out of the breach of contract. The purpose of the damages is to put the party injured by the breach in the position that person would have been in had the contract not been breached.

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The appellant in his testimony to Court stated that he never received his retrenchment package because all of it was consumed by the deductions that included the building loan and he rained indebted to the respondent. He suffered much for the termination was sudden and he got nothing. He was diabetic and he got a shock. He lost his 12 year old son in 1996 for he had no money to pay for the son's medication. His sister whom he was supporting in school had to drop out of school. He would have invested the retrenchment package money into poultry and piggery.

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In the **Bank of Uganda vs Masaba & 5 others (Supra)** a case with some similarity to this one both as to facts and the parties involved, all being of the banking sector, both the Court of Appeal and the Supreme Court left undisturbed the award of

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shs. 7,000,000= to the 1st respondent and shs. 10,000,000=
270 collectively to the other 5 respondents.

The appellant in this appeal was a principal banking officer, a
high rank in the respondents' establishment. His retrenchment
was sudden and his retrenchment package was reduced to
nothing through the respondent's arbitrary deductions. He was
275 reduced to a pauper, incapable of financially supporting his
family and relatives. He was rendered incapable of investing
into any economic venture as he was deprived of use of his
money. Doing the best in the circumstances, being guided by
the case authority referred to above and taking into
280 consideration the inflationary trends in the economy, Court
awards the appellant shs. 20 million general damages.

Though in the normal course of things, interest on general
damages runs from the date of Judgment, in this case, the
appellant has suffered being deprived of use of his retirement
package money from the date of his retrenchment, and since
285 Court has ordered that he is not to be refunded any money of
the housing loan that was wrongly deducted from him, it is only
fair and just that the general damages awarded carry interest of
20% p.a. from 24.04.1995, the date of retrenchment.

290 In conclusion this appeal is allowed. The Judgment dismissing
HCCS No. 93 of 2001 is hereby set aside. It is substituted with
a Judgment in favour of the plaintiff in the suit, now appellant,
against the defendant, now respondent, with an award of shs.
20 million general damages with interest thereon at 20% p.a.
295 from 24.04.1995 till payment in full.

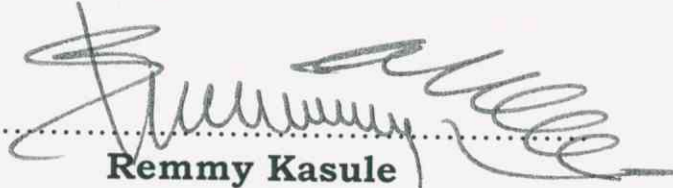
  
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The appellant is awarded the costs of this appeal and those of the Court below.


We so order.

Dated at Kampala this.....31..... day.....July..... of 2018

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Remmy Kasule
Justice of Appeal

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Kenneth Kakuru
Justice of Appeal

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Geoffrey Kiryabwire
Justice of Appeal

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