

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 05 OF 2012

(ARISING FROM HCCS. NO. 118 OF 2015 AT KAMPALA)

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UGANDA REVENUE AUTHORITY:.....APPELLANT

VERSUS

HUDSON MUSOKE:.....RESPONDENT

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CORAM: (K. Kakuru, S.Musota. C. Madrama JJA)

JUDGMENT OF STEPHEN MUSOTA, JA

The appellant brought this appeal against the decision of Hon. Justice Elizabeth Musoke (as she was then) dated 10th June 2011 in H.C.C.S No. 118 of 2008.

Background

The brief background to this appeal as far as I could ascertain from the court record is that by letter dated 24/3/2000, the appellant appointed the respondent and the respondent accepted the appointment to the position of Principal Revenue Officer Legal. The respondent was confirmed in service of the Defendant by letter dated 4/12/2000. The respondent executed his tasks and responsibilities diligently and the appellant promoted him to the rank of Senior Principal Revenue Officer (Legal). In the year 2005, the appellant underwent a restructuring exercise consequent upon which, the respondent was interviewed by the Board of directors and appointed

Manager Prosecution with effect from 19th April, 2005. On the 27th July, 2005, the respondent's services with the appellant were terminated by letter written by virtue of clause 14.2 of the human resource manual (HRM) of the respondent. The respondent was
5 dissatisfied with the manner in which his employment was terminated. He sued the appellant in the High Court for special and general damages for wrongful dismissal and/or terminal benefits, unpaid gratuity, repatriation allowance, interest and costs of the suit. Elizabeth Musoke J. (as she was) found for him and ordered the
10 appellant to pay gratuity for 3 months the respondent served as Manager Prosecutions on pro rata basis at 24% of the annual gross salary for the relevant year and interest of 25% p.a from 22nd July, 2005 till payment in full, shs. 35,000,000= as general and aggravated damages for wrongful termination of employment at an interest of
15 10% from the date of judgment till payment in full and costs of the suit.

Being dissatisfied with that decision, the appellant filed this appeal on the following grounds;

- 20 1. The Learned Trial Judge erred in law and fact when she held that the Plaintiff was entitled to be paid gratuity on pro rata basis for 3 months at a rate of 24% and interest of 25% accruing therefrom of the annual gross salary for the relevant year contrary to the Appellant's Human Resource Management Manual.
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2. The Learned trial Judge erred in law and fact and misdirected herself when she failed to properly consider and evaluate the evidence and submissions on the record and held that the Respondent was entitled to be paid gratuity on pro rata basis
30 for 3 months at a rate of 24%

Representation

At the hearing of the appeal, Mr. Aliddeki Ssali Alex appeared for the appellant while Mr. Kizito Ssekitooleko appeared for the respondent holding brief for Mr. Walubiri Peter.

Appellant's submissions

5 The appellant argued both grounds together.

It was argued for the appellant that under section 3.2.4 of the Human Resource Management Manual, no employee shall be entitled to gratuity unless he has completed a minimum of one year of service in the authority. Under paragraph 3 of the respondent's appointment letter, the conditions of his employment with the appellant were set out that he would be bound by the provisions of the appellant's human resource manual and staff code. Counsel relied on the decision of the House of Lords in **Miramar Maritime Corporation Vs Holborn Oil Trading Ltd (1984) AC 676** where it was held that "*the*
10 *common and universal principle ought to be applied, namely, that [an agreement] ought to receive that construction which its language will admit; and which will best effectuate the intentions of the parties, to be collected from the whole agreement, and that greater regard is to be had to the clear intention of the parties than to any particular words*
15 *which may have been used in the expression of their intent*".
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It was further argued for the appellant that since the learned trial judge found that the respondent had been in employment with the appellant for 3 months, she erred in holding that he was entitled to payment of gratuity on pro rata basis for 3 months at a rate of 24%
25 instead of not granting gratuity at all as agreed by the parties in the terms of the employment contract as per section 3.2.4 (c) of the Human Resource Manual. Counsel prayed that this appeal be allowed and the judgment and orders of the High Court be set aside with costs.

30 The respondent did not file any submissions.

Court's consideration of the appeal

The two grounds of appeal will be resolved together.

Before resolving the grounds of appeal, I have reminded myself that as a first appellate Court, this court has a duty to re-evaluate all the evidence and materials that were laid before the trial court and come
5 to its own conclusion regarding the matter before it in accordance with *Rule 30 of the Court of Appeal Rules*. Rule 30 provides:

“30. Power to re-appraise evidence and to take additional evidence

(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

- 10 *(a) Reappraise the evidence and draw inferences of fact; and*
(b)...”

As a first appellate court, I must make up my mind after carefully weighing and considering the evidence that was adduced at trial. I have to subject the evidence as a whole to a fresh and exhaustive
15 scrutiny (See the cases of **Pandya v. R [1957] EA 336, Kifamunte Henry v Uganda Supreme Court Criminal Appeal No. 10 of 1997 and Bogere Moses and Another v. Uganda, Supreme Court Criminal Appeal No. 1 of 1997**).

All this has been done.

20 I have carefully considered the submissions of the appellant and the authorities filed.

At trial, the respondent’s case was that he was not paid terminal benefits even though he raised the matter with the board of Directors, the appellant did not inform the respondent of his terminal benefits.
25 During the re-structuring of the appellant in 2005, all remaining contracts below Assistant Commissioner were terminated with effect from 31/3/2005. This meant that the respondent started on a new contract when he took up the appointment as Manager Prosecutions on 19th April 2005 and it was terminated on 20/7/2005. The

respondent had however worked with the appellant for 5 years and 4 months in the same position.

Section 13.7.2 (b) of the **Human Resource Management Manual** states that;

5 *“Gratuity shall be paid to employees appointed under section 3.2.1 of this manual at the rate of 24% of the annual gross salary for every year served; and in any other case the Gratuity shall be paid at the rate of 15% of the annual gross salary.”*

Section 3.2.4 provides for gratuity and section 3.2.4 (c) states that;

10 *“No employee shall be entitled to gratuity unless he has completed a minimum of one year of service to the Authority.”*

The trial Judge rightly found that the respondent, after the restructuring of the appellant, started on a clean slate when he took up employment as the Manager Prosecutions. He served as such from 15 19th April, 2005 upto 20th July, 2005, a period of three months. This essentially means the respondent was in employment for 3 months at the time he was terminated from service. An application of section 3.2.4 of the Human Resource Management Manual would mean that the respondent was not entitled to gratuity because he had not 20 completed one year in service of the appellant as stipulated in the terms and conditions of the employment agreement.

As rightly submitted by learned counsel for the appellant, parties are bound by the agreement entered into voluntarily as was held in **Miramar Maritime Corpn. Vs Holborne Oil Trading Ltd (supra)**. 25 It is equally clear that where, from the whole tenor of the agreement, it appears that however unreasonable and oppressive a stipulation or condition may be the one party intended to insist upon and the other to submit to it, a court of justice cannot do otherwise than give full effect to the terms which have been agreed upon by the parties. 30 **See McRae v. Marshall (1891) 19 SCR 10 (Supreme Court of Canada)**. It was further opined in the latter case and I agree that it

frequently happens in the competition which notoriously exists in the various departments of business and employment that persons anxious to get contracts or jobs submit to terms which, when they come to be enforced, appear harsh and oppressive. From the stringency of such terms escape is often sought by endeavouring to read the agreement otherwise than according to its plain meaning. But the duty of a court in such cases is to ascertain and give effect to the intention of both parties as evidenced by the agreement, where the language of the contract/agreement will admit of it. If the terms are clear and unambiguous, the court is bound to give effect to them without stopping to consider they may be reasonable or not.

I thus find that the learned trial Judge erred in law and in fact when she held that the respondent was entitled to payment of gratuity at pro rata basis for 3 months at a rate of 24% and 25% accruing therefrom of the annual gross salary for the relevant year contrarily to the appellant's Human Resource Manual yet he had been in employment for 3 months prior to his termination. The terms and conditions of service ought to be enforced. I will allow this appeal and set aside the trial court's orders and decree.

For the above reasons, this appeal succeeds.

In view of the background to this appeal, where a job was lost each shall bear its own costs.

Dated this 30th day of May, _____ 2019



Justice Stephen Musota, JA.

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THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 05 OF 2012

(CORAM: KAKURU, MUSOTA, MADRAMA, JJA)

UGANDA REVENUE AUTHORITY}APPELLANT

10

VERSUS

HUDSON MUSOKE}RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

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I have read in draft the judgment of my learned brother Honourable Mr. Justice Stephen Musota, JA in the above appeal and I concur with his summary of facts and decision.

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The appeal revolves on the issue of whether the respondent was entitled to gratuity as held by the learned trial judge. The underlying question is whether the respondent had served a minimum of one year in the employment of the appellant that would entitle him to gratuity as stipulated by clause 3.2.4. (c) of the appellant's Human Resource Management Manual. Clause 3.2.4 (c) provides that: "No employee shall be entitled to gratuity unless he has completed a minimum of one year of service to the Authority." The issue is whether this clause applies to all categories of employees irrespective of the period served. The clause by its wording is a proviso to the preceding general provisions under clause 3.2.4. It qualifies previous sub clauses; namely sub clauses 3.2.4 (a) and (b) and particularly clause 3.2.4 (b) which provides that:

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"If the employee leaves employment before the end of his contract, he shall be paid gratuity on a pro rata basis."

5 Clause 3.2.4 (a) provided that:

"On completion of the contract, the employee appointed under 3.2.1 of this manual shall be eligible for a Gratuity equivalent to 24% of the gross annual salary for each completed year of the contract. In any other case, the gratuity shall be 15% of the gross annual salary.

10 Clause 3.2.4 (a) can be interpreted to mean that even if a person has not completed his contract of service, he or she can be paid gratuity equivalent to 15% of the gross annual salary. Similarly under clause 3.2.4 (b), it can be argued that an employee who leaves employment before the end of his contract can be paid gratuity on a pro rata basis. The proviso in clause 3.2.4
15 (c) therefore makes it clear that in all cases where the question of payment of gratuity is considered, the employee ought to have completed a minimum of one year's service before he or she qualifies for gratuity.

The learned trial judge noted that during the restructuring of the appellant in 2005, all remaining contracts of its staff below the rank of Assistant
20 Commissioner, which is in the category of the respondent, were terminated with effect from 31st March, 2005. Further, that the respondent started his new employment on a clean slate when he took up a new appointment as Manager Prosecutions on 19th April, 2005. This appointment was terminated on 20th July, 2005 when the respondent had served for only
25 three months in the new appointment. The learned trial judge held that the respondent is entitled to be paid on a pro rata basis for the period served at 24% of his annual gross salary for the relevant year.

The holding is clearly contrary to the contract the respondent signed and he is barred by estoppel by contract to claim gratuity. The point is that the
30 appellant had already terminated the services of the respondent before his new appointment and paid him terminal benefits for the previous contract. The record clearly shows that the terminal benefits of the respondent

5 pursuant to termination of his previous service of employment had been
paid to Messrs. Standard Chartered Bank Ltd to repay the respondent's
loan. As observed by the learned trial judge, the respondent started work in
the new appointment on a "clean slate". This meant that he started work in
the new appointment as a new employee with a date of commencement of
10 the employment. I particularly wish to note that the letter of appointment
dated 19th April, 2005 clearly shows that the effective date of appointment
of the respondent was the 18th of April 2005. The respondent endorsed this
appointment later on 22nd April, 2005 and is bound by the effective date of
appointment found in paragraph 1 of the appointment letter.

15 In the premises I agree that the appeal should be allowed on the terms
proposed by my learned brother Hon. Mr. Justice Stephen Musota, JA

Dated at Kampala the 30th day of May, 2019


Christopher Madrama Izama

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Justice of Appeal

THE REPUBLIC OF UGANDA
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CIVIL APPEAL NO. 05 OF 2012

UGANDA REVENUE AUTHORITY APPELLANT

VERSUS

HUSDON MUSOKE RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Stephen Musota, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Mr. Justice Stephen Musota, JA.

I agree with him that this appeal ought to succeed for the reasons he has set out in his Judgment. I also agree with the orders he has proposed.

As Madrama, JA also agrees. It is so ordered.

Dated at Kampala this 30th day of May 2019.



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Kenneth Kakuru
JUSTICE OF APPEAL