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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 36 OF 2016

KABANDIZE JOHN BAPTIST & 21 OTHERS APPELLANTS

VERSUS

10 **KAMPALA CAPITAL CITY AUTHORITY RESPONDENT**

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

15 This appeal arises from the decision of Hon. Stephen Musota J (as he then was) in High Court Civil Suit No. 1128 of 1998 delivered on 15th December, 2015 in which he awarded the appellants Ug. Shs 143,253,029 as special damages resulting from unpaid terminal benefits.

The Judge also awarded the appellants general damages totaling Ug. Shs. 25 million
20 and further awarded interest at 8% per annum in respect of special damages.

The appellants although they were the successful party, nevertheless they were dissatisfied with the awards made by the learned trial Judge and appealed to this Court on the following grounds;-

1. The learned trial Judge erred in fact in finding that the total amount of unpaid terminal benefits was UGX 143,253,029 (One Hundred Forty Three Million Two Hundred Fifty Three Thousands Twenty Nine Shillings)
2. The learned trial Judge erred in law and fact when he awarded interest on the unpaid benefits at a low rate of 8% per annum.
3. The learned trial Judge erred in law and in fact when he awarded to the plaintiffs General damages that are inordinately low.

At the hearing of this appeal Mr. Joseph Luswata learned Counsel appeared for the appellants while Mr. Denis Byaruhanga learned Counsel appeared for the respondent.

Both parties were granted leave to file written submissions, which they did. It is on the basis of the written submissions that this Judgment has been made.

The appellants' case

The appellants did not have to argue ground one of the appeal, the same having been conceded to by the respondent. It was agreed by both parties that the award of special damages ought to have been Ug. shs 149,420,546/=. The amount of Ug.shs 143,253,029/= set out in the judgment was a result of arithmetical error.

Counsel submitted in the 2nd and 3rd grounds of appeal together that:-

The award of general damages and interest are at the discretion of the trial Court. However, an appellate Court may interfere with this discretion on grounds that have been determined by Courts in a number of authorities

Counsel submitted that, an appellate Court may interfere with the discretion of the Judge if it is satisfied that he misdirected himself/herself in some matters and arrived at a wrong decision or where it is a wrong decision or where it is manifestly clear that the Judge had been clearly wrong in exercise of his discretion and that as a

5 result there has been misjustice. He relied on *Uganda Development Bank vs National Insurance Corporation and Another, Supreme Court Civil Appeal No. 28 of 1995* and *Gichuki vs TM Construction Group (2003) 1 EA 83* for the above proposition of the law.

10 It was further submitted for the appellants that, the terminal benefits were awarded as special damages and as such ought to have attracted a higher interest rate. He cited to us *ECTA (U) vs Geraldine S. Namurimu, Supreme Court Civil Appeal No. 29 of 1994*.

It was submitted further that, the trial Court ought to have taken into account a number of factors favouring enhanced interest rate as special damages namely:-

- 15 - *The long period the appellant's money was withheld by the respondent which was over 21 years.*
- *Prevailing Inflation in the Country over the same period.*
- *Awards made by Courts in respect of similar claims in other cases.*

Counsel asked this Court to interfere with the award of interest and enhance it from 8% per annum to 24%.

20 In respect of general damages Counsel submitted that, the learned trial Judge failed to take into account inflation and consistency of awards. Further that, had he done so he would have awarded at least 5 million shillings as general damages to each of the appellants. He asked this Court to enhance the general damages from Ug. shs 1,100,000 to 5,000,000 for each of the appellants.

25 Respondent's reply

It was submitted in reply to ground two that, the learned trial Judge properly exercised his discretion in respect of the awarded of general damages. The award

was within the discretion of the Court as the appellants had failed to provide
5 sufficient material facts to justify a higher award.

He asked this Court not to interfere with the trial Judge's discretion. He relied on
Robert Coussens vs Attorney General, Supreme Court Civil Appeal No. 8 of 1999 for the
proposition that, the appellate Court will only interfere with a trial Judge's
discretion on award of general damages if that Court acted on a wrong principle of
10 law or where the amount is so high or low as to make an entirely erroneous
estimate of the damages.

In respect of ground three, Counsel submitted that the award of interest is
discretionary and there is no rule of thumb which permits the appellant to claim
interest at commercial lending rate. He referred to us *Section 22(2)* of the Civil
15 Procedure Act and to *ECTA (U) vs Geraldine S. Namurimu (Supra)*.

Further Counsel submitted that, the appellants failed to provide any facts to support
their claim for enhanced interest.

He asked Court to dismiss this appeal.

Resolution of grounds

20 Being a first appeal we are required to re-appraise the evidence adduced at the trial
and make our own inferences of law and fact. See:- *Rule 30* of the Rules of this Court,
Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17
of 2002, Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997
and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.

25 I shall now proceed to do so.

The first ground has been conceded to. It appears clearly that the learned trial Judge
made an arithmetical error while calculating the exact amount of money due to the
appellants as their terminal benefits. We find that the judgment and decree ought to

5 have read Ug. shs 149,420,546 and not 143,253,029. The award of terminal benefits is varied accordingly. The first ground therefore succeeds.

10 It is now trite law that, an appellate Court cannot interfere with the exercise of discretion of the trial Judge in assessment and award of general damages unless he or she has acted on a wrong principle or where the award is manifestly low or high as to occasion a miscarriage of justice. See:- *Mbogo Shah (1968)EA 93, Patel vs Samaj & Another (1941) 11 EACA, ECTA (U) vs Geraldine S. Namurimu (Supra)* and *Robert Coussens vs Attorney General (Supra)*.

The learned trial Judge while determining the issue of general damages stated as follows at page 21 of his judgment:-

15 *"All plaintiffs testified that they were retrenched in April 1997 and have demanded for payments of the balance of the rightful benefits since 1998. All the plaintiffs also testified that they came from their respective villages to attend proceedings of the Court.*

20 *From the evidence on record, I am satisfied that the plaintiffs have been inconvenienced a great deal by the defendant's award of wrong terminal benefits.*

I also agree with counsel for the plaintiffs' submission that the plaintiffs would have invested their money if it had all been paid according to the law. I would therefore award general damages of 25 million to be shared equally amongst the plaintiffs."

25 The general rule regarding the measure of general damages is that, the award is such a sum of money that will put the party who has been injured or who has suffered as adjudged by Court in the same position as he or she would have been had he or she not sustained the wrong for which he or she is getting the

5 compensation. See: *Livingstone vs Rowyards Coal [1880] 5 App Cas. 2539* cited with approval in *Robert Coussens vs Attorney General (Supra)*.

The respondent denied the appellants their terminal benefits from 1998 to 2015 when the High Court delivered its judgment. With all due respect the learned trial Judge ought to have attempted to quantify this loss.

10 The appellants were pensioners. Except one, the rest are over 70 years old. It can be said that they must have faced great financial difficulties on account of unemployment. They were unable to get the benefits of their long years of services to the respondent. They were denied money at the time they needed it most. Had they received this money 20 years ago in 1998, they would probably have invested it or used it to better their lives in some way. This did not happen on account of the
15 respondent's fault.

In the meantime, their former employer the respondent withheld the money and used it or somehow benefited from it by way of bank interest or otherwise. Bank of Uganda records indicate that the exchange rate of 1 US dollar to Ug. Shs was 1,231 See: <https://www.bou.or.ug> and <https://usd-currency-conversion.com/USD-to-Uganda-Shillings-UGX-Currency-converter-course-history>. Today the exchange rate is 1 dollar to 3,717.20 See: <https://www.bou.or.ug/bou/collateral>. The cost of living has gone up and this can be determined from the cost of fuel alone. This means that, the value of the money today is 1/3 of its value in 1998. The appellants therefore are today entitled to three times the amount of the money they ought to have been paid
25 in 1998.

Taking all the above into account I find that the award of general damages of shs 1,100,000 for each of the appellants was too low as to amount to an injustice. I would enhance it to Ug. Shs7,000,000 per person.

In respect of interest, the same principle applies. This Court can interfere with the trial Court's discretion on interest if the Court acted on a wrong principle or the award was too low or high as to amount to an injustice.

The appellants were awarded interest at 8% on the special damages.

Had the appellants been paid their terminal benefits in 1998 and deposited it on a fixed deposit account, they would have been paid interest between 10%-14% per annum. Had they procured government bonds or bought shares on the stock exchange, they would have earned interest at more than 8% per annum on that money. As already stated above the value of the appellant's money has been eroded to 1/3 of its value as a result of inflation

I find that the award of 8% on special damages to be too low as to amount to an injustice. I would enhance it to 15% per annum from the date of filing the suit until payment in full.

I would allow this appeal and make the following orders:-

1. The judgment of the High Court is hereby varied to the extent set out in this judgment.
2. General damages enhanced to Ug. Shs 7,000,000/= per appellant.
3. The respondent is ordered to pay to the appellants as special damages a total of Ug. Shs 149,420,546/=
4. Interest on special damages at 15% per annum from the date of filing the suit until payment in full.
5. Interest on general damages at 6% per annum from the date of High Court Judgment until payment in full.
6. The respondents shall pay the costs of the appeal.

Since my learned brothers Hon. Muhanguzi and Hon. Madrama JJA agree to the orders proposed, it is so ordered.

Before I take leave of this appeal I would like to make the following observations.

5 When this appeal came up for hearing on 11th June 2018, we concluded with the following orders and directions.

'Let the parties file written submission of not more than 10 pages each. The appellant is to file submissions by 18th June 2018 and serve the respondent. The respondent will reply and serve the appellant by 25th of 10 June and the appellant may file a rejoinder by the 29th of June if any. Thereafter judgment shall be delivered on a date to be given to you on notice. In the meantime the Registrar of this court is directed to place this file before Justice Kiryabwire for mediation.'

15 The Registrar of this Court did place the file before Hon. Justice Kiryabwire for mediation. The parties appeared before him on 11th July 2018 and again 18th July 2018 according to the mediation file.

On 18th October, 2018 Counsel for the respondent presented to Court a signed "Consent Judgment" which was endorsed by Justice Kiryabwire on 18th October 20 2018. The full Coram of this which referred the matter for mediation was not informed of any of the above developments as no mediation report was ever forwarded to the full Court. Accordingly the Court went on to prepare this Judgment oblivious of the consent arrived at by the parties. The question is whether that "Consent Judgment" is valid.

25 The rules of this Court and indeed the law does not provide for consent judgments on appeal. See:- *Edith Nantumbwe Kizito & 3 Ors Versus Miriam Kuteesa, Civil*

Application No. 294 of 2013 and Bulasio Konde versus Bulandina Nankya, Court of
5 Appeal Civil Appeal No. 7 of 1980.

What is referred to as a consent Judgment is in essence “a withdrawal” of the appeal
by consent under Rule 94 of the Rules of this Court.

However, for the appellant to withdraw the appeal under Rule 94, the withdrawal
must be completed before the appeal is called for hearing. Where the appeal has
10 been called for hearing as in this matter, the appellant seeking to withdraw it must
first seek leave of the Court. See: *Geoffrey Gatete, Angella Maria Nakigonya vs
William Kyobe, Supreme Court Civil Appeal No. 7 of 205 (The Judgment of Tsekooko
JSC)*.

Accordingly the “consent Judgment” entered into by the parties cannot be valid.
15 Firstly because it was not a Judgment but a withdrawal, secondly because it did not
comply with Rule 94(1) of the Rules of this Court. I would strike it out on that
account under Rule 2 (2) of the Rules of this Court.

The mediation Justice with utmost respect should not have concluded this matter on
his own. He ought to have forwarded a mediation report to the full Court which had
20 referred the matter to him for it to conclude it and grant the necessary orders and
directions.

It is so ordered.

Dated at Kampala this 16th day of April 2019.

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Kenneth Kakuru
JUSTICE OF APPEAL

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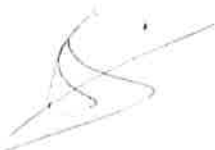
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF EZEKIEL MUHANGUZI, JA

I have had the benefit of reading in draft the judgment prepared by my learned brother Hon. Justice Kenneth Kakuru, JA.

I agree with his reasons, decision and orders. I have nothing more useful to add.

Dated at Kampala this.....16th.....day of.....April.....2019.



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Ezekiel Muhanguzi
Justice of Appeal

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**THE REPUBLIC OF UGANDA,
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CIVIL APPEAL NO 36 OF 2016**

(CORAM: KAKURU, MUHANGUZI AND MADRAMA JJA)

KABANDIZE JOHN BAPTIST & 21 OTHERS}APPELLANT

10

VERSUS

KAMPALA CAPITAL CITY AUTHORITY}.....RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

I have read in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

15 I concur with the judgment and I wish to add a few words of my own on the issue of the nature of an award of interest. Interest is meant to compensate the plaintiff for the period the money he or she is entitled to was withheld. According to **Stroud's Judicial Dictionary of Words and Phrases Sweet & Maxwell 2000 Edition** interest on money is:

20 "compensation paid by the borrower to the lender for deprivation of the use of his money"

Interest is meant to compensate the Plaintiff for deprivation of the use of money withheld by the defendant. In **Riches v Westminster Bank Ltd [1947] 1 All ER 469** HL at **472** Lord Wright of the House of Lords held that
25 the essence of the award of interest is *restitutio in integrum*.

"...the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if

5 he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...."

In the case of **Jefford and another v Gee [1970] 1 All ER 1202**, Court of Appeal, Civil Division Lord Denning MR held at page 1206 that:

10 "We applied this principle very recently in Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd... where we all agreed in saying:

'... the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly.' ..."

15 Finally this principle is captured in **Halsbury's laws of England** 4th Edition reissue paragraph 850 thereof where it is stated that in the award of interest:

"it is assumed that the Plaintiff would have borrowed to replace the assets of which he has been deprived..."

20 In the premises for there to be genuine restitution of the appellants, inflation and devaluation of the value of the money withheld has to be taken into account as well as the fact that the plaintiff would have had the benefit of it and might have earned from it. It follows that an award of 8% per annum would be manifestly low in view of the rates of interest on fixed deposit accounts or treasury bills. I agree with the conclusions of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA that the appeal should be allowed on the terms he proposed.

30 Dated at Kampala the 16th day of April 2019

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Christopher Madrama Izama

Justice of Appeal