

**THE REPUBLIC OF UGANDA,  
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
 CIVL APPEAL NO 0124 OF 2017  
 (ARISING FROM LABOUR REFERENCE NO 084 OF 2016)  
 (CORAM: OWINY DOLLO, DCJ, KAKURU, MADRAMA JJA)**

10 **AFRICAN FIELD EPIDEMIOLOGY NETWORK (EFENET)} .....APPELLANT**

**VERSUS**

**PETER WASSWA KITYABA} .....RESPONDENT**

**RULING OF COURT**

15 Judgment in the above appeal was delivered by this court on the 22<sup>nd</sup> of October 2019. Since then, our attention has been drawn to some errors therein.

20 Rule 36 (1) of the Rules of this Court permits this court to correct clerical or arithmetical mistakes in any Judgment or any error arising in it from an accidental slip or omission. The correction may be made at any time before or after the judgment and either on the motion of the court or on the application of any interested person. Rule 36 (1) of the rules of court stipulates that:

36. Correction of errors.

25 (1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.

5 The respondent to the appeal filed Miscellaneous Application No 368 of 2019 seeking *inter alia* review and correction of clerical or mathematical mistakes or errors arising from any accidental slip or omission in the judgment. The application was filed on 12<sup>th</sup> November, 2019. When the matter was brought to the attention of the court, we established that there were some errors that  
10 did not require formal address since they are apparent on the face of the record. We have accordingly moved on our own motion to correct them.

The brief background is that the appeal arose from the decision of the Industrial Court awarding the respondent special, general and punitive damages amounting to Uganda shillings 430,000,000/= upon finding that  
15 the respondent was wrongly dismissed from employment. The appellant's services had been terminated with effect from 29<sup>th</sup> February, 2016 and being aggrieved, filed a complaint under the Employment Act 2006 for unfair termination against the appellant in the Kampala City Council Authority (KCCA) Labour office at Nakawa. The dispute was referred to the Industrial  
20 Court for determination.

The Judgment of this court stated that the respondent was awarded 4 ½ years severance pay at page 43 and paragraph 25 of the judgment. The question is whether the Industrial Court awarded 5 ½ years arising from a ruling delivered after an application for correction of errors filed in the  
25 Industrial Court at page 606 of the record of appeal.

This court affirmed the decision of the Industrial Court but made an arithmetic mistake in recording the years of severance package awarded by the Industrial Court. The judgment of the court stated as follows:

30 In relation to ground 10 of the appeal, the appellant averred that the learned Justices and the Honourable members of the panel Industrial Court erred in law and followed wrong principles in awarding excessive severance package. The ground of appeal essentially repeats earlier grounds which deal with the award of damages. I have considered the award and the holding of the Industrial Court is at

5 page 602 of the record. The appellant was awarded 4 ½ years severance package at the rate of US\$2540 per month, for each year. I do not find that excessive.

Page 602 has the decision of the Industrial Court in the following words:

10 In the instant case, the claimant was paid US\$2540 per month from 1<sup>st</sup> of September 2010 – 1 September 2015 and US\$2737 from 1<sup>st</sup> of September 2015 to the date of termination i.e. for 4 ½ years. With therefore grant a rate of US\$2540 per month for each of the 4 years at the rate of US\$2737 for 6 months.

15 However, in a subsequent ruling the Industrial Court corrected the period to read 5 ½ years as appears at page 606 of the record. We perused the award without the subsequent ruling which corrected the error. It is also clear that in our earlier decision, we did not interfere with the award of the Industrial Court. For purposes of clarity, we affirm the decision of the Industrial Court since the court did not find it excessive and we do not need to add any more words to that. The decision of the Industrial Court dated 3<sup>rd</sup> February 2017 should be read as one with the subsequent ruling in Miscellaneous Application No26 of 2016 at pages 604 – 606 of the record.

20 With regard to the 2<sup>nd</sup> issue, this court disallowed the award of aggravated damages in the sum of Uganda shillings 70,000,000/= on the ground that the Industrial Court had not given reasons for this award. However, our attention has been drawn to the award of the Industrial Court. The record of appeal did not have page 12 of the judgment of the Industrial Court which had the reasons for the award. We have accordingly considered page 12 of the award of the Industrial Court which has subsequently been availed to the court where the Industrial Court stated as follows:

30 We have already found that the act of the Executive Director refusing to release the appraisals and recommendation for promotion of the claimant from his desk to the Human Resource despite a reminder constituted a malicious act. For all intents and purposes, the claimant's promotional ladder and therefore his salary increment had been completed but was thwarted by the Executive Director for no good reason except that he believed without evidence that the claimant had been

5 behind anonymous letters that could have led to his suspension. We find this action of the executive director for the respondent very callous and having caused exceptional harm to the claimant who but for this action would have earned an extra US\$2000 per month. Accordingly, we find it befitting to award 70,000,000/= as aggravated damages.

10 This was an accidental slip by omission because the record of appeal that we consider did not have page 12 of the judgment of the Industrial Court. In the premises, the judgment that no grounds were given for the award of aggravated damages cannot stand and we hereby set aside for having been issued in error because the reasons were indeed given by the Industrial Court  
15 but the page was missing. In the premises, we affirm the decision of the Industrial Court awarding the respondent Uganda shillings 70,000,000/=.

Thirdly, at page 38 of the judgment, we set aside an award of salary arrears of US\$57,169. This is what the Industrial Court held at page 9 of their award:

20 We therefore have no reason to depart from our decision and we hold that the claimant shall be paid salary arrears from the date of the unlawful termination to the date of this award.

In other words, the Industrial Court held that the claimant shall be paid salary arrears from the date of unlawful termination to the date of the award. The date of the award was 3<sup>rd</sup> of February 2017. The claimant's services had been  
25 terminated according to the facts accepted by the Industrial Court on 12<sup>th</sup> of February 2016 effective 29<sup>th</sup> of February 2016. In other words, the award amounted to a quantum of 12 month's salary. The appellant sought payment of salary arrears for 24 months of the terminated contract amounting to US\$95,308. At page 12 of the award this is what the Industrial Court stated:

30 (1) As regards salary for the remaining 18 months, we have already ruled that the claimant is entitled to salary from the date of termination to the date of the award. This will be at the rate of US\$2737 per month.

5 The salary of the claimant from the time of termination to the date of the award being a period of about 12 months' amounts to US\$32,844. There was obviously an error in calculation. At pages 37 and 38 of the judgment of this court this is what we stated:

At page 37 paragraph 10 our judgment was that:

10 In ground six, the appellant is aggrieved by an award of US\$57,169 salary arrears for 12 month's gratuity and severance allowance for a period after the contract had been effectively terminated. I agree that an award of salary arrears cannot be made where the contract has been terminated because there is no employer/employee relationship between the parties. That notwithstanding, was the award excessive?

15 Further at page 38 of the judgment of this court this is what we stated:

20 Having set aside the award of US\$57,169 I would not remit the issue to the Industrial Court for assessment of damages as this would prolong the litigation and escalate costs. The Industrial Court had awarded salary arrears from date of termination which became effective on 29<sup>th</sup> February 2016 to the date of the award on 3<sup>rd</sup> of February 2017, a period of about one year. I would substitute therefore general damages in addition to that already awarded equivalent to three month's pay at US\$2,737 totalling to US\$ 8,211.

25 The error arose from ground 6 of the appellant's appeal because it is a grievance against an award of US\$57,169 salary arrears for 12 months' gratuity and severance allowance for a period after the contract had been effectively terminated. This was an accidental slip and should not have been confused with the award of the Industrial Court of salary arrears from the date of termination to the date of the award that was set aside and substituted with 3 months' pay amounting to US\$8211.

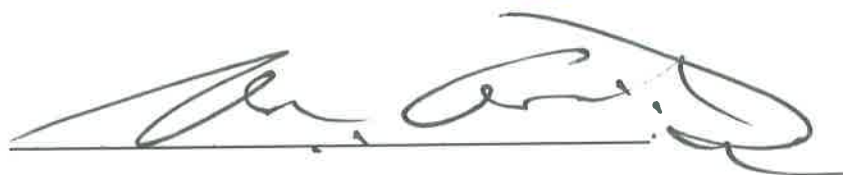
30 On the other hand, ground 6 of the appellant's appeal bundled up salary arrears, 12 months' gratuity and severance pay. We separately dealt with the severance pay. Secondly, the court was silent on the question of gratuity and in the premises did not overturn gratuity awarded to the respondent.

5 Presumably this is because the appellant according to the Industrial Court  
did not deny that the claimant was entitled to gratuity and the matter was  
not in controversy. The calculations for gratuity was based on the old salary  
of US\$2540. He was awarded gratuity for 3 years prior to the period of 1<sup>st</sup>  
September, 2015 to August, 2017. For purposes of clarity, the court affirms  
10 the decision of the Industrial Court on gratuity.

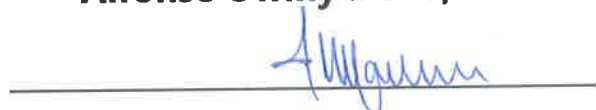
Last but not least, this court indicated that severance pay awarded by the  
Industrial Court was US\$11,528. The respondent complained to court that  
the actual amount awarded was US\$14,068 at page 606 of the record of  
appeal. Page 606 of the record has page 3 of the ruling of the court in  
15 Miscellaneous Application No 26 of 2017 correcting some errors in the  
original award of the Industrial Court. Obviously, we considered the award of  
the Industrial Court but due to accidental slip omitted to include the ruling  
on correction of the award. The correct figure is therefore US\$14,068 and our  
judgment stands corrected accordingly.

20 On our own motion, this ruling corrects the errors in our judgment delivered  
on 22<sup>nd</sup> October 2019.

Dated at Kampala the 7<sup>th</sup> day of Aug 2020



25 **Alfonse Owiny Dollo, DCJ**



**Kenneth Kakuru, JA**



**Christopher Izama Madrama, JA**