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THE REPUBLIC OF UGANDA

10 **IN THE COURT OF APPEAL OF UGANDA**

AT KAMPALA

Civil Appeal No. 138 of 2017

(Appeal from the Judgment of Hon. Lady Justice Dr. Winifred Nabisinde, Judge of the High Court delivered on the 13th day of March, 2017, in High Court of Uganda at Lira Civil Suit No. 2809 of 2010)

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Ogwang David and 99 Others ::::::::::::::::::::::::::::: **Appellants**

20 **Versus**

Attorney General ::::::::::::::::::::::::::::: **Respondent**

Coram: **Hon. Justice Elizabeth Musoke, JA**
25 **Hon. Stephen Musota, JA**
Hon. Justice Remmy Kasule, Ag. JA

Judgment of Justice Remmy Kasule, Ag. JA

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This is an appeal from the Judgment and orders of the Hon. Lady Justice Winfred Nabisinde in **Civil Suit No. 280 of 2010**, delivered on the 13.03 2017 in the High Court at Lira.

Background:

35 From 1986 to 2001 Uganda Spinning Mill Limited, a Government Parastatal was fully privatized by the Government. As a consequence, many of its employees, were laid off. Some employees were retained to continue working until the government completely divested itself of any interests in the stated parastatal.
40 They were popularly termed *"caretaker staff"*, and the "caretaker period" was the period when the caretaking would last. The Appellants continued working as care taker staff during the care taker period from 1995 until their services were finally terminated by the Government Privatisation Unit in 2001. No fresh,
45 appointment letters were issued to the appellants to work as caretakers. In 2003 former employees numbering 1415, including the appellants, had filed **Civil Suit No. 455 of 2003** in the High Court at Lira claiming for terminal benefits of all the former workers of Uganda Spinning Mill Limited as of the cut-off date of
50 28.02.1995. This suit was settled and terminal benefits up to the stated cut-off date paid.

The terminal benefits beyond the cut-off date for the employees who continued to work as care taker employees were not paid. It is on this basis that the Appellants filed **Civil Suit No. 280 of**
55 **2010** in the High Court, Lira. When this suit was tried the learned trial Judge held that the terminal benefits of the Appellants as care taker staff had been paid in the consent Judgment in **Civil Suit**

No. 455 of 2003. The Judge accordingly decided **Civil Suit No. 280 of 2010** against the appellants by dismissing the same with costs. Dissatisfied the appellants lodged this appeal.

The grounds of the appeal are as set out in the Memorandum of Appeal dated 17.07.2017 and are that:

1. ***The learned trial Judge erred in law and fact when she relied on speculation to decide that the Appellants were not employees of Uganda Spinning Mills Ltd thereby coming to the erroneous conclusion that the Appellants were not entitled to terminal benefits.***

2. ***The learned trial Judge erred in law and fact when she disregarded the evidence of the Appellants letters of re-engagement stating that they were not on court record thereby reaching a wrong conclusion on the same.***

3. ***The learned trial Judge erred in law and fact when she held that the terminal benefits of the Appellants as care taker staff were paid in the consent Judgment in Civil Suit No. 455 of 2003.***

4. ***The learned trial Judge erred in law and fact in failure as a court of first instance to properly and thoroughly evaluate all the evidence on the court record thereby coming to the erroneous conclusion that the Appellants were not entitled to terminal benefits.***

Legal Representation:

At the hearing on 14.11.2019, Learned Counsel Katumba

Chrisestom appeared for the appellants. The respondent the Attorney General had no representative in Court.

85 Counsel for the appellants prayed that the hearing of the appeal proceeds exparte but the prayer was not granted by the Court as the respondent had been served only on 13.11.2019 with Notice of the Hearing date of 14.11.2019. The written submissions for the appellants had also been filed and served on the respondent on the
90 same day of hearing.

The parties were ordered to file and to serve upon each other written submission and all to be filed and served by 05.12.2019 which they did. Thereafter Court would proceed to deliver Judgment on Notice on the basis of the filed written submissions.

95 **Appellants' Submissions:**

Grounds 1,2 and 4:

Appellants' Counsel dealt with grounds 1,2 and 4 together.

Counsel argued that it was never disputed by the respondent that the appellants were employees of Uganda Spinning Mills Ltd as per
100 their respective appointment letters exhibited in court.

Further, it was also not in dispute that the appellants served as care taker staff for Uganda Spinning Mills Ltd during the care taker period. During this caretaker period the company was taken over by the Government Privatization Unit and it continued operating
105 with the appellants as employees on a caretaker basis. Their services were later terminated by the said Privatization Unit.

Learned appellants' Counsel further argued that the re-

engagement and appointment letters that were filed in Court on 26.09.2016 were dated between1987-1997 and that this was when
110 the re-engagement of the appellants as caretaker staff started. He contended that after the re-engagement, there was no payment of terminal benefits to the appellants as caretaker staff after the cut-off date of 28.02.1995.

Counsel referred Court to the termination letters issued to
115 appellants between 1998 and 2002 that were exhibited in Court. He submitted that those termination letters are proof that employment contracts continued between the appellants and Uganda Spinning Mills Ltd during the period. Further, the Director of Privatization Unit, Mr. Michael Opagi had communicated to the
120 appellants confirming their being employed by the Uganda Spinning Mills Ltd under supervision of the Privatization Unit, pending the said company being fully privatized.

Learned Counsel also submitted that under **Section 7(2**) of the **Public Enterprises Reform and Divestiture Act, Cap 98,** the
125 Ministry of Finance took over the administration and Monitoring of the Public Enterprises which included the Uganda Spinning Mills Ltd.

Counsel referred Court to the re-engagement letters issued to the appellants which clearly stated that;

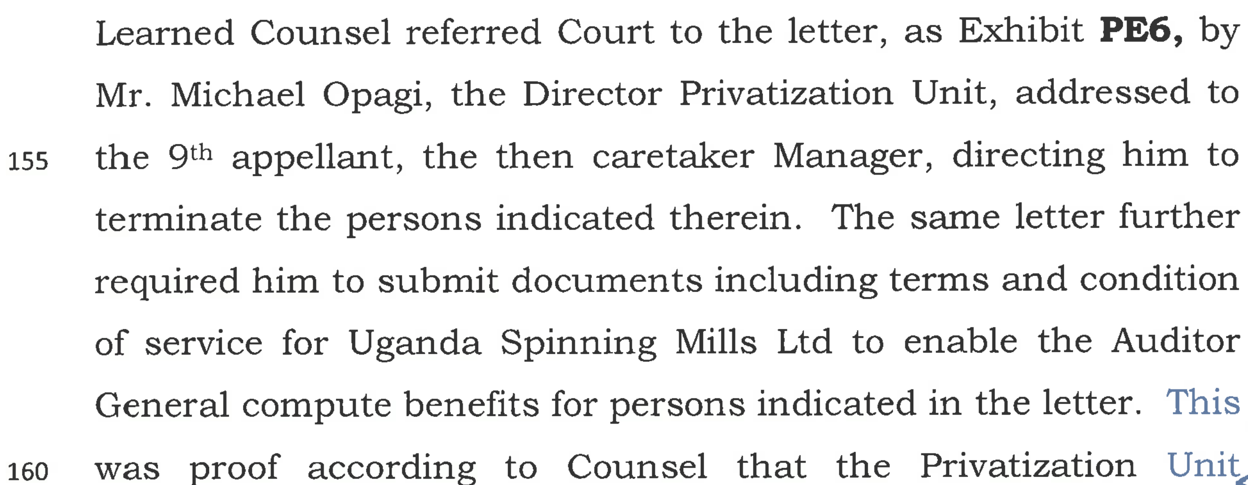
130 *"Your terms and conditions of your service are as laid down in the established staff regulations, terms and conditions of service currently in force".*

He invited this Court to appreciate that the terminal benefits that

the appellants are entitled to as caretaker staff are the same benefits that constituted the computation of terminal benefits for employees who worked for Uganda Spinning Mills Ltd-Lira, up to the cut-off date whose payment was settled in **High Court Civil Suit No. 455 of 2002.** These included payment in lieu of notice, commutation of leave, severance pay, long service award, transport allowance, retirement benefits, gratuity and repatriation.

Counsel submitted that the re-engagement letters with the same terms and condition of service were laid down in the established staff regulations, terms and condition of service in force before the Privatization Unit took over the management of the Uganda Spinning Mills Ltd-Lira. The same remained in force and bound the Privatization Unit to abide by them on the basis of **Section 31 of the Public Enterprises Reform and Divestiture Act, Cap. 98** and **Section 28(2) and (3) of the Employment Act, 2006.**

Appellants' Counsel maintained that the terms of employment given to the appellants when they first took on employment before privatization, were never varied by the Privatization Unit, when the appellants were taken on during the caretaker period.



Learned Counsel referred Court to the letter, as Exhibit **PE6,** by Mr. Michael Opagi, the Director Privatization Unit, addressed to the 9th appellant, the then caretaker Manager, directing him to terminate the persons indicated therein. The same letter further required him to submit documents including terms and condition of service for Uganda Spinning Mills Ltd to enable the Auditor General compute benefits for persons indicated in the letter. This was proof according to Counsel that the Privatization Unit

recognized that the appellants were entitled to receive terminal benefits.

For the same reason, learned Counsel invited court to disregard, the assertion of Mr. Joseph Ogwang of the respondent to the effect that there is no justification for the Appellants' claim for terminal benefits because the appointment letters given to caretakers do not provide for such terminal benefits.

Appellants' Counsel finally submitted that by law an employee who is unlawfully dismissed is entitled to be compensated adequately. He relied on **Bank of Uganda Vs Betty Tinkamanyire: Supreme Court Civil Appeal No. 12 of 2007** and **Barclays Bank of Uganda Vs. Godfrey Mubiru: Supreme Court Civil Appeal No. 1 of 1998** and prayed that grounds 1, 2 and 4 be allowed.

Ground 3:

In respect of ground 3, learned Counsel for the appellants submitted that the retirement exercise of the recalled appellants was conducted in different phases with Mr. Moro Santos Acuda being the last person to be terminated. Mr. Acuda himself had terminated all other caretaker employees on the instructions of the Privatization Unit. There were 100 employees who continued to serve as caretaker staff after the cut-off date of 28.02.1995. They were retrenched at different times.

Learned Counsel reasoned that **High Court Civil Suit No. 455 of 2002: John Oloto and Another vs Attorney General** was different from the one of the appellants, the subject of this appeal, because the plaintiffs therein claimed terminal benefits only up to

the cut-off date of 28.02.1995. Hence the years of employment specifically covered in **High Court Civil Suit No. 455 of 2003** were those between 1971 and 1984 up to 28.02.1995. However in

190 **High Court Civil Suit No. 280 of 2010** the claim of the appellants is for the period of employment from **1995 up to 2001.** The two suits could not be pursued together because the cause of action in **HCCS No. 280 of 2010** arose after **HCCS No. 455 of 2003** had been completed to finality by a settlement being entered therein.

195 Counsel finally submitted that the appellants were in agreement that the former workers would be paid terminal benefits on the scale of the former employees of the defunct Nyanzi Textile Industries despite their being termed care taker employees. Learned Counsel invited Court to also allow ground 3 of the appeal.

200 Since all the grounds were successful, Counsel prayed the Court to allow the whole appeal.

Respondent's Submissions:

Grounds 1,2,3 and 4:

Learned Counsel for the respondent submitted on all the 4

205 grounds together. Counsel supported the learned trial Judge as having properly analyzed and evaluated the evidence and came to the right conclusions.

Respondent's Counsel referred to the testimony of Pw1 and disputed the assertion of Pw1 that the appellants' cause of action

210 was based on the Auditor General's report dated 21.05.2004, of computation of terminal benefits for the former employees of Uganda Spinning Mills Ltd-Lira. Counsel contended that the said

document was not a report. It was a mere letter written by the Auditor General to the Director of Privatization Unit observing, and
215 not directing that employees, who worked beyond the cut-off date of 28.02.1995 would receive terminal benefits to that date and negotiate fresh terms for the caretaker period.

Counsel further contended that the appellants never negotiated fresh terms regarding terminal benefits for having worked beyond
220 the cut-off date of 28.02.1995. As such they were not entitled to recover what they claimed in **HCCCS No. 280 of 2010.**

Respondent's Counsel therefore submitted that the care taker workers were employed by the Privatization Unit, according to the appointment letter dated 27.01.1997, without any provision for
225 payment of terminal benefits as part of their contractual terms of employment. Pw1, and the other appellants, agreed to work under the said terms by fully executing the same without any duress being put upon anyone of them.

Learned Counsel thus contended that the majority of the
230 appellants had no appointment letters from the Privatization Unit, and many of them were recruited by Pw1 who also terminated their employment. Even those who had appointment letters, there was no clause in those letters dated 15.03.2000, about payment of terminal benefits.

235 Learned Counsel reasoned that where there is a contract of employment envisaging the terms of appointment, no new clause can be imported into that contract by implication. Therefore the Appellants' employment as caretaker staff was contractual and there was no provision for terminal benefits in their contracts as

240 caretaker employees. The Appellants cannot therefore claim what is not provided for in their contracts of employment.

In conclusion, Respondent's Counsel contended that the appellants were misled by the caretaker manager, Lira Spinning Mills Ltd, that they were entitled to terminal benefits for the period 245 they worked as caretaker, staff when actually they were not so entitled. Counsel therefore prayed that this Court upholds the decision of the High Court by disallowing all the grounds of the appeal. He prayed for the appeal to be dismissed with costs.

Resolution of Court:

250 As the first appellate Court, it is the duty of this Court to review, re-evaluate and subject to scrutiny the evidence adduced at trial, draw inferences therefrom and make it own conclusions. See: **Rule 30(1) of the Judicature (Court of Appeal Rules) Direction SI 13-10.** See also: **Beatrice Kobusingye vs Fiona Nyakana** 255 **and Another: Supreme Court Civil Appeal No. 18 of 2001.**

In resolving the grounds of Appeal, ground 3 will be considered first since its disposal affects, one way or the other, the other grounds of appeal. Then grounds 1 and 2 will be resolved concurrently, and Court will conclude with ground 4.

260 **Ground 3:**

That the learned trial Judge erred in law and fact when she held that the terminal benefits of the Appellants as care taker staff were paid in the consent Judgment in Civil Suit No. 455 of 2003.

265 The learned trial Judge in her Judgment considered the issue whether this **High Court Civil Suit No. 280 of 2010** was *"res judicata"*. She reasoned that since Counsel for the respective parties had agreed to abandon the issue, therefore she did not find it necessary to determine it. *"Res Judicata"* is not one of the 270 grounds of this appeal and therefore this Court would ordinarily not be concerned with it. However, with all due respect to the learned trial Judge, an issue of *"res judicata"* cannot be waived by the parties to a suit. It is an issue of law going to the validity of the whole Civil Suit. The same must be determined first once it arises 275 out of the pleadings, before dealing with the other issues in such a case.

The doctrine of *res-judicata* was accurately defined by this Court in **Ponsiano Semakula versus Susane Magala and Others, 1993 KALR 213**:

280 **"The doctrine of *res-judicata*, embodied in S.7 of the Civil Procedure Act, is a fundament doctrine of all courts that there must be an end of litigation. The spirit of the doctrine succinctly expressed in the well-known maxim: 'nemo debt bisvexari pro una et eadacausa' (No one** 285 **should be vexed twice for the same cause). Justice requires that every matter should be once fairly tried and having been tried once, all litigation about it should be concluded forever between the parties. The test whether or not a suit is barred by res-judicata appears to be that** 290 **the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause of action, a transaction which he has already put before**

a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res-judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time".

The doctrine of *res-judicata* stems from **S. 7 of the Civil Procedure Act, Cap. *75;***

"No court shall try any suit or issue in which the matter is directly and substantially in issue in a former suit between the same parties or parties under which they claim, litigating under the same title, in a Court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court".

This is a statutory provision set out in mandatory terms that a decision made by a competent court cannot be challenged or altered in any subsequent suit. Therefore, the law does not give room for the parties to waive *res-judicata.* In **Maniraguha v Nkundiye Civil Appeal No. 23 of 2005;** the Court held:

"In fact res judicata is a plea of jurisdiction, in that Section 7 of Civil Procedure Act (supra) bars any court from trying a suit or even an issue that is res judicata. It would be correct therefore to state that courts have no jurisdiction to try a matter that is res judicata. The learned Judge therefore erred when he held that a plea of

320 **res- judicata had been waived by the defendant at the trial before the Magistrate's Court."**

There were factors in terms of the parties, the time the claims of the parties arose and how they arose and against whom they arose that made the decision in **HCCS No. 455 of 2003** not to have 325 decided the issues in **HCCS No. 280 of 2010.** These will be elaborated upon as the other issues in this appeal are being resolved upon. The holding in this Judgment is that the doctrine of "Res Judicata" did not apply in this case.

Coming back to ground 3, to determine whether or not the terminal 330 benefits of the Appellants as caretaker staff were paid in the consent Judgment in **Civil Suit No. 455 of 2003**, the learned trial Judge ought to have examined the pleadings and the evidence filed and adduced in **Civil Suit No. 455 of 2003.** Should the pleadings and the evidence adduced in **Civil Suit No. 455 of 2003** show that 335 the Appellants prayed for terminal benefits for the time that included the caretaking period, then the trial Judge would be justified in finding that the consent Judgment catered for their terminal benefits.

This is the first appellate Court. As such the parties to the appeal 340 are entitled to have a re-hearing of the issues by having this appellate Court's own consideration of the evidence as a whole and its own decision thereon. This right originates from the already stated **Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions: S.I 13 – 10.** In **URA v Rwakasaija Azarious and 2** 345 **Others CACA 8/2007**, Justice Engwau held that:

"This being the first appellate court, it is duty bound to re-

appraise the evidence on record as a whole and come to its conclusion, bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in that regard.

350 See: **D.R. Pandya V.R [1957] E.A.336; Ephraim Ongom and Another vs Francis Binega Donge, S.C.C.A No. 10 of 1987. Having cautioned myself about the role of this Court in its capacity as the first appellate court, I have subjected the evidence on record as a whole to a fresh and exhaustive**

355 **examination and scrutiny."**

I have had the opportunity of examining the amended plaint in **Civil Suit No. 455 of 2003**. Therein, the Plaintiffs (of which some of the Appellants in this appeal were a part) prayed for;

"A declaration that the plaintiffs are entitled to be paid their

360 ***terminal benefits in accordance with the terms of reference agreed between the Defendant and them, which terms of reference were not complied with when the Defendant made part payment to the Plaintiffs in or around 1999."***

From that prayer, the duration for which the terminal benefits

365 were being prayed is not clearly stipulated. However, the Court record has a letter from the Office of the Auditor General on pages 297 to 299, addressed to the Director of the Privatization Unit as to the Computation of terminal benefits for the former employees of Uganda Spinning Mills Ltd. Therein, the Auditor General states

370 that the terminal benefits of those employees who worked for the parastatal past 04.07.1984 had been computed to the cut-off date of 28.02.1995. The Auditor General went on to state that those employees who worked after 04.07.1984 beyond the cut-off date of 28.02.1995 i.e. the care taker staff, were supposed to receive

375 terminal benefits for the extra period of work up to 28.02.1995 and negotiate fresh terms for the later periods. This implied that the caretaker employees had not yet received their benefits and that the Privatization Unit had not catered for them in this regard for the period beyond 28.02.1995.

380 It should be noted that this communication from the Auditor General's Office was addressed to the Privatization Unit on 21.05.2004 in response to that from the Privatization Unit of 19.04.2004 whose subject was "computation of terminal benefits for the former employees of Uganda Spinning Mills, Lira". By 2004,
385 **Civil Suit No. 455 of 2003** had already been filed in Court but the consent Judgment dated 18.07.2005 had not yet been reached.

The Appellants in their pleadings in **HCCS No. 280 of 2010** contended in the plaint that the Privatization Unit upon receiving the communication from the Auditor General in May, 2004 never
390 communicated the same to the appellants. It was instead 5 years later on 10.03.2009, that the Privatization Unit claimed to the representatives of the Appellants that all their claims had been settled in the consent Judgment of **HCCS No. 455 of 2003**. Thus the Privatization Unit did not follow the Auditor General's
395 recommendation in the communication of 21.05.2004.

It follows from the above that the appellants only came to know that the Privatization Unit was not to pay their terminal benefits earned during the caretaker period on 10.03.2009. This is when their cause of action in respect of the terminal benefits earned
400 during the caretaker period arose.

The appellants were accordingly not caught by the principle of *"res-*

judicata" when they filed **HCCS No. 280 of 2010** in the High Court, Lira.

Section 17 of the Public Enterprises Reform and Divestiture
405 **Act** provides that the Auditor General shall audit public enterprises;

"(1) Notwithstanding the Companies Act, the Auditor General shall be responsible for auditing the accounts of public enterprises in classes I and II of the First Schedule and shall
410 **have, in relation to them, the same duties and powers as he or she has in respect of Government departments and, in particular, with regard to public funds and Government property."**

The Office of the Auditor General is a Constitutional Office whose
415 mandate is provided for under **Article 163(3) of the Constitution of the Republic of Uganda;**

"(3) The Auditor General shall—

(a) audit and report on the public accounts of Uganda and of all public offices, including the courts, the central and local
420 **government administrations, universities and public institutions of like nature, and any public corporation or other bodies or organisations established by an Act of Parliament; and**

(b) conduct financial and value for money audits in respect of
425 **any project involving public funds."**

The evidence on record shows that the Privatisation Unit wrote to the Office of the Auditor General as to the entitlement and calculation of the terminal benefits of the Appellants, amongst

others. The Office of the Auditor General rendered the necessary
430 communication to the Privatization Unit. It is my conclusion that the Auditor General in the ordinary performance of his public duties, scrutinizing the information documented or otherwise, presented to him by the Privatization Unit, could not have concluded that the Appellants had not received their terminal
435 benefits for the caretaker period without just cause.

The communication of the Auditor General to the Privatization Unit is proof that the Appellants did not receive their terminal benefits during the caretaker period from 1995 to 2002.

With respect to the learned trial Judge, she attached less weight to
440 the Auditor General's recommendation than she should have. It is my considered view that the Auditor General's communication ought to have been complied with. The learned trial Judge, basing on the evidence presented to her, could not have found that the terminal benefits of the Appellants as care taker staff were paid in
445 the consent Judgment in **Civil Suit No. 455 of 2003**. This, with respect, was an error on the part of the learned trial Judge. Accordingly I allow ground 3 of the appeal.

Grounds 1 and 2:

Ground 1 was that the learned trial Judge erred in law and
450 ***fact when she relied on speculation to decide that the Appellants were not employees of Uganda Spinning Mills Ltd thereby coming to the erroneous conclusion that the Appellants were not entitled to terminal benefits.***

Ground 2 was that the learned trial Judge erred in law and
455 ***fact when she disregarded the evidence of the Appellants'***

letters of re-engagement stating that they were not on court record thereby reaching a wrong conclusion on the same.

The Appellants adduced, as part of their evidence, their re-engagement letters of appointment as care taker employees.

460 The first letter addressed to Mr. Ogwang David by Uganda Spinning Mills Ltd is dated 8th November, 1987 sets out the designation, date of re-engagement, salary and period of leave that the employee was to enjoy. Then it states that the other terms and conditions of his service are as per the management and union 465 agreement that was in force at that time. Other letters dated between 1978 and 1997 to the other Appellants were also in similar terms.

The Respondent's Trial Bundle and Scheduling Notes on pages; 397-423 of the record also contain a letter of appointment of the 470 caretaker manager dated 27.01.1997.

Learned Counsel for the Respondent submitted that the Appellants had not brought evidence in the form of their letters of re-appointment by Uganda Spinning Mill Ltd during the care taking period entitling them to be granted terminal benefits. The trial 475 Judge agreed with this reasoning and found that with the exception of a few, the majority of the Appellants' letters of appointment had not been produced to the trial Court.

The learned trial Judge found that even the appointment letters of Moro Santos Acuda and those of a few others that had been put 480 on record, did not at any point, make reference to terminal benefits. The learned trial Judge then concluded that terminal

benefits can only be an obligation if there is an agreement to that effect and that since there was no evidence for such agreement, then the Appellants could not claim terminal benefits for the period of care taking.

On re-appraising the evidence that was adduced, it is a fact that is not contested that the cut-off date for all employees was the 28.02.1995. This was the date of stoppage of employment of all employees of Uganda Spinning Mills Ltd. Any letter of appointment issued past the cut-off date of 28.02.1995 would automatically be a letter of appointment in the care taking capacity. The learned trial Judge ought to have so found. I, with respect, find that it was an error on the part of the learned trial Judge for not so finding.

The evidence that was adduced showed that Mr. Aryono Patrick had a letter of appointment dated 18.07.1995, that of Mr. Patrick Oyugi was dated 01.02.1997, while Mr. Opio Kuranire-Amai was appointed on the 28th of July, 1995. Mr. Engola Akio-Alfred also got his appointment letter dated 08.09.1995.

While it is true that not all the Appellants had their letters of re-engagement for the caretaker period beyond the 28.02.1995 on record, it is an undisputed fact that some of the letters of appointment for the caretaker staff that were produced to Court and are part of the Court record refer to terms and conditions of service that were in force at that moment. For example, on page 386 of the record, is the letter of appointment of Mr. Patrick Oyugi dated 01.02.1997 which refers to such terms and conditions of service. It is therefore reasonable to conclude that the Appellants

were entitled to terminal benefits if those benefits were part of the
510 terms and conditions of service in place at the material time.

Further, it is not in dispute that the Appellants were part of the lot of other employees that had been previously employed by Uganda Spinning Mills Ltd before the care taking period. The rest of the employees having been discharged and granted their terminal
515 benefits, it is reasonable to infer that those that were retained in the care taking capacity were also entitled to terminal benefits. In such circumstances, entitlement to terminal benefits was one of those terms that were implied in the contracts of re-engagement to work during the caretaking period.

520 As to those employees that continued working as care taker staff, but were not issued with letters of appointment, their having been employed by Uganda Spinning Mills Ltd previously and their employment having not been expressly terminated with the rest of the terminated employees by 28.02.1995, it was right for the
525 learned trial Judge to conclude that their employment continued being in force during the care taking period.

The conclusion of the learned trial Judge is further supported by the fact that the care taking management of the Parastatal, continued working, with the Appellants as employees, throughout
530 the care taking period, only to terminate their contracts later. Therefore, the argument of the respondent that the Employment Law required the Appellants to have in their possession letters of appointment so as to be able to prove that they were lawful employees of Uganda Spinning Mills Ltd during the care taking
535 period, has no validity at all.

Be that as it may, situations of uncertainty in the employment status of employees of public parastatals that are later privatized were contemplated by the legislature which took steps to secure their employment. The law that governed the privatization process of Uganda Spinning Mills Ltd was the **Public Enterprises Reform and Divestiture Act, 1993. Section 31** of that Act provided:

"Notwithstanding any other provision of this Act—

(a) on the appointed day in relation to a public enterprise, each employee of the public enterprise shall become an employee of its successor company but, for the purposes of every enactment, law, determination, contract and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service of that employee with the public enterprise, and every other period of service of that employee that is recognised as continuous service by the public enterprise, shall be deemed to have been a period of service with the company;

(b) the terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of the employee's employment with the public enterprise immediately before the appointed day and be capable of variation in the same manner; and

(c) property held on trust or vested in any person under any provident, benefit, superannuation or retirement fund or

scheme for the employees of the public enterprise, their dependents or other persons immediately before the appointed day shall, on and after the appointed day, be deemed to be held on trust or vested in that person for those employees in their capacity as employees of the successor company of the public enterprise, their dependants or other persons on the same terms and conditions; and every reference in any instrument constituting that fund or scheme to the public enterprise, an employee of the public enterprise, a dependent of that employee or any other person shall be read and construed as a reference to the successor company of that public enterprise, an employee of that company, a dependent of that employee or any other person, as the case may be."

The learned trial Judge, with respect was in error for having not applied the above quoted Section to the case of the appellants. Had the learned trial Judge done so, then she ought to have held that under the above stated Section the appellants who continued to work during the caretaker period had the terms of their previous contracts of employment continuing during the care taker period.

Therefore the learned trial Judge was in error for holding that the Appellants were, during the care taker period, not continuing employees of Uganda Spinning Mills Ltd. Accordingly, grounds 1 and 2 of the appeal also succeed.

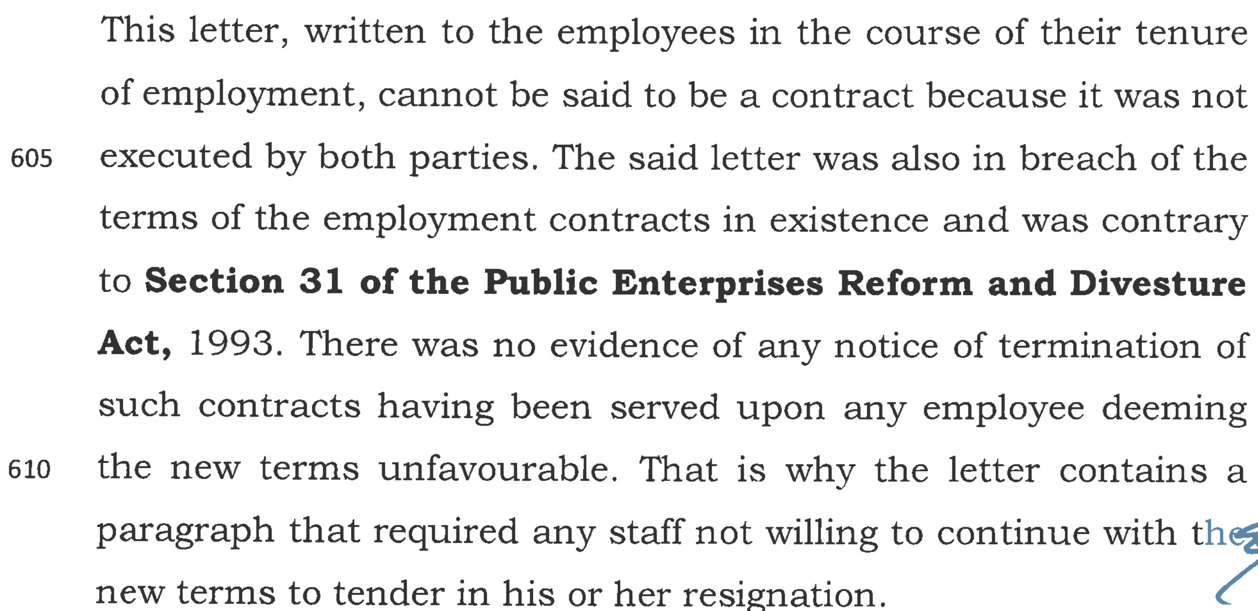
Ground 4:

In this ground the learned trial Judge is stated to have erred when she failed, as a court of first instance, to properly and

thoroughly evaluate all the evidence on the court record thereby coming to the erroneous conclusion that the Appellants were not entitled to terminal benefits.

In resolving grounds 1,2 and 3 it has been shown how the learned trial Judge erroneously came to the wrong conclusion that the Appellants did not have contracts supporting their claim to be entitled to terminal benefits for the period of care taking when they continued to work. The learned trial Judge also ignored to consider the letter of the Auditor General by not attaching weight to it as evidence. Consequently, she came to the wrong conclusion.

There was also the letter dated 15.03.2000 (page 409 of the record) addressed to All the Caretaker Staff of Uganda Spinning Mills Ltd by the Minister of State for Finance in charge of Privatisation. The letter was to the effect that no terminal benefits would be paid to the employees who worked during the caretaker period under the tenure of the caretaker contracts.



This letter, written to the employees in the course of their tenure of employment, cannot be said to be a contract because it was not executed by both parties. The said letter was also in breach of the terms of the employment contracts in existence and was contrary to **Section 31 of the Public Enterprises Reform and Divesture Act,** 1993. There was no evidence of any notice of termination of such contracts having been served upon any employee deeming the new terms unfavourable. That is why the letter contains a paragraph that required any staff not willing to continue with the new terms to tender in his or her resignation.

In **Barclays Bank of Uganda Vs. Godfrey Mubiru, Supreme Court Civil Appeal No. 1 of 1998; Kanyeihamba JSC**, with the concurrence of the others Justices of the Court, held that:

"In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment."

The letter of 15.03.2000 acted as a notice of termination of employment for all those caretaker employees that did not deem the terms of employment without terminal benefits favourable. As a result, termination benefits must not be given beyond the date on which employment should have been terminated pursuant to this 15.03.2000 letter, which may be taken as the termination notice.

Save for the 9th appellant, the rest of the appellants are therefore entitled to only terminal benefits during the care taking period but not past the date of 31st March 2000, which is the date on which they were supposed to tender in their resignation letters, if they were dissatisfied with the new terms set out by the letter of 15.03.2000.

For the 9th appellant who was terminated last, the effective date of his termination being 30th April 2002, he is entitled to terminal benefits during the care taking period but not later than 30th April 2002.

Ground 4 of the appeal is accordingly also allowed.

As to remedies the appellants claimed a sum of UGX 993,785,319= as terminal benefits to which they became entitled by way of being employed during the caretaker period of 1995 to 2002, that is a period of eight (8) years.

The appellants adduced evidence to the trial Court as to how the said sum of UGX 993,785,319= was arrive at.

The respondent did not dispute the calculation giving rise to this amount. It was not also contended by the respondent that the sum does not represent the items that constitute terminal benefits.

The respondent contested the claim for this amount by the appellants on the ground that the same was part and parcel of what had been settled by the consent settlement of the parties in the earlier **High Court Civil Suit No. 455 of 2002: Johnson Oloto and Others vs the Attorney General.** It has already been resolved that this was not correct on the part of the respondent.

The respondent also further contested the inclusion of the sum of UGX 7,147,650= sub-headed "underpayment" in the overall sum total of UGX 993,785,319=. It was contended by the respondent that this sum of UGX 7,147,650= being claimed by appellants Mr. Joseph Orombi, ought to have been claimed in **High Court Civil Suit No. 455 of 2002** and not in this subsequent **High Court Civil Suit No. 280 of 2010**. The claimant, Joseph Orombi, had become

665 barred by the doctrine of "res judicata" from claiming this amount in this subsequent suit, it was so contended for the respondent.

I have carefully reviewed all the evidence that was adduced at trial. That evidence clearly established on a balance of probabilities that the appellants lodged in the **High Court Civil Suit No. 455 of**
670 **2002** on 23.07.2002 claiming for terminal benefits for the period of their employment with Uganda Spinning Mills Ltd up to the cut-off date of 28.02.1995. This is the suit that was resolved by consent with a Consent Judgment being executed and filed in Court on 01.07.2005.

675 However, it so happened that after the Consent Judgment had been entered in **HCCS No. 455 of 2002,** thus bringing to the end the prosecution of that case, the plaintiffs, now appellants, were being re-engaged, one by one at different times, to continue in employment pending the privatisation by the Government through
680 the Privatisation Unit of their employer, Uganda Spinning Mills Ltd. This is what became being employed under the caretaker period. It is this employment relationship that gave rise to the claim of the appellants for UGX 993,785,319= against the respondent in **HCCS No. 280 of 2010.**

685 It is my finding therefore that the cause of action in **HCCS No. 280 of 2010** was different from the cause of action in the earlier **HCCS No. 455 of 2002** in that the facts giving rise to **HCCS No. 280 of 2010** called for Court action on the part of the appellants after **HCCS No. 455 of 2002** had been completed with the filing therein
690 of a Consent Judgment on 01.07.2005.

The determination of **HCCS No. 455 of 2002** cannot therefore be

taken to have resolved the claims of the appellants in the subsequent **HCCS No. 280 of 2010**. The respondent's submission to that effect is accordingly not valid. I with respect reject the

695 same.

As to the inclusion in the overall amount of UGX 993,785,319= the sum of UGX 7,147,650= being a sum claimed by Joseph Orombi Okello A., the 4th Plaintiff, now 4th Appellant, I find that the inclusion was in accordance with the law. The said sum was

700 properly claimed by the 4th appellant in **High Court Civil Suit No. 280 of 2010.** I find so because the evidence adduced at trial established that the claim of the 4th appellant for that amount was based on the fact that the Privatisation Unit Auditors and other officials are the ones who committed the error that caused the 4th

705 appellant to suffer the loss amounting to that sum of money.

The 4th appellant was a former employee of the Uganda Spinning Mills Ltd. He was amongst those former employees whose employment was finally terminated effective 01.05.1999.

The Privtisation Unit then proceeded to calculate his terminal

710 entitlements. He was in the category of Grade "B" at a monthly salary of UGX 224,555=.

However, through an error, the Privatisation Unit, used a wrong Grade "J" with a monthly salary of UGX 24,305= to calculate his entitlements. The 4th appellant protested to the Privatisation Unit

715 and the Ag. Director Privatisation Unit, without going into the merits or demerits of the 4th appellant's complaint, communicated to the 4th appellant on 28.05.2007, that the Privatisation Unit had closed his case. The 4th appellant then sued to recover what he

was rightly entitled to through **High Court Civil Suit No. 280 of**
720 **2010.**

I find no basis for the respondent's submission that this claim of the 4th appellant was res-judicata which ought to have been claimed under **HCCS No. 455 of 2002** and not under this **HCCS No. 280 of 2010.**

725 The 4th appellant's cause of action arose on 28.05.2007 when the Ag. Director Privatisation Unit communicated to him that his case was closed. By this time, **HCCS No. 455 of 2002** had long been determined on 01.07.2005 with a consent Judgment being filed therein.

730 I accordingly hold that the sum of UGX 7,147,650= being a claim of the 4th appellant was rightly included in the overall sum of UGX 993,785,319=.

The above claims of the appellants were clearly set out, item by item and were not in any way disputed by the respondent as to
735 how they were calculated using the agreed upon scale that was used in calculating the terminal benefits in **HCCCS No. 455 of 2003.**

I accordingly hold that the appellants were entitled to be awarded the sum of UGX 993,785,319= terminal benefits for employment
740 during the caretaker period from 28.02.1995 to 2002.

Each appellant at trial claimed general damages of UGX 20,000,000=. A party to a suit who suffers damage due to the wrongful act of the other party to the same suit must be put in the position he or she would have been in, if she or he, had not suffered

745 the wrong. This is done by awarding damages. A Court of law does so through the exercise of its own discretion based on applicable principles. See **Kibimba Rice Ltd vs Umar Salim: SCCA No. 17 of 1992.**

The principles that are applicable in assessing damages include 750 the economic inconvenience suffered, the nature and extent of the breach and the value of the subject matter; See: **Robert Coussens v Attorney General SCCCA No. 8 of 1999.** See also: **Uganda Commercial Bank v Kigozi [2000] 1 EA 305.**

In the case of the appellants, it was specifically pleaded in 755 paragraph 3(b) of the plaint, that they suffered mental anguish, torture financial hardship and inconvenience by reason of their being not paid the amounts they claimed.

In the witness statement of the witness of the appellants, Mr. Moro Santos Acuda, which was accepted by the trial Court as part of the 760 Court record, the said witness in paragraphs 20 and 21 of the statement stated on oath, that the Privatization Unit by refusing to pay their terminal benefits had kept the appellants impoverished, adversely affecting their prospects of planning for the future of their families, thus subjecting them and their families to hardships

765 The witness also asserted that the conduct of the Privatization Unit had subjected the appellants to financial hardships, mental anguish, psychological torture and emotional stress.

The above evidence of this witness Pw1, remained uncontroverted, by the cross-examination to which he subjected. The respondent 770 adduced no evidence in the trial Court to show that the appellants

did not suffer as their witness asserted.

I therefore find that, with great respect to the learned trial Judge, she was not justified to hold as she did that:

775 *"In the instant case, I have found that the plaintiffs have not proved that they suffered any damages. I find that they are* ***not*** *entitled to general damages".*

780 The appellants had not been availed their terminal benefits for the period from 28.02.1995 to date. This has subjected each one of them to economic and financial hardships, mental anguish stress and psychological agony. This entitles each appellant to general damages.

785 Having appreciated all the facts of this case I award general damages of UGX. 3,000,000= (three million shillings only) to each appellant for the loss and suffering suffered thus making a total of UGX. 300,000,000= to all the appellants.

790 As to interest awardable, I find the prayed for interest of 30% p.a. to be on the high side, since the amount claimed of UGX. 993,785,319= is not in the strict sense commercial in nature. I award interest of 8% p.a. on the same from 28.02.1995 till payment in full.

The general damages awarded shall carry interest at the Court rate from the date of Judgment of the trial Court i.e. 13.03.2017, till payment in full.

795 In conclusion, all the grounds of appeal having been successful, I allow this appeal.

I would set aside the Judgment of the learned trial Judge and enter Judgment for the appellants as follows:

1. UGX. 993,785,319= (nine hundred ninety-three million, seven hundred eighty-five thousand, three hundred nineteen shillings only) being terminal benefits for employment of the appellants during the care-taker period of 28.02.1995 to 2000.

2. UGX. 3,000,000= (three million shillings only) general damages for each appellant making a total of UGX, 300,000,000= (three hundred million shillings only).

3. Interest at 8% p.a. on the sum awarded in (1) above, from 28.02.1995 till payment in full.

4. Interest at 8% p.a. on the sum of general damages awarded in (2) above from the date of Judgment of the trial Court i.e. 13.03.2017, till payment in full.

As to the costs of appeal and those of the trial suit the same shall go to the successful party, the appellants, as against the respondent.

Dated at Kampala this ...16th... day of ...July............... **2021**.

Remmy Kasule
Ag. Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 138 OF 2017

OGWANG DAVID
AND 99 OTHERS::APPELLANTS

VERSUS

ATTORNEY GENERAL:::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Lira before Nabisinde, J. dated the 13th day of March, 2017 in Civil Suit No. 280 of 2010)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE STEPHEN MUSOTA, JA
HON. MR. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading in draft the judgment of my learned brother Kasule, Ag. JA. For the reasons he has given therein I agree with him that this appeal should be allowed on the terms he has proposed.

As Musota, JA also agrees, the disposition of the appeal shall be on the terms proposed in Kasule, Ag. JA's judgment.

It is so ordered.

Dated at Kampala this ....22nd............ day of..........July..............2021.

....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPEAL NO. 138 OF 2015

(Arising from the Judgment of Lady Justice Winifred Nabisinde in High Court Civil Suit No. 2809 of 2010)

OGWANG DAVID AND 99 OTHERS :::::::::::::::::::::: APPELLANTS

VERSUS

ATTORNEY GENERAL :: RESPONDENTS

CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

HON. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment by my brother Hon. Mr. Justice Remmy Kasule, Ag. JA.

I agree with his analysis, conclusions and orders he has proposed. This appeal ought to be allowed with costs to the appellant.

Dated this 22nd day of July 2021

Hon. Stephen Musota

JUSTICE OF APPEAL