THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 40 OF 2016

(Appeal from the Judgment of Batema.J, in High Court Civil Suit No. 0036 of 2007 at Kampala, dated 7th October, 2014)

KASESE DISTRICT LOCAL GOVERNMENT COUNCIL::APELLANT

VERSUS

BAGAMBE GEORGE::: RESPONDENT

CORAM: Hon. Justice Geoffrey Kiryabwire, JA
Hon. Justice Monica Mugenyi, JA
Hon. Justice RemmyKasule, Ag. JA

JUDGMENT OF HON JUSTICE REMMY KASULE, AG. JA

The Respondent filed **HCCS No. 0036 of 2007** against the Appellant in the High Court, Fort-Portal seeking special, exemplary and general damages for unlawful dismissal and costs of the suit.

Background:

The Respondent was employed as Heavy machine Plant Operator by the Appellant as from the 1st April, 1999 when he was so formally appointed in the Appellant's employment. He had previously worked in the Ministry of Works, Uganda Government, as a machine Plant

Operator, from where he was forwarded to the Appellant. He subsequently became a complete employee of the Appellant as from 1st April,1999.

On 10th August 2005, the Respondent, while on duty at Maliba- Kikyo Road, was summarily dismissed from employment by the Appellant through the Chief Administrative Officer.(CAO)

Dissatisfied the Respondent sued the Appellant for damages for wrongful dismissal. The High Court, Fort Portal decided the case in favour of the Respondent. The Appellant lodged this Appeal challenging the Judgment of the High Court.

Grounds of Appeal

The grounds of appeal are:

"1. The learned Trial Judge erred in law and fact when he held that the Respondent was an employee of the Appellant.

2. **The learned Trial Judge erred in law and fact when he held that the Respondent was unlawfully dismissed by the Appellant.**
3. **The learned Trial Judge erred in law and fact when he failed to properly evaluate the available evidence on record about the Respondent's recruitment, employment deployment and remuneration thus ended up making erroneous decisions.**
4. **The learned Trial Judge erred in law and fact when he denied the Appellant a chance to cross examine the**

Respondent and also closed the proceedings without hearing the Appellant's case.

5. **The learned Trial Judge erred in law and fact when he held that the Respondent be awarded special damages in form of his monthly salary from the 10th of August 2005 up to the date of the Judgment."**

Legal Representation:

At the hearing of the appeal, Counsel Kiriahe Samuel represented the Appellant, while counsel Richard Mwebase was for the respondent. Both parties were present in Court.

Both Counsel filed in Court and adopted their respective written submissions.

Appellant's submissions

Ground 1:

In regard to ground 1, counsel for the Appellant faulted the Trial Judge for having held that the Respondent was an employee of the Appellant, yet the Respondent's recruitment and appointment in the service of the Appellant had not been in compliance with the legal procedure prescribed by law. He referred Court to **Sections 55 -58 of the Local Governments Act** which set out as to who in the Appellant's Administration has the powers to appoint and/or to, confirm an employee in a specific office as well as the procedure to be followed by an employee to hold office in the Appellant's Administration structures. Counsel contended that since the

procedure and the manner of appointment of the Respondent to the service of the Appellant was not in accordance with the law, therefore the Respondent cannot claim to have been unlawfully dismissed by the Appellant.

The Respondent's employment by the Appellant had all along been null and void. Counsel thus prayed to Court to allow ground 1 of the appeal.

Ground 2:

As to ground 2, Appellant's Counsel contended that since the Respondent was never validly appointed as an employee of the Appellant, he cannot complain of wrongful dismissal. He submitted that one can only complain of wrongful dismissal by the Appellant if he/she was legally recruited and appointed into service by the Appellant through the District Service Commission. In the instant case the Respondent had no such letter of appointment from the District Service Commission. The Respondent never applied to be recruited and appointed into the service of the Appellant through and by the Appellant's District Service Commission. The Respondent's alleged employment into the service of the Appellant was therefore null and void.

Counsel prayed that ground 2 be allowed.

Ground 3:

In respect of ground 3, Appellant's Counsel argued that the evidence on record proved that the recruitment of the Respondent was in breach of the law as he was never appointed into the Appellant's

Service by the District Service Commission that is vested with powers to do so. The Appellant's Chief Administrative Officer had no powers in law to appoint the Respondent to any office.

Counsel argued that this being a Court of law, it ought not condone an illegality that has been brought to its knowledge and attention.

He prayed that ground 3 succeeds.

Ground 4:

Counsel for the Appellant contended in respect of ground 4, that the Appellant's Constitutional right to a fair hearing under **Article 28 of the Constitution** was infringed upon when he was never availed an opportunity to challenge the evidence of the Respondent through cross examination of the Respondent, in the course of the hearing of **HCCS No. 0036 of 2007** giving rise to this Appeal. Even when he lodged **Miscellaneous Application No.0054 of 2014**, seeking leave to be allowed to cross examine the Respondent, the Trial Judge declined to hear the said Application. He instead dismissed it with costs.

The Appellant was also denied by the Trial Court the opportunity to call witnesses to give evidence in support of this case at the Trial Court. This occasioned a miscarriage of justice to the Appellant.

Counsel for the Appellant called upon this Court to do Justice to the Appellant by allowing ground 4 of the Appeal.

Ground 5

In respect of ground 5, Appellant's Counsel contended that the Respondent having not been legally employed by the Appellant, it was an error on the part of the Trial Judge to award the Respondent special damages since the Respondent never suffered any loss. By awarding such damages to the Respondent the Trial Judge was condoning an illegality. Ground 5 had therefore to succeed.

Counsel for the Appellant prayed this Court to allow this appeal, set aside the Judgement of the Trial Judge and order the Respondent to pay the costs of both the Appeal and those in the Court below to the Appellant. As an alternative, Counsel prayed that this Court orders a re-trial of **HCCS No. 0036 of 2007.**

Respondent's submissions

Ground 1:

Counsel for the Respondent supported the finding and decision of the Trial Judge that the Respondent was, at all material time, a lawful employee of the Appellant.

Counsel submitted that the Respondent was an employee of the Ministry of Works, Uganda Government, from 1996 to 1998, when he was transferred to work for the Appellant.

Relying on the **Public Service Standing Orders 2010, A-B (2)(iii),** Counsel contended that the Respondent having first been appointed by the Public Service Commission in the Uganda Public Service, there

was no need for him to re-apply and be re-appointed by the District Service Commission.

Counsel argued that the Respondent was transferred from the Ministry of Works, Uganda Public Service, to the Appellant's Service and served for one year while on Probation, until 1st April,1999 when he was employed permanently by the Appellant. Communication to that effect was made to him by the Appellant's Chief Administrative Officer after carrying out consultations with other officers and organs of the Appellant, the District Service Commission, inclusive. The Respondent then carried out his work with the Appellant from 1999 to 2005 and for all those years no one ever questioned the legality of his appointment, let alone his being so employed. He was included on the payroll and remunerated for his services for all those years, like all other employees of the Appellant.

Accordingly the Appellant is bound by the doctrine of estoppel from subsequently turning around to deny that the Respondent is not their employee.

Counsel prayed Court to disallow ground 1.

Ground 2:

Counsel for the Respondent submitted that, given the Respondent's status as an employee for the Appellant, the dismissal by the Appellant should have been conducted as prescribed by law under **Section 66 of the Employment Act**, where the Respondent had to be accorded a fair hearing before being dismissed. Failure of the

Appellant to comply with the proper legal procedures rendered the dismissal unlawful.

Counsel prayed Court to dismiss ground 2.

Ground 3:

Counsel for the Respondent submitted that the Trial Judge properly evaluated the evidence on record and arrived at the right conclusion. The Trial Judge rightly held that, the Respondent on being so required by the Appellant, applied for the job of the Heavy machine Plant Operator through a handwritten application addressed to the Chief Administrative Officer of the Appellant. The application was routed through the District Engineer, who forwarded it for consideration on 26th March, 1999.

There were minutes on the said Application letter clearly indicating that consultations were held between the Chief Administrative Officer's office and other officers and and organs of the Appellant before the Appellant's Chief Administrative Officer directed that posting instructions be issued and communicated to the Respondent. Thereafter the Respondent was issued with an Identity Card and entered on the Pay Roll of the Appellant. He was thereafter paid his salary and other entitlements as an employee of the Appellant.

Counsel prayed Court to uphold the finding of the Trial Judge that the Respondent was properly and lawfully recruited, deployed and employed into the service of the Appellant and was so remunerated at all material time. Counsel further prayed that ground 3 be disallowed.

Ground 4:

Counsel for the Respondent in response to ground 4, contended that the learned Trial Judge made the right decision to close the proceedings and not to accede to the Appellant's Application to cross-examine the Respondent or any other witnesses in **HCCS No. 0036 of 2007**. This is because, from the time the hearing of the case started, there was a string of unnecessary adjournments caused by the Appellant. Even when the case was fixed for a special session in 2014, so as to bring its hearing to a conclusion, the Appellant did not appear in Court.

The case was subjected to adjournments spanning over 7 years until when the trial Judge gave the parties and their respective Counsel one final chance, when the case was fixed so as to enable the Appellant's Counsel to cross examine the Respondent. However, on the scheduled date the Appellant and Counsel did not turn up. This led the Trial Judge to close the case and set a date for Judgment.

The trial Judge came to this decision after concluding, from the conduct of the Appellant and the Appellant's Counsel, that their intention was to cause as much delay as possible so as to prevent the trial Court from concluding the hearing of the case, thus causing more injustice to the Respondent.

Counsel prayed for ground 4 to be disallowed.

Ground 5:

Counsel for the Respondent submitted that the award of special damages by way of payment to the Respondent the monthly salary

he was earning by the time of his unlawful dismissal, from the 10th August 2005 up to the date of Judgment, was justified and rightly awarded. He argued that damages are restitutive in nature aimed at putting the party into a position that party would have been in, if the act complained of had not occurred. This is what guided the Trial Judge in this case to make the decision that he made.

Counsel prayed for ground 5 to be disallowed and the whole Appeal to be dismissed.

Decision of the Court:

Under **Rule 30(1) of the Court of Appeal Rules,** this Court is duty bound to re-appraise the evidence and draw its own conclusions of fact from the evidence adduced at trial. This duty was elaborated upon by the Supreme Court in **Kifamunte Henry V Uganda: Supreme Court Criminal Appeal No. 10 of 2007** thus:

"...the first Appellate Court has a duty to review the evidendence of the case and to reconsider the materials before the trial Judge.

The Appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it". See also **Pandya v R (1957) EA 336.**

I shall keep in mind the above principle when resolving the grounds in this Appeal.

Ground 1:

The gist of Counsel for the Appellant's submission in respect of ground 1 is that the law provides for the process and procedure of who and how one occupies any office at the District Local Government Council and that any employment relationship which fails to comply with that established law and procedure is null and void.

The Appellant's case was that the Respondent was never appointed into employment of the Appellant by the Appellant's District Service Commission which was the body vested by law with the power to make that appointment. The Appellant relied on the **Public Service Standing Orders, 2010**, **Orders 1, 2 and 3** that provide for **"appointment to the Public Service (A-B)".** These provide that appointment to Public Service, whether on pensionable or non pensionable terms, shall be in accordance with the Laws of Uganda and shall follow the laid down procedures. Any appointment direct into the public service, be it on promotion or transfer within the service or on appointment or transfer from other public service to another, which is not made by the appropriate authority, shall be null and void and the person appointed shall not be entitled to privileges and benefits accruing to that appointment. This applies also to the appointments from a Local Government to a Central Government and vice versa.

The evidence at trial was that the Respondent started working for the Ministry of Works, Central Government in 1991, as a Machine Plant Operator.

In 1998 he was transferred to the Ministry of Local Governments on request by that Ministry. He was operating a chain loader machine in respect of which the Appellant, whose line Ministry was that of Local Governments, later became the one responsible. The Respondent was getting a salary from the Ministry of works but the allowances were being paid for by the Appellant. This went on for about a year.

On 26th March, 1999 the Respondent was requested by the Appellant, through the Appellant's Chief Administrative Officer, to apply for the job of the machine Heavy Plant Operator with the Appellant and to address the application to him through the Appellant's District Engineer. The Respondent did as requested.

The Appellant's Chief Administrative Officer, on receipt of the Application, submitted the same to a number of appropriate officers and organs of the Appellant, for them to act upon. This is shown by the number of endorsements and remarks made on the very Application (Page 31 of the Record of Appeal). The consideration of the Application went on up to the 8th April, 1999 when the Appellant's Chief Administrative Officer communicated the final decision by issuing in writing posting instructions to the Respondent with the designation of a Heavy Plant Operator.

In the written statement of defence filed in **Civil Suit No. 36 of 2007**, paragraph 4 thereof, the Appellant, amongst other defences, pleaded that the alleged appointment of the Respondent by the Appellant's agent was on a temporary basis and not by the Distrct Service Commission. Further, that by the nature of employment, the Appellant's Chief Administrative Officer reserved the right to terminate the Respondent's employment at any time. The appointment of the Respondent having been illegal because temporary appointments had long been abolished, the Respondent could not enforce an illegal contract. In paragragh 9 of the written statement of Defence the Appellant maintained that its conduct to the Respondent was lawful and did not violate any right of the Respondent at all.

No evidence was adduced at all by the Appellant to disprove the fact that the Resopondent was first appointed as a Plant Operator working in the Ministry of Works, Central Government in 1991. It is from the said Ministry of Works that the Respondent was transferred and instructed to work in the Ministry of Local Governments and then from that Ministry of Local Governments the Respondent was taken on by transfer to the Appellant.

The Respodent was then requested by the Appellant through the Appellant's Administrative Officer, to lodge an application in writing for the Job of the Heavy Plant Operator, and to address the application to him through the District Engineer of the Appellant. The Respondent complied with the request on 23rd, June, 2009. He

clearly stated in the application that he had been working with the Ministry of Works since 1990 and gave Mr. B. Mugisha, the O/C Ministry of Works, as his reference , just in case more information and details were required about him.

On the face of the Respodent's application, tendered in evidence as Exhibit PE1, there are several hand written notes clearly showing that the application was the subject of consideration of other officials and organs of the Appellant before a posting instruction was issued by the Chief Administrative Officer of the Appellant for the information and compliance of all concerned. The Respondent whose designation was that of Heavy Plant Operator was posted at Rukoki Administration Headquarters as from 1st April, 1999. Copies of the posting instructions were passed on to a number of officers of the Appellant.

The Respondent was then issued with the official identity card by the Appellant as his employer, Exhibit PE2. He was also entered on the Appellant's payroll. He had a Tax identification number and the Appellant paid him, his monthly salary and given payslips, one of which was exhibited as Exhibit PE(i), from 1999 up to June 2005. There was no audit query, no complaints or any questioning of the recruitment, employment, deployment or remuneration of the Respondent for a whole period of six years and four months from 1st April, 1999 to the date of dismissal of 10th August, 2005.

No evidence was adduced at all from the Appellant's District Service Commission that the said Commission never appointed, or never approved the Respondent to be an employee of the appellant.

Counsel for the Appellant relied on the **Public Service Standing Orders 2010 Appointment To The Public Service (A-b)**: **Orders 1, 2 and 3** and submitted that the Respondent's appointment in the service of the Appellant was contrary to those Orders. The facts of the case giving rise to this Appeal happenened during the period 1991 to 2005. The Standing Orders being relied upon are of 2010. The Appellant offered no explanation as to how the said Orders retrospectively applied to the Respondent's case. At any rate, in the absence of any evidence that the Appellant's District Service Commission did not make and/or approve directly and/or indirectly the appointment and employment of the Respondent into the service of the Appellant, any reference to the said Orders becomes irrelevant, given the facts of this case.

The Trial Judge critically analyzed the pleadings in the case and the evidence adduced in respect of this particular issue and came to the conclusion that:

" There is sufficient evidence proving that the plaintiff was recruited in the service of D.L.G"

I agree with the conclusion of the trial Judge. Ground 1 is accordingly disallowed.

Ground 2:

Under ground 2, the Trial Judge is faulted for having held that the Respondent was unlawfully dismissed from his employment.

Having held that the Respondent was indeed an employee of the Appellant, the manner in which he was summarily dismissed without cause or being accorded a fair hearing falls short of a lawful process of dismissing an employee.

The evidence on record is that in June 2005 while the Respondent was on duty at Maliba- Kikyo Road, the Uganda Police personnel, on the instructions of the Appellant's officials, went and picked from the Respondent keys of the Heavy Plant machine he was operating. They ordered him not to go back to his offices. The Respondent lodged a complaint against the Appellant to the Inspector General of Government (IGG) and also to the Uganda Human Rights Commission who took up the matter with the Appellant.

On 15th February 2007, the IGG communicated to the Respondent, as per Exhibit PE4, to the effect that the Appellant had, through the Chief Admistrative Officer by way of response to the Respondent's complaint, communicated that the Respondent submits details of his claims, constituting the complaint, to the Appellant for appropriate actions on the same. The Respondent complied and forwarded to the Appellant the requested for details on 16th August, 2005. No action was taken on the same by the Appellant, inspite of the reminder from the Respondent dated 20th September, 2006. In May 2007 the

Respondent lodged **HCCS No. 0036 of 2007** in the High Court, Fort Portal.

In the Defence to the said suit, the Appellant pleaded in Para 4 of that Defence:

"That by nature of employment aforementioned the defendant (read Chief of Administative Officer) reserved the right to terminate the Plaintiff's employment at any time"

It is accordingly not denied that the Appellant dismissed the Respondent in the manner stated by the Respondent in his pleadings to Court as well as in his evidence at trial. The Respondent was not given any formal warning or notice before dismissal. No reasons were given to him for the dismissal. The Respondent was never first interdicted so that there is investigation against him, whereby he would have been afforded a hearing to put his side of the case against him and to avail a defence to any accusation, if any.

Article 28(1) of the Constitution is to the effect that in the determination of the Civil rights and obligations one is entitled to a fair hearing. **Section 59(1) (b) of the Local Governments Act, Cap, 243,** provides that the employee of a District shall not be dismissed or removed from Office or reduced in rank or other wise punished without just cause.

The Constitution and the Local Governments Act thus provide for the fair treatment of employees including those of a District, which the Appellant is. This is only possible if the decision maker is fair,

independent and impartial. See: **G.M combined (U)Ltd vs A.K. Detergents & 4 Others, SCCA NO.7 of 1998: (2001) KALR 115.**

The Appellant without giving any notice specifying what wrong the Respondent had done, and in total denial of any hearing to him, dismissed the Respondent from employment . Yet it was the very Appellant that had taken on the employment of the Respondent from the Ministry of Works. Central Government, where the Respondent first worked.

The Appellant was thus estopped by **Section 114** of the **Evidence Act** from asserting, against the Respondent, that the employment relationship between the two was null and void from the very beginning. The principle of the law of estoppel is that where a party has acted in such away, so as to give an inference from his/her conduct, that there is consent to the transaction to which that party would have objected, then that party cannot be allowed to question the legality of the transaction as against that person, who on the faith of that party's conduct, has acted on the created impression that the transaction was legal. See: **Development Finance Company of Kenya Ltd V Wino Indusrtries Ltd (1995-1998)2 EA 65.** See also: the persuasive decision of **Face Technologies (PTY) Ltd Vs Attorney General and Uganda Bureau of Standards. HCCS NO 248 of 2008**

The Appellant portrayed themselves to the Respondent that they were taking him on in employment in complete compliance with the law and procedure as well as approval of all the Appellant's officers and

organs. The Appellant had no reason to assume otherwise. At any rate, the Appellant adduced no evidence that the situation was otherwise than what the Respondent testified to in Court. See: **Tom Mukalazi –V-Devis Kisule(1995) KALR 860.**

I accordingly uphold the decision of the Trial Judge that the Appellant unlawfully dismissed the Respondent from his employment. Ground 2 is therefore disallowed.

Ground 3:

The learned Trial Judge is stated to have erred by failing to properly evaluate the evidence adduced as regards the recruitment, employment, deployment and remuneration of the Respondent, thus making an erroneous decision.

It is a fact that the Respondent, as instructed by the Appellant's Chief Administrative Officer, addressed the application, Exhibit PE1, to be appointed a Heavy Plant Operator to the Chief Administrative Officer, through the District Engineer of the Appellant. The Respondent clearly stated in the application that he had been working with the Ministry of Works, Central Government since 1990. Addressing such application to the Chief Administrative Officer on the instructions of the said officer was within the ambit of the functions of a Chief Administrative Officer of a District under **Section 64(1)** and **2(b) (c) (e) (f) (g) and (h) of the Local Governments Act**. It was up to the said officer to see to it that the responsible organs and officers of the Appellant act appropriately on the matter.

The trial Judge evaluated all the relevant evidence that was before him. The application for the job by the Respondent was received by the office of the Chief Administrative Officer through the District Engineer. There is evidence on the application, Exhibit PE1, that consultations were carried out by other officers and organs of the Appellant with a view to taking a decision about the application from 26th March, 1999 up to 8th April, 1999 when the posting instructions were issued to the Respondent. The Appellant then issued to the Respondent an identity card, Exhibit PE2, and entered the Respondent on the Appellant's payroll. A TIN number was also issued to him as was the case with other employees of the Appellant.

No evidence was adduced by the Appellant at trial to show that the Respondent never properly joined Public service in the Ministry of Works, Central Government, from where he was transferred to work for the Appellant; or that the District Service Commissission of the Appellant in its internal workings and in accordance with its mandate, never made a decision about the Respondent being employed by the Appellant.

The learned trial Judge, on the basis of the evidence that was adduced, correctly evaluated that evidence and arrived, in my considered view, at the correct decision that the Respondent was properly recruited within the service of the Appellant. I find no merit in ground 3. The same is also dismissed.

Ground 4:

In this ground, the Appellant complains that he was denied a chance to cross examine the Respondent and also that the Trial Judge closed the proceedings without hearing the Appellant's case.

I have carefully scrutinized and reviewed the record of proceedings of the Trial Court and I find that, it is necessary in order to be able to properly resolve this ground, to re-appraise the facts on record with regard to the attitude and conduct of each party as to the prosecution of each party's case to the said suit.

Although Counsel for the Appellant claims that his **Application No. 0054 Of 2014** was dismissed denying him an opportunity to be heard, the record indicates that **HCCS No. 0036 of 2007** was lodged in Court on 24th May, 2007. Judgment was delivered in the same on 7th October, 2014, thus taking 7years and 5months to be completed. There were about 23 adjournments of the case from 17th August 2008 when it was first called for hearing up to the stated date of delivery of Judgment. Most of the adjournments were due to unavailability of a party or Counsel not being ready to proceed with the hearing. The majority of the adjournments during the period 17th August 2008, to 7th October, 2014, were at the prompting of the Appellant.

On 23rd June,2009, the Respondent testified in Chief, and for reasons that were never disclosed to the trial Court (Owiny-Dollo, J, as he then was), Counsel for the Appellant prayed Court:

"I seek to cross examine the witness another time"

The Court obliged and adjourned the case. From that date of 23rd June 2009, until 28th May 2014, a period of almost 5 years, Counsel for the Appellant never cross examineed the Respondent. Every time the case was called for hearing, the same would be adjourned mainly on the basis of the reasons already stated above .

The Trial Court, frustrated by the negative attitude of the parties mainly the Appellant and Appellant's Counsel, of not making progress in the completion of the hearing of the case, did on 12th of June, 2012 (Chibita, J., as he then was) grant an adjournment to the 23rd October 2012 for the last time. When the case was called for hearing on this date of 23rd October, 2012, the same, could not proceed because the Appellant's Counsel who was supposed to cross-examine the Respondent was absent and had requested another counsel to hold a brief for the purpose of praying for a further adjournment.

No reasons were given as to why the Counsel for the Appellant, who was conversant with the cross-examination of the Respondent was absent. The trial Court, never the less, adjourned the case to 25th March, 2013.

The Court **(Chibita, J, as he then was)** re-convened on 23rd March,2013. Counsel for the respective parties were present. So too was the respondent. The Court was then addressed by Respondent's Counsel that Counsel for the Appellant had communicated to him that morning that the Appellant was to settle the case and a Court Judgment was to be filed in Court after discussion had been held

with the Appellant's Chief Administrative Officer. Counsel for the Appellant who was recorded as present did not dispute this. The Court thus adjourned the case to 13th May 2013 for mention, in the hope that a consent Judgment will have been filed in Court, by then.

Thereafter no progress was made with the case by way of settlement or otherwise. The Court **(Batema, J)** in order to bring to completion the hearing of the case, arranged and fixed the same for a special session to be held on 28th May 2014. This was in the presence of Counsel for the Appellant and the one for the Respondent.

The Court **(Batema, J)** duly convened on 28th May 2014 with the Respondent present, but his lawyer absent. The lawyer for the Appellant was also absent. There was no representative from the Appellant in Court. The Court stood over the case for another 15 minutes to give a chance for those absent to be contacted and to come to Court for the hearing. Thereafter, after the fifteen minutes had expired, no one else, other than the Respondent, turned up for the hearing of the case. The Court, in these circumstances, resolved that the proceedings in the case had been closed and that the Court was to deliver Judgment in the case on 20th June,2014.

On that very day of 20th June, 2014, the Appellant, lodged in the High Court,Fort Portal, **Miscellaneous Application No. 0054 of 2014** seeking for an order that the Appellant, as applicant, be allowed to cross–examine the Respondent and the Respndent's other witnesses and also that the Appellant be allowed to adduce evidence in defence. The Application was fixed for hearing on 26th June, 2014.

The Court **(Batema, J)** sat on 26th June,2014 to determine **Miscellaneous Application No. 0054 of 2014**. Counsel for the parties to the Application were present. Counsel for the Respondent sought an adjournment because he had only been served the day before with the Application and wanted to consult his client, the Respondent.

The Court refused to grant the adjournment, but instead held that the Court's Judgment in the **Civil Suit No. 0036 of 2007**, was ready for delivery.

The Court noted that the Appellant had falsely impressed upon the Court that the case was being settled by consent out of Court, whereas not. The Appellant had also failed to cross examine the respondent on the dates the Court had adjourned the case to so as to enable this to be done. The Court therefore concluded that the Appellant was not serious in pursuing the cause. The **Application NO. 54 of 2014** was dismissed with costs to the Respondent and the Court proceeded with the delivery of Judgment in **Civil Suit No. 0036 of 2007.**

The Court record ***(P 28 of the record of Appeal)*** shows that the counsel for the Applicant, now Appellant, who was in Court on 26th June 2014, did not communicate to Court that he wanted to add anything or state to Court any other matter, other than that which was in the pleadings of the Application, that is the Notice of Motion and the affidavit in support of the Application.

The above re-appraisal of the facts of this case, shows that the conduct of the Appellant and the Appellant's Counsel through out the trial of the case, was in main, the one causing as much delay as possible, so that the Respondent does not have his case completed. The Appellant and the Appellant's counsel did this even to the extent of being deceitful to the Trial Court and others.

It was deceitful of the Appellant to communicate on 15th February, 2007 to the Inspector General of Government as regards the Respondent's complaint, that once the Respondent forwarded his claim to the Appellant the same would be verified and appropriately handled, including settling the same. See: Exhibit PE4. The Respondent submitted his claims to the Appellant on 16th August, 2005 and even sent a written reminder on 20th September, 2006: Exhibits PE6(a) and (b), but the Appellant never responded to the same at all.It is safe to conclude that the Appellant conducted himself as he did so as to deceive the Inspector General of Government (IGG) and thus to stop the said IGG from bothering him with the Respondent's claim.

As already stated, on 25th March, 2013, communiction was made to Court, in the presence of and with no objection at all from Counsel for the Appellant, that the Appellant was going to execute a consent Judgment settling the Respondent's claim and as such the hearing of the case should be adjourned, so as to enable the settlement to be effected. This was a falsehood on the part of the Appellant, as the

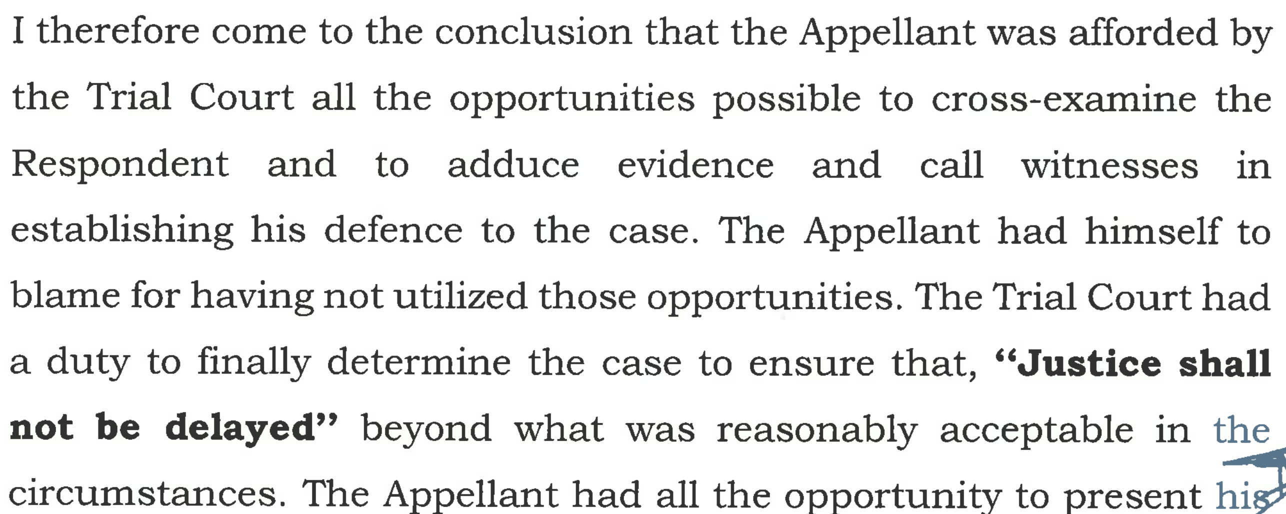
settlement was never addressed by the Appellant once the case had been adjourned.

The lodging of **Miscellenous Application No.054 of 2014** in Court on 20th June, 2014, the very day the Trial Judge had put aside to deliver the Judgment in **HCCS No. 0036 of 2007,** is further evidence as to how the Appellant was determined to frustrate the Trial Court from determining the said suit to finality.

All the above has to be considered together with the so many instances when the Appellant through Counsel, applied and secured adjournments of the case from being heard to completion, during the stated period of almost 6years.

While the Appellant was entitled to a Right to a Fair Trial under **Article 28 of the Constitution**, such a Right had to be enjoyed subject to **Article 126(2)(d)** that ***"Justice shall not be delayed"*** as justice delayed is justice denied, Further, justice must not only be done but must also be seen to be done.

I therefore come to the conclusion that the Appellant was afforded by the Trial Court all the opportunities possible to cross-examine the Respondent and to adduce evidence and call witnesses in establishing his defence to the case. The Appellant had himself to blame for having not utilized those opportunities. The Trial Court had a duty to finally determine the case to ensure that, **"Justice shall not be delayed"** beyond what was reasonably acceptable in the circumstances. The Appellant had all the opportunity to present his



case and he did not do it through his own conduct as stated above. Ground 4 is therefore without merit and the same is disallowed.

Ground 5:

This grounds faults the Trial Judge for awarding special damages to the Respondent in form of his monthly salary from the 10th August 2005 up to the date of the Judgment.

In resolving grounds 1,2 and 3, it has already been held that the Respondent was an employee of the Appellant. The contention of the Appellant that the Respondent was not entitled to damages because he was never an employee of the Appellant is thus rejected.

The ordinary remedy for breach of contract, including even that of employment, is damages. The victim of the breach is entitled to have such a sum of money by way of damages that will put him in the same financial position as he would have been in, had the breach not occurred and the other party to the contract had carried out his side of the bargain. See: **JK Patel V Spear Motors Ltd SCCA No. 4 of 1991**

The Trial Judge considered the facts and the law relating to the remedies that the Respondent claimed to be entitled to. The Judge then awarded the Respondent damages for unlawful dismissal being payment to the Respondent of his monthly salary at that material time of dismissal of Ug. Shs. 235,355 from the date of dismissal of the 10th August 2005 up to the date of the delivery of Judgment of 7th October,2014.

As an Appellate Court, this Court may only interfere with an award of damages by the trial Court, only on being satisfied that the Trial Court acted on a wrong principle; or that the sum awarded as damages is so high, or so low, as to make it an erroneous estimate of the damages to which the successful party is entitled. A mere wish that this Court, as the first appellate Court, would have awarded a higher amount is no valid ground for interfering with an ward of the Trial Court. See: **Robert Coussens V Attorney General SCCA NO.8 of 1999 (SCU) and Matiya Biryabarema & 2 Others vs Uganda Transport Co. (1975) Ltd: SCCA NO. 10 of 1993(SCU).**

I am satisfied that the award of damages as set out by the trial Judge was valid in law and I have no cause to interfere with the same.

The Appellant did not contest the other award to the Respondent of the gratuity as an employee of the Appellant from 1999 up to 10th August 2005, to be calculated in accordance with the formula under the Uganda Public Service Standing Orders. Accordingly the said award remains undisturbed.

Ground 5 is thus found to be without merit and the same is dismissed.

No Counter-Appeal was lodged by the Respondent against the trial Judge's refusal to award the other remedies prayed for by the Respondent in the plaint. This Court thus upholds the refusal by the trial Judge to so award.

The award of interest at the Court rate on the damages for unlawful dismissal and on the gratuity from the date of judgment till payment in full is also upheld.

All the 5 grounds of Appeal having failed, this appeal stands dismissed.

The Respondent is awarded the costs of this Appeal as well as those in the High Court in **HCCS No. 0036 of 2007** and also those in High Court at Fort Portal **Miscelleneous Application No. 0054 of 2014.**

The costs are to carry interest at the Court rate as from the respective dates of delivery of the Judgment/Ruling in the Court of Appeal and in the High Court, as the case may be.

It is so ordered.

Dated at Kampala this.....21st........ 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. 40 OF 2016

(An appeal from the decision of the High Court of Uganda at Kampala before Batema, J. dated 7th October 2014 in Civil Suit No.0036 of 2007)

KASESE DISTRICT LOCAL GOVERNMENT COUNCIL ============================ APPELLANT

VERSUS

BAGAMBE GEORGE ================================= RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

HON. LADY JUSTICE MONICA MUGENYI, J.A.

HON. MR. JUSTICE REMMY KASULE, Ag. J.A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Remmy Kasule, Ag. J.A.

I agree with his Judgment and I have nothing to add. Since the Hon. Lady Justice Monica Mugenyi, J.A. also agrees, we hereby order that:-

1. The Appeal is dismissed.
2. The Respondent is awarded the costs of this Appeal as well as those in HCCS No. 0036 of 2007 and in High Court Misc. Application No. 0054 of 2014.
3. The costs are to carry interest at Court rate as from the respective dates of delivery of the Judgment/Ruling in this Court and in the High Court.

It is so ordered.

Dated at **Kampala** this ....9th.............. day of ....Sept..............2021.

....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

Dated and delivered at Kampala this 9th day of Sept, 2021.

Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: KIRYABWIRE; MUGENYI, JJA AND KASULE, AG. JA

CIVIL APPEAL NO. 40 OF 2016

BETWEEN

KASESE DISTRICT LOCAL GOVERNMENT .... APPELLANT

AND

GEORGE BAGAMBE .... RESPONDENT

(Appeal from the Judgment of the High Court of Uganda (Batema, J) in Civil Suit No. 36 of 2007)

JUDGMENT OF MONICA K. MUGENYI, JA

A. Introduction

1. I have had the benefit of reading in draft the judgment of my brother, Hon. Justice Kasule in this Appeal. I agree with the conclusions and orders encapsulated therein.

2. In addition to the elaborate reasoning articulated in the lead judgment, it will suffice to point out that the actions undertaken by the Appellant in the recruitment of the Respondent are duly provided for in Uganda's Public Service Standing Orders, 2010. In the case of Local Governments, such as the Appellant, clause A – b, paragraph 10(d) designates the relevant District Service Commission as the body with the power to appoint, confirm, discipline and remove officers employed with it. On the other hand, clause A – I, paragraph 9 of the same Standing Orders does make provision for the appointment of public officers on transfer from the Central Government to a Local Government, such as the Appellant.

3. In the instant case, the Respondent started off as an employee of the Central government in the Ministry of Works, and was subsequently redeployed at the Ministry of Local Government, upon request by that Ministry. As such, he operated a chain loader machine on behalf of the Appellant, earning a salary from his line Ministry (the Ministry of Works) and allowances paid by the Appellant as provided for in clause A – I, paragraph 4(b) of the Standing Orders. The Appellant later engineered his departure from the Central Government's employment to its (Appellant) service.

4. The Appellant contends that he was employed on temporary basis, the Chief Administrative Officer reserving the right to terminate his services at any time. However, the evidence on record fell short on sufficient proof that the Respondent was either employed by the Appellant illegally or was employed on temporary terms as alleged. On the contrary, the evidence is such that the Appellant would be estopped by its conduct from reneging on its employment obligations to the Respondent.

5. In the result, as stated earlier herein, I concur with the lead judgment's findings on the Appeal and would similarly resolve it in the negative. I do similarly abide the decision on costs in the terms set out therein.