

THE REPUBLIC OF UGANDA
COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL No.158 OF 2013

CORAM

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Hon. Lady Justice Catherine Bamugemereire JA
Hon. Mr. Justice Stephen Musota JA
Hon. Lady Justice Irene Mulyagonja JA

1. DEOGRATIUS SEBABI
10 2. JACOB NGOBI:..... APPELLANTS
3. STUART MUTUSYA & 126 OTHERS

VERSUS

15 UGANDA REVENUE AUTHORITY:..... RESPONDENT

(Appeal from the Judgment of Eldad Mwangusya J, as he then was, arising from High Court Civil Suit No.62 of 2006 at the High Court of Uganda, Civil Division, Kampala delivered on 30th of April 2013).

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JUDGMENT OF CATHERINE BAMUGEMEREIRE JA

Background

The facts as agreed at the trial court were that the Appellants
25 were employed by the Respondent between the years of
1992-2005. They were terminated and some voluntarily
retired from employment and following their retirement or
termination, the appellants were paid a long term service
award at a rate of 2.5% in accordance with the Human
30 Resource Manual obtaining at the time the operation of
which ended in July 2004. The parties agreed that the new
manual, which came in effect on 1st August 2004, replaced
the 1992 manual. The Appellants' claims were that they
should have been paid long service awards at the rate of
35 15% in accordance with the amended Human

Resources Management Manual and also that they were public servants liable to pension. They equally claimed payment in lieu of uniform allowance, payment in lieu of notice and they alleged that the whole computation of
5 benefits was erroneous.

The Trial Judge ruled in favour of the respondent and the Appellants being dissatisfied with the said judgment, lodged this appeal to this honourable Court on the
10 following grounds:

Grounds of Appeal

1. *That the learned Trial Judge erred in law and fact when he held that the plaintiffs were not entitled to gratuity
15 calculated at the rate of 15% under the Respondent Human Resource Management Manual of 4th August 2004.*
2. *That the learned Trial Judge erred in law and fact when he held that no evidence was produced to show that the
20 plaintiffs were appointed on contract under the new HRMM.*
3. *That the learned Trial Judge erred in Law when he held that the plaintiffs' circumstances did not fall under the definition of termination.*
4. *That the Trial Judge erred in Law when he held that the
25 Plaintiffs were paid 5 months' severance pay and 2 of those were for payment in lieu of notice.*
5. *That the learned Trial Judge erred in law by using the definition of termination in the Employment Act 2006*

which was not in existence at the time of termination of the Plaintiffs.

5 6. *That the learned Trial Judge erred in law and in fact when he held that the plaintiffs were not entitled to special damages.*

7. *That the learned Trial Judge erred in law when he failed or neglected to make a judgment on the Plaintiffs' alternative claim.*

10 **Representation:**

At the hearing, the Appellants were represented by Mr. Cephias Birungyi, Martin Mbanza and Ms Lydia Namungoma from Birungyi, Barata & Associates while the respondent was represented by Mr. Alex Ssali Aliddeki and
15 Mr. Donald Rwakashaba from the Legal Department of Uganda Revenue Authority. Both Counsel relied on and filed written submissions.

Appellants' Submissions

20 Counsel for the appellants argued Grounds No.1 & No.2 together. He submitted that the Appellants' employment was terminated in accordance with clause 13.4 of the new HRMM hence it was fully in force at the time of their termination and all terms in the new HRMM should have
25 been implemented.

Counsel added that the new HRMM replaced the older one even if there were no new appointment letters issued to the

effect and that the new HRRM formed part of the terms of service, thus it is not fair for only the financial implications of a contract of service to be suspended.

5 It was also counsel's contention that the respondent's actions while making payments discriminated against the Appellants. Counsel submitted that unlike the appellants, the management team were paid gratuity at the rate of 24% as per the new HRMM Management, which was a
10 violation of the right of the Appellants to equal treatment in economic life.

Counsel also argued Grounds No. 3, No. 4 and No.5 together where he faulted the Trial Judge for holding that
15 "the plaintiffs' circumstances did not fall under the definition of termination, relying on the definition of termination in the Employment Act 2006, which was not yet in existence and holding that the plaintiffs were paid 5 months' severance pay out of which 2 were for payment in
20 lieu of notice.

He argued that clause 13.4 (b) of the new HRMM provides that in case of termination of employment as a result of reorganisation or restructuring, the staff shall be entitled to
25 receive entitlements including severance pay for loss of employment as determined by the Board but the retrenchment package given to the appellants did not include payment in lieu of notice. Counsel submitted that

the Trial Judge's speculation based on the URA/08/2005 to say that 2 months were for payment in lieu of notice is erroneous.

5 Regarding Ground No.7 Counsel faulted the Trial Judge for failing or neglecting to make judgment on the appellants' alternative remedies. Counsel submitted that the Trial Judge did not pronounce himself on the alternative claim yet the issues on the same were framed and agreed upon by both
10 parties during scheduling, hence occasioning a miscarriage of justice. He prayed that the appellants be awarded general damages and costs.

Respondent's Submissions

15 In reply, Counsel for the respondent also argued grounds 1 and 2 together. He submitted that the appellants were entitled to long service award of 2.5% as was paid to them in accordance with clause 14.7(a) of the Human Resource Management Manual (HRMM). Counsel argued that the
20 1992 HRMM only provided gratuity for management staff on contract.

In regards to Grounds No. 3, No. 4 and No.5 Counsel submitted that the Board of Directors is vested with power
25 to vary the rate of severance pay through a Special Resolution under clause 13(b) of the 1992 HRMM. It is pursuant to this that the Board on 166th Meeting held on

28/01/2005 varied and approved the severance pay equivalent to 3 months' salary to staff that were leaving.

5 Regarding Ground No. 6, Counsel submitted that the appellants are not entitled to any special damages as no wrong was occasioned to them by the Respondent.

10 In reply to Ground No. 7, counsel argued that the Trial Judge was alive to the facts as per the scheduling notes and his judgment albeit not expressly stating the findings on the alternative claim was sufficient for the decision of the suit as per O. 21 r 5 of the CPR.

Counsel prayed that the appeal be dismissed with costs to the respondent.

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Considerations of the Appeal

Rule.30 of the Judicature Act (Court of Appeal Rules)

Directions SI 13-1 states that;

20 **30 (1)** "*On any appeal from decisions of the High Court acting in the exercise of its original Jurisdiction, the Court may-*

(a) Reappraise the evidence and draw inferences of fact; and (b)

In its discretion for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial Court or by a commissioner."

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While discussing the duty of the first Appellate Court in the case of **Uganda v George Wilson Simbwa, Criminal Appeal No. 37 of 2005**, the Supreme Court stated as follows:

"This being the first Appellate Court in this case, it is our duty to give the evidence on record as a whole that fresh and exhaustive scrutiny which the appellant is entitled to expect and draw our own conclusions of fact. However, as we never saw or heard the witnesses give evidence, we must make due allowance in that respect." I bear the above principles in mind in determination of the grounds of appeal in this case. I shall consider the first two grounds of appeal together as argued by both counsel.

10 This Court had the opportunity to read the lower Court record and the Judgment. I also considered the submissions from both counsel for the appellants and Respondent and I find as follows;

15 Regarding Grounds No. 1 & No. 2, the Appellants submitted that their employment was terminated in accordance with clause 13.4 of the new HRMM thus they were entitled to gratuity at the rate of 15% of the gross annual salary as communicated in the new HRMM.

20 I, however, noted that although the new Manual came into operation on 1st August 2004, the implementation related to retaining non-management staff on contract was suspended by the Board.

In its 160th ordinary meeting held on 28th July 2004 (at page 25 328-337 of the Record of Appeal) under minute URA/58/2004 entitled "Implementation of the new HRMM" the Board decided, among other things, as follows:

"(b) Appointment of staff on contract.

- (i)
- (ii)
- (iii) That the appointment on contract would therefore be implemented after this process had been completed and the relevant provisions in the HRMM would therefore be suspended until that time.

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The Board decision, as quoted above, was communicated to the staff through a circular dated 4th August 2004 (at page 10 370 of the record). The relevant parts of the circular read:

“2. (a) CONTRACTS: (SEC. 3.2.2)

The Board approved the policy of appointing all staff on contract. This shall be spread out starting with PROS and SPROS. However, the Board suspended the implementation and financial implications of this policy to a later date. Therefore all staff remain on the current terms until further notice. (Emphasis is mine).

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In **Commissioner General URA v William Mukasa SCCA No. 4 of 2014** the Supreme Court while considering a similar issue noted thus,

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“The circular of 4th August, 2004 which communicated the suspension of implementation of contract provisions for non-management staff stated, “All staff remain on the current terms until further notice”. In my view, what this meant was that non-management staff would remain on permanent terms as contained in the old Manual because the terms in the new Manual were not applicable to them, as the Board had suspended them. Their

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entitlement under the old Manual was long service award of 2.5% contained in the old Manual and not gratuity which they claim."

It was held that; *'the respondent's claim can only succeed if it is based on his terms of employment and not on the basis of what the appellant organization paid to management staff that retired around the same time.'*

I have followed the reasoning of the Supreme Court and on that basis and find that the Appellants in the instant case were not entitled to the 15% rate of gross annual pay but rather they were entitled and rightly paid a long service award of 2.5% as per clause 14.7(a) of the old manual. The Trial Judge was therefore justified in holding that the Appellants were only entitled to long service award of 2.5%. Grounds No. 1 and No. 2 therefore fail.

Regarding Grounds No.3, No. 4 and No. 5 the Appellants fault the Trial Judge for finding that they were paid 5 months' severance pay and 2 of those were for payment in lieu of notice. From the evidence on record, the retirement packages were contained in an Internal Memo dated 17th March 20005 under ref URA/CG/2.7 (a) termed 'Phase 2' of the restructuring exercise. It provided under paragraph (d) as follows;

"Staff that will not be absorbed under the new structure will be paid a severance package equivalent to

- ❖ Three (3) months' salary severance pay
- ❖ Two (2) months' salary in lieu of notice,
- ❖ Any outstanding leave,
- ❖ Long service award,
- 5 ❖ Transport,
- ❖ Less any outstanding liabilities."

Needless to mention that this is a matter in which former URA employees were given a severance pay following a restructuring process after a Commission of Inquiry the result of which was that many employees were made
10 redundant and others opted for early retirement. The board resolution was therefore to provide for a form of early retirement or retrenchment or redundancy pay. I have carefully considered the board resolution and the resolution
15 Ex. P.20 as correctly applied by the learned Trial Judge. I do not perceive any breach in the resolution that each employee was entitled to:

1. 5 months consolidated pay
2. 15 days pay for June 2005
- 20 3. Long Service Award
4. Commutated Leave Pay
5. Transport Allowance

The Appellants were paid according to the conditions obtaining at the time they were employed. The HRMM
25 manual, which applied to the Appellants did provide for a severance pay for workers who were otherwise permanent and pensionable. The same HRMM provided for gratuity

for workers who were on contract. This contentious HRMM commenced at the inception of the URA in 1991/1992. The employees questioned the fairness of their severance pay and why it was not pegged to HRMM which came into force
5 on 1st August 2004 Ex. D1. From the wording of the clauses in their HRMM, it was clear that they contracted under terms set prior to the 1st August HRMM and were governed by those terms. I agree with the reasoning of the Trial Judge when he found that the employees were not governed by
10 the public service standing orders but rather, they were governed under the URA HRMM as applied to them and find no reason to fault him. I have followed the decision of **Uganda Revenue Authority v Boniface Ojok**. I find the decision of **Barclays Bank of Uganda v Godfrey Mubiru**
15 **SCCA 1 of 1998** distinguishable on issues regarding the lawfulness of the dismissal but agreeable on other matters. I find the reasoning in **Ombaya v Gaileys and Roberts Ltd** persuasive when it proposes that, 'where a person is employed and one of the terms of his employment included
20 a period of termination of that employment, the damages suffered are the wages for the period during which his normal notice would have been current.'

In this case the plaintiff was awarded Three (3) months' salary severance pay; Two (2) months' salary in lieu of
25 notice; any outstanding leave; Long service award; Transport; Less any outstanding liabilities. I agree with the finding in **John Okori v UEB 1981 HCB 52** that where the

contract of service is for an indefinite term, there is still an implied right to terminate as long as reasonable notice is given by either party. I also followed **Barclays Bank v Godfrey Mubiru SCCA No. 1 of 1998** for the proposition
5 that where a contract stipulates termination by notice...in default of such notice by the employer, the employee is entitled to receive payment in lieu of notice. Payment in lieu of notice can be viewed as ordinary giving of notice accompanied by a waiver of service by the employer to
10 terminate by notice. See **Lees v Arthur Greaves [1974] 2 All ER 393** where Lord Denning proposed that employee was still employed but not required to work for the period of the notice.

In this case the employer provided for payment in lieu of
15 notice topped up with other compensatory payments. I find, like the Trial Judge did, that the Appellants have not proved any entitlement beyond what was provided for and what was offered. In this case therefore the employer incurred the penalty of paying compensation in lieu of notice. There
20 was therefore no wrongful termination. Having reasoned as above I find no basis for Grounds No. 3, No. 4 and No. 5 they therefore fail.

In respect of Ground No. 6, whether the appellants are
25 entitled to special and general damages. The award of special or general damages flows from loss suffered as a consequence of an unlawful act on the part of the respondent. These are awarded at the discretion of the

court. I have thoroughly reviewed the evidence and materials which were availed to the learned Trial Judge and I find no justifiable reason to award the same to the appellants. No grounds for grant of general damages exists.

5 I dismiss Ground No. 6 with costs.

Finally in regard to Ground No. 7 it is my finding that the Trial Judge followed the law applicable to the trial court under 0.21 r5 of the Civil Procedure Rules, which provides
10 that;

"In suits in which issues have been framed, the court shall state it's finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit." I find Ground No.7 repetitive and

15 redundant. I find that it has been adequately addressed as in grounds No. 1 through No.5. I therefore find no reason to fault the Trial Judge for his decision. In the premises, Ground No. 7 also fails.

In conclusion I dismiss all the grounds of this appeal with
20 costs.

Dated at Kampala

On this...^{22nd}.....day of...^{March}..... 2022



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**CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 158 OF 2013

*(Arising from the Judgment of Justice Eldard Mwangusya, J (as he then was) in
High Court Civil Suit No. 62 of 2006)*

- 1. SEBABI DEOGRATIUS**
- 2. JACOB NGOBI**
- 3. MUTUSYA STUART & 126 OTHERS ::::::::::::::: APPELLANTS**

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::: RESPONDENT

CORAM:

HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA.

HON. JUSTICE STEPHEN MUSOTA, JA.

HON. JUSTICE IRENE MULYAGONJA, JA.

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment by my sister Hon. Justice Catherine Bamugemereire, JA.

I agree with her analysis, conclusions and the orders she has proposed. The appellants were paid according to the conditions obtaining at the time they were employed by the respondent and the respondent, being their employer, provided for payment in lieu of

notice together with other compensatory payments and have no entitlement beyond what was offered.

Dated this 22nd day of March 2022

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Stephen Musota

JUSTICE OF APPEAL

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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(Coram: Bamugemereire, Musota & Mulyagonja, JJA)

CIVIL APPEAL NO 158 OF 2013

BETWEEN

1. DEOGRATIOUS SEBABI
2. JACOB NGOBI
3. STUART MUTUSYA
& 126 OTHERS

..... APPELLANTS

AND

UGANDA REVENUE AUTHORITY RESPONDENT

(Appeal from the decision of Eldad Mwangusya, J, as he then was, in
Kampala High Court (Civil Division) Civil Suit No. 62 of 2006)

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my sister, Hon
Justice Bamugemereire, JA . I agree with her findings and the decision
that the appeal be dismissed with cost.

Dated at Kampala this 22nd day of March 2022.



Irene Mulyagonja

JUSTICE COURT OF APPEAL