

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Muzamiru Kibeedi & Gashirabake, JJA]

CIVIL APPEAL NO. 30 OF 2014

(Arising from High Court Civil Suit No. 08 of 2008))

BETWEEN

Uganda Railways Corporation ===== Appellant

AND

Abby Kasolo Kiberu & 128 Others ===== Respondents

(An appeal from the judgment of the High Court of Uganda [Musoke, J] (as she then was) delivered on 18th October 2013)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

Introduction

- [1] The respondents instituted High Court Civil Suit No. 08 of 2008 against the appellant seeking special damages and general damages for failure by the appellant, their former employer to pay them their proper and full-term benefits including pension, conservancy allowance, payment in lieu of accumulated leave and other related entitlements upon the termination of their employment contracts. The respondents also claimed severance pay and prayed for interest, costs of the suit and a permanent injunction restraining the appellant from evicting or charging rent on its houses until all pension and benefits are paid in full. The respondents also sought an

order for payment of monthly pension by the appellant to the estate of any deceased respondent any pension due to the respondent before the expiry of 15 years from 1st August 2006.

- [2] The respondents were former employees of the East African Railways Corporation who joined the services of the appellant following the collapse of the East African Community. It was the respondents' claim amongst other claims that the appellant ought to have taken into consideration their period of service with the East African Railways Corporation while calculating the pension and other terminal benefits due to them upon the termination of their employment. The respondents claimed a total of UGX1,375,079,500 arising out of unpaid pension and terminal benefits.
- [3] The learned trial judge found that the appellant ought to have taken into consideration the respondents' period of employment with the East African Railways Corporation in computing terminal benefits. She left the parties to calculate the amount of money due with regard to the unpaid pension and terminal benefits. The learned trial judge also awarded interest of 10% from the date of filing the suit until payment in full on the unpaid pension and terminal benefits of the respondents in respect of their period of service with the East African Railways Corporation. The learned trial judge awarded general damages of UGX 2,000,000 to each of the respondents as compensation for the anguish they suffered. She awarded two thirds of the costs to the respondents on the account that the respondents had succeeded in their major issues.
- [4] Being dissatisfied with the decision of the trial court, the appellant has appealed on the following grounds:

'1. The Learned trial Judge erred in law and misdirected herself in holding that the Appellant ought to have taken into account the Plaintiffs' service with East African Railways Corporation in calculating pension and other terminal benefits payable to the Respondents.

2.The learned trial Judge erred in law and fact in failing to hold that the Appellant is NOT responsible for paying pension and terminal benefits to the Respondents for their of service in EARC prior to 1st July 1977.

3.The learned trial judge erred in law and fact and wrongly exercised her discretion in awarding Ug.Shs.2,000,000/= to each of the Respondents as general damages.

4.The learned trial Judge erred in law and fact and wrongly exercised her discretion in awarding two thirds (2/3) of the costs to the Respondents.'

[5] The respondents opposed the appeal.

Submissions of counsel

[6] At the hearing, the appellant was represented by Mr. Noel Muhangi and the respondents were represented by Prof. John Barya. The parties opted to rely on their written submissions on record.

[7] Regarding grounds 1 and 2, counsel for the appellant submitted that the appellant rightly took into account only the period after 1st July 1977 when computing pension and other terminal benefits payable to the respondents upon termination of their employment. Counsel argued that the question of liability to settle the respondents' pension and terminal benefits for their period of service with the East African Community Corporation is a matter of law. By operation of Decree No. 6 of 1978 and the East African Mediation Agreement 1984, the government of Uganda took up the liability to pay the respondents' said pension and terminal benefits. Mr. Muhangi submitted that during the respondents' employment with the East African Railways Corporation, there pension and other terminal benefits were regulated by the East African Railways Corporation Act and the East African Railways Corporation Pensions Regulations-Legal Notice No.24 of 1970. When the East African Railways Corporation collapsed in 1977, the government of Uganda assumed the responsibility of settling the pension and other terminal benefits payable to eligible Ugandans who had

been serving in the East African Community. That in 1978, the Pensions Act was amended by the Pensions Act (Amendment) Decree No.6 of 1978 to provide that all pensions, gratuities and other allowances granted to any Ugandan national under the East African Community Pensions Act would be charged on and payable out of the Consolidated Fund. Counsel for the appellant submitted that this amendment took effect on 1st July 1977 to coincide with the effective date of termination of the respondents' employment with the East African Railways Corporation. Counsel referred to sections 1(1), 1(g)(iii) and 7(2) of the Pensions Act.

[8] Mr. Muhangi further submitted that on 14th May 1984, the governments of Kenya, Tanzania and Uganda signed the East African Community Mediation Agreement where each of the member states assumed the liability of paying its nationals employed by the East African Community corporations and retired from active service, the pensions and other benefits due to them on account of such employment. Counsel for the appellant also referred to the evidence of DW1, Sarah Alutu to show that some of the respondents documents adduced into evidence confirmed the above submissions.

[9] Counsel for the appellant contended that there was evidence before the learned trial judge to show that the government of Uganda actually paid pension and other terminal benefits to former employees of the defunct East African Community. He referred to the Inter-Ministerial Committee Report where it was noted that in 1992, government started making payments of terminal benefits to the former employees of the defunct East African Community, however, these payments were inadequate because many staff records were either incomplete or missing. It was for that reason that in February 1996 the government constituted a committee under the leadership of Mr. Adrian Sibbo to draw up a comprehensive register for the East African Community former employees to determine those so far paid and those to be paid. Counsel for the appellant submitted that one of the key findings of the Inter-Ministerial Committee Report was that 1,465 former employees of the Community got full payment (gratuity and interest), 3,705 former employees of the community received part

payment of commuted pension gratuity, interest and a total of 4,113 former employees had not been paid yet. Counsel for the appellant also referred to the recommendations in the report.

- [10] Counsel for the appellant further submitted that PW1, Natseri David confirmed during cross examination that the government of Uganda paid pension and terminal benefits to some of the respondents in respect of their period of service with the East African Railways Corporation. He submitted that by the time the Pensions Act (Amendment) Decree was passed in 1978 and the East African Community Mediation Agreement signed in 1984, the Uganda Railways Corporation was already in existence. Mr. Muhangi argued that had it been the government's intention for Uganda Railways Corporation to settle the respondents' pension and terminal benefits in respect to their period of service in the East African Railways Corporation, it would have been expressly stated in the decree and the agreement.
- [11] Counsel for the appellant further submitted that the learned trial judge erred in finding that recommendation c) (ii) in the Inter-Ministerial Committee Report applied to the respondents. He contended that the respondents were not absorbed into public service but instead joined the former corporation. Therefore, the relevant part of the said inter-ministerial report would be recommendation c) (iii) wherein it was recommended that the former East African Community employees who were not absorbed in public service should be allowed to join the public service pension pay roll. He contended that recommendation c) (ii) in the Inter-Ministerial Committee Report did not have the effect of amending the law let alone transferring to the appellant the liability to settle pension and other terminal benefits in respect of the respondents' period of service with the East African Railways Corporation.
- [12] Counsel for the appellant argued that because the law is clear on where the liability lies, the learned trial judge ought to have accepted the appellant's evidence that the letters of confirmation, certificates of service and the payments where the appellant purported to recognise the respondents'

period of service in the East African Railways Corporation as part of their period of service in the appellant corporation were issued in error. He referred to the witness statement of DW1. Mr. Muhangi contended that the said letters of confirmation, certificates of service and payments issued in error cannot create an estoppel against clear provisions of the law. He relied on Maritime Electric Company Limited v General Dairies Limited [1937] AC 610 for the submission that there is no estoppel against a statute or a legal provision and estoppel cannot supersede the same.

[13] Counsel for the appellant also submitted that it was erroneous for the learned trial judge to find that no documentary evidence in form of Board minutes or resolutions was tendered to back up the claim that the said confirmation letters, certificates of service and payments were issued and or made in error. He contended that the appellant tendered in evidence of minutes of the Board meeting of 30th June 2006 showing that the board of Uganda Railways Corporation discovered the errors and directed management to take corrective measures. Counsel further submitted that the fact that the appellant declined to consider the respondents' period of service with East African Railways Corporation in computing their terminal benefits would mean that the appellant realised that the confirmation letters and certificates of service had been issued in error.

[14] Mr. Muhangi further contended that the learned trial judge further misdirected herself on the law in finding that Uganda Railways Corporation recognised the respondents' service in East African Railways Corporation before 1st July 1977 as part of a continuous contract of employment. He submitted that legally, the respondents' period of service in East African Railways Corporation and their period of service in Uganda Railways Corporation are severable. He stated that following the collapse of the East African Community, the former Uganda Railways Corporation was established under Decree No.14 of 1977 as a separate legal entity and only as a transitional caretaker of the affairs of the East African Railways Corporation in Uganda until such a time when the assets of the East African Railways Corporation could be divided amongst the partner states. Counsel argued that nothing in the said Decree suggests that

the former corporation was a successor of the East African Railways Corporation.

- [15] Counsel for the appellant submitted that the respondents joined the service of the former Uganda Railways Corporation pursuant to section 12(1) of the Uganda Railways Corporation Decree No.14 of 1977. Under the section, the board of the former corporation had the option not to appoint the respondents into the service of the appellant provided this was done within 12 months from the date of commencement of the decree. The respondents therefore could only be confirmed in the service of the former corporation if the board appointed them or upon expiry of 12 months from the date of commencement of the decree. Counsel was of the view that this is inconsistent with the finding that the respondents' service in the East African Railways Corporation before 1st July 1977 was part of a continuous contract of employment.
- [16] On the other hand, counsel for the respondents submitted that there is no doubt that the East Railways Corporation Act and the regulations thereunder provided for pension and terminal benefits for the employees of the East African Railways Corporation while it was still in existence prior 1st July 1977 but with the collapse of the community, the law ceased to operate and that what is relevant are the laws of Uganda effective 1st July 1977. Counsel for the respondents argued that there is a difference between employees of the East African Community as 'general employees' and employees of specific corporations such as the East African Railways Corporation who were governed by different laws.
- [17] Counsel for the respondents further contended that the Pensions Act cap 286 was only relevant during the period when it was possible to transfer services from a public corporation to government or vice versa. However, with the establishment of different corporations after the collapse of the old East African Community, each corporation (at a national level) became responsible for the pension and terminal benefits of its employees. Prof. Barya argued that the East African Community Mediation Agreement Act

of Kenya cannot apply to Uganda. Even if it is to be seen as persuasive, there is nothing in the law to show that the government of Uganda took up the responsibility for paying the pension and other terminal benefits of the employees of the former East African Railways Corporation.

- [18] Prof. Barya submitted that the Pensions Act's reference under section 1(j)(ii) to service under the East African Community and the corporations thereunder including the East African Railways Corporation as having been part of 'public service' was only relevant when the term 'public service' under the Pensions Act included such corporations. Counsel contended that these corporations are no longer part of the 'public service'. He submitted that the Pensions Act still refers to many entities that are no longer part of public service. He referred to section (j)(iii) and section 1(j)(iv) of the Pensions Act to support this submission.
- [19] Counsel for the respondents submitted that the fact that the appellant implemented recommendation (ii) of the Inter-Ministerial Committee report to some extent showed that the appellant recognised the respondents' period of service in the East African Railways Corporation prior to 1st July 1977. The recommendation was to the effect that all ex-employees of the community who are still alive and were absorbed in the public service and who were paid commuted pension gratuity and interest, their pension arrears should be suspended and the amount of money they were paid for the commuted pension gratuity should be recovered from their pension entitlements when they eventually retire.
- [20] Counsel also contended that the evidence provided at trial in form of letters of appointment, confirmation letters and certificates of service confirmed that the appellant recognised the period before 1st July 1977 as part of the respondents' service with the appellant. In particular counsel referred to the confirmation letter of a one Mr. J.D Kiggundu, certificates of service for David Natseri, John Baptist Ngwerisa and Samuel Ssentongo. Counsel also relied on the evidence of David Natseri (PW1) to support his submissions. Prof. Barya submitted that the appellant's witness Sarah Alutu admitted that a number of respondents and other Uganda Railways

Corporation workers had been paid their pension and terminal benefits which included the period they served in the East African Railways Corporation. Counsel concluded by stating that from the evidence availed on record, the learned trial judge was right to conclude that the appellant was responsible for paying the pension and terminal benefits of the respondents for the entire period that they served the appellant and the East African Railways Corporation.

- [21] In rejoinder, counsel for the appellant submitted that the only reason why the East African Community Agreement Act was cited was because it contains the full text of the East African Community Mediation Agreement and the appellant's intention was that this court could have the benefit of considering the said agreement from its entirety from an authentic source. Counsel contended that it was not his submission that the said Act made the government of Uganda liable to pay pension and terminal benefits of the former East African Railways Corporation employees but rather that by the signing of the said agreement in 1984, the member states assumed the liability to pay its nationals employed by the East African Community corporations and retired from active service, the pension and other benefits due to them on account of such employment.
- [22] Counsel for the appellant reiterated his submissions that the government of Uganda took deliberate steps after 1st July 1977 to show that it assumed responsibility of settling pension and other terminal benefits payable to Ugandan nationals who had been serving in the East African Community. He contended that the respondents' submissions about the inadequacies in the Pensions Act are merely opinions and diversionary. Counsel contended that the respondents did not provide any authority for their submission that with the establishment of different corporations after the collapse of the East African Community, each corporation became responsible for the pension and terminal benefits of its employees. Counsel contended that the Inter-ministerial committee report should be read as a whole.
- [23] Regarding ground 3, counsel for the appellant submitted that the award of UGX 2,000,000 to each of the respondents as general damages was

erroneous because the learned trial judge erred in the finding that the appellant should have taken into account the respondent's period of service with East African Railways Corporation in computing their terminal benefits. Counsel contended that since the said finding greatly influenced the trial court's decision on the quantum awarded as general damages, the award of damages should be set aside.

- [24] In reply, counsel for the respondents submitted that the appellant did not appeal on most of the issues that were raised in the trial court and that the general damages were awarded because of the delay in making payments which the appellant did not contest. He argued that the appellant is deemed to have abandoned the ground of appeal because it had already paid the general damages to the respondents by 11th November 2002.
- [25] Regarding ground 4, counsel for the appellant submitted that the only basis for the award of two thirds of the costs to the respondents was that the respondents' suit had succeeded on the major issues. He contended that since the erroneous finding that the appellant should have taken into account the respondents period of service with the East African Railways Corporation in computing their terminal benefits influenced the trial court's decision on the award of costs, the award of costs should be set aside.
- [26] In reply, counsel for the respondents submitted that the trial court rightly awarded two thirds of the costs to the respondents because they had succeeded on the major issues they raised in court. Counsel for the respondents contended that since the appellant does not dispute most of the trial judge's findings, it has no basis for contending against the trial court's discretion to award the said percentage of costs. Counsel for the respondents was of the view that since the appellant has already paid costs, it is deemed to have abandoned this ground of appeal by its conduct.
- [27] In rejoinder to counsel for the respondents' reply in grounds 3 and 4, counsel for the appellant submitted that since the appellant is dissatisfied with the award of general damages and costs, the only course of action is

through appeal and that the respondents' submission that the appellant waived this right when it paid the damages and costs is baseless.

Analysis

Grounds 1 and 2

- [28] Grounds 1 and 2 shall be handled together because they are interrelated. The appellant essentially contends that it is not responsible for paying pension and terminal benefits to the respondents for their period of service in the East African Railways Corporation prior to 1st July 1977.
- [29] The East African Railways Corporation was a statutory corporation of the East African Community that was established by section 3 of the East African Railways Corporation Act and Article 71 of the East African Community Act, 1967. During the respondents' period of service with the East African Railways Corporation, their pension and terminal benefits were regulated by the East African Railways Corporation Act and the East African Railways Corporation Pensions Regulations legal notice No. 24 of 1970. While the East African Railways Corporation was still in existence, pension and other terminal were charged on the funds of the corporation. Regulation 3(1) of the pension regulations stated:
- ‘There shall be charged on and paid out of the funds of the corporation all such sums of money as may from time to time be granted by the corporation by way of pension, gratuity or other allowance in accordance with these Regulations.’
- [30] It was counsel for the appellant's contention that when the East African Community collapsed in 1977, the government of Uganda took up the responsibility of settling pension and other terminal benefits payable to its eligible citizens that had been employed by the East African Community. Counsel relied on the Pensions Act (Amendment) Decree No.6 of 1978 and the East African Community Mediation Agreement Act No7 of 1987.

[31] In order to rationally settle the affairs of the formerly dissolved East African Community, the member states entered into the East African Community Mediation Agreement whereby they covenanted under Article 10.05 as follows:

‘10.05 Each State shall:

(a) Pay its nationals, employed by the corporations or GFS and retired from active service by the division date the pensions and other benefits due to them on account of such employment.

(b) Make provision for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and GFS at that date.’

[32] The agreement defined the word ‘corporations’ to include the East African Railways Corporation and ‘GFS’ to mean the General Fund Services. There is no doubt that the Mediation Agreement of 1984 effectively moved the management of the assets and liabilities of the defunct Community to the member states. This included the pension and terminal benefits of the employees of the East African Railways Corporation. Article 10.05 (b) tasked each of the member states to make provision for pension and other benefits for their nationals who remained in active service when the East African Community collapsed. The states were to cater for the pension and terminal benefits that had accrued to them while in service of the Community.

[33] The Pensions Act (Amendment) Decree No. 6 of 1978 amended section 4 of the Pensions Act No.18 of 1969 to include subsection (2) which stated:

‘(2) All pensions, gratuities or other allowances granted to any Ugandan national under the Pensions Act of the Community shall be charged on and payable out of the Consolidated Fund without further appropriation than this Act.’

[34] The decree was considered to have come into effect on 1st July 1977 in respect of the East African Community. I am refrained to agree with counsel for the appellant's submission that the above provision applied to the respondents who were former employees of the East African Community. The pension and terminal benefits of the respondents while serving in the East African Railways Corporation were governed by the East African Railways Corporation Act and the East African Railways Corporation Pensions Regulations as seen above but not the East African Community-Pensions Act cap 11

[35] The Uganda Railways Corporation Decree 1977 established the former Uganda Railways Corporation under section 1(1) as a caretaker for the affairs of the East African Railways Corporation. Section 2 of the decree stated:

'2. The Corporation shall be responsible on a caretaker basis for the affairs of the East African Railways Corporation within Uganda until such time as the assets of the East African Railways Corporation are divided by the Authority amongst the Partner States.'

[36] Section 12 of the decree stated:

'(1) subject to subsection (3), the Board may appoint or employ upon such terms and conditions as it thinks fit such officers and employees as it deems necessary for the proper and efficient performance of the functions of the Corporation under this Decree:

Provided that until the appointments under this section have been made or the expiry of twelve months from the commencement of this Decree, whichever shall be the earlier, the Regional Manager and all other officers and employees of the East African Railways Corporation serving in Uganda at the commencement of this Decree shall, unless otherwise determined by the Minister and the Board be deemed to be officers and employees of the Corporation in the equivalent posts and exercising the

same powers held and exercised immediately before the commencement of this Decree.

(2) All reference in any written law whether directly or by implication to East African Railways Corporation or to the Director-General. Or to officers and employees of the East African Railways Corporation shall be deemed, unless the contexts otherwise requires, to be references respectively to the Corporation or to the Managing Director or to officers and employees of the Corporation.'

- [37] Under minute 4/79 of the first meeting of the board of directors of the Uganda Railways Corporation held on 7th February 1979, the board of the former corporation discussed the implications of the above sections and resolved as follows:

'MINUTE 4/79: APPOINTMENT OF STAFF
(MEMORANDUM NO.2)

Memorandum No.2 on appointment of staff pointed out to the Board that the proviso to section 12 of the Uganda Railways Decree, 1977 required that until the appointments under section 12 had been made or the expiry of twelve months from the commencement of the Decree whichever was the earlier, the staff of the defunct East African Railways Corporation serving in Uganda at the commencement of the Decree were to be deemed to be officers and employees of the Uganda Railways Corporation in equivalent posts and exercising the same powers held and exercised immediately before the commencement of the Decree.

The Memorandum requested the Board, as a matter of formality, to accept or ratify the appointments of the officers and employees who were in any case, under the proviso already deemed to be officers and employees of the Uganda Railways Corporation.

The Board considered the memorandum and in the course of the discussion the members exchanged views as to the

financial implications of such acceptance or ratification, that is to say, for example, whether the Corporation alone would have to bear the employee's pensions for the services rendered to the defunct East African Railways Corporation.

After a lengthy discussion, the Board,
x(a) agreed that the officers and employees of the defunct East African Railways Corporation serving in Uganda at the commencement of the Decree be deemed to be officers and employees of the Corporation as it is provided under the proviso to section 12 of the Uganda Railways Corporation Decree 1977.

x(b) resolved that for the time being, the terms and conditions of service of the defunct East African Railways Corporation will continue to apply to the officers and employees of the Corporation, and

x(c) directed Management to prepare a paper or memorandum on terms and conditions of service of the officers and employees of the Uganda Railways Corporation and submit it to the Board for consideration at the next meeting.'

- [38] From the above, it is clear that it was resolved by the Board of the former corporation to take on the officers and employees of the defunct East African Railways Corporation under the same terms and conditions provided by the defunct corporation, pension and other terminal benefits inclusive. PW1, Natseri David Cooper testified that they (the respondents) were readily available and taken over by the Uganda Railways Corporation to serve in the same capacities as they were doing in the East African Railways Corporation. They were not freshly re-appointed, they still held their appointment letters by the East African Railways Corporation. He stated that since 1st July 1977 up to 2000, pension was being calculated basing on one's date of appointment, that is, from the date of one's appointment in the East African Railways Corporation up to the date one retired. If anyone had been paid commuted pension gratuity and interest by the Ministry of Public Service, payments would be deducted from the full pension paid by the Uganda Railways Corporation.

[39] The respondents adduced samples of letters of appointment, letters of confirmation and certificates of service to prove that the appellant recognised the respondents' period of service in the East African Railways Corporation prior to 1st July 1977 as part of their service with the appellant. Sample letters of appointment by the East African Railway Corporation of Esau Japaini, Johnson Ssekikubo and Mr. John Mary Nsubuga were adduced into evidence. The appointment letters for Mr. John Mary Nsubuga stated as follows:

'East African Railways Corporation
LETTER OF APPOINTMENT – TRAINEE
Traffic branch
Nairobi station

ST.88796

Date 22-7-71

To: Mr. John Mary Nsubuga Yiga

By authority of the Board of Directors and subject to your acceptance of the terms of this letter, you are hereby appointed on trial with effect from 19-7-71 to the post of T/station Clerk Div.1 in the service of the East African Railways Corporation (hereinafter referred to as "the Corporation").

2. The salary attached to your post is at the rate of £447 per annum in the scale of $£447 \times 612 = £507$ per annum, and your increment date is 1st July.

3. Your appointment will be for such period as is necessary for you to complete your training after which, subject to a satisfactory report on your progress and training, and to your passing such examinations as may be required, you will be eligible for consideration for appointment on probation to a permanent and pensionable post in the service of the Corporation.

4. You are liable, in the discretion of the Director-General to be transferred at any time to the service of the Corporation in Kenya, Tanzania or Uganda.

5. During the term of your employment, you will be subject to the provisions of such rules and regulations of the Corporation, applicable to your post, as may from time

to time be in force in the country in which you are for the time being serving.

6. Your appointment may be terminated by seven days' notice on either side or upon payment of seven days' salary in lieu thereof.

CHIEF TRAFFIC MANAGER

Head of Branch

(For

and on behalf of the Director-General)

I hereby accept the appointment subject to the terms of this letter.

Date 26th July 1971

.....

Signature of employee

E.A.R.0056'

- [40] The respondents also adduced samples of letters of confirmation by the Uganda Railways Corporation in which the dates of appointment for the respondents predated 1st July 1977. These included the letters of appointment for Mr. S Odora whose appointment date was considered as 1st May 1977, Mr. S. Magemeso whose appointment date was considered as 1st December 1973, Isabirye Moses whose appointment date was considered as 27th October 1972, P. Sibaminyo whose appointment date was considered as 1st November 1972, Mr. Alex Kasujja whose appointment date was considered as 25th May 1972 and Kigundu J.D whose appointment date was considered as 1st August 1972. A sample of the letters reads as follows:

'UGANDA RAILWAYS CORPORATION

Chief Administration Manager's (O)

P.O. Box 7150

Kampala

CAM/89832

Mr. S. Odora

Draftsman RB II

Thro: The Chief Mechanical Engineer
Kampala

CONFIRMATION IN APPOINTMENT AND
ADMISSION TO PENSIONABLE STATUS

I have pleasure in advising you that you have been confirmed in your appointment with consequent admission to permanent and pensionable status with effect from 1-5-77.

E.Okui
for: CHIEF ADMINISTRATION MANAGER
c.c The Financial Controller
Kampala
For information.'

- [41] There were also certificates of service for S.Ogwal, David C Natseri, Sentongo Samuel, Opio Celestino Aseu, Katunze Edward, Opio Charles Vicent, Ngwerisa John Baptist, Japaini Esau, Mvuyekule Vicent, Ogondo Santo and Madira Qwirino in which the commencement dates predate 1st July 1997. A sample of the certificates states as follows:

'Uganda Railways Corporation
Certificate of Service

OPIO CELESTINO ASEU

Designation **DATA CONTROLLER** Department

Rail operations

Salary **SHS 4510056 = PA** Scale

4479432=x 3062=TO 4510056 = P.A

Date of Commencement of Engagement **1ST**

JANUARY 1971

Date of Termination of service **31ST JULY**

2016

Period of service **36** Years **7**

Months - Days

Cause of Termination of Engagement

CONCESSIONING OF THE CORPORATION

Ability and Efficiency **GOOD**
General Conduct **GOOD**

-----Sign-----

GEORGE OMUTE

Chief Administration Manager

Reference No.

CAM/89919

Includes the period of terminal leave granted'

- [42] The above appointment letters, letters of confirmation and certificates of service constitute evidence that the appellant recognised the respondents service in the East African Railways Corporation before 1st July 1977 as part of a continuous contract of employment. The enactment of the Uganda Railways Corporation Act in 1992 repealed the Uganda Railways Corporation Decree of 1977. One of the objects of the Act was to dissolve the then existing Uganda Railways Corporation and to transfer to the appellant its property, assets, rights, obligations and liabilities. The appellant assumed the liabilities of the former corporation including the responsibility to pay the pension and terminal benefits of employees who were formerly in service of the East African Railways Corporation.
- [43] Under section 93, employees of the former corporation became employees of the Uganda Railways Corporation. Section 93 states:
- ‘Unless the board, with the prior approval of the Minister otherwise directs in writing, all employees who immediately before the commencement of this Act were in the service of the Uganda Railways Corporation established by the Uganda Railways Corporation Decree, in this Act referred to as the “former corporation” shall be deemed on the commencement of this Act to have become employees of the corporation and shall hold positions equivalent to those held by them and on terms and

conditions not less favourable than those applicable to them immediately before the commencement of this Act.’

[44] Further, section 94 (1) states:

‘All property, assets, rights, obligations and liabilities of the former corporation in existence at the commencement of this Act are, on the commencement of this Act transferred to the corporation; and accordingly, all such property, assets, rights, obligations and liabilities shall, on the commencement of this Act, vest in or as the case may be, subsist against the corporation without any further assurance than this Act.’

[45] DW1, Sarah Alutu, stated in her witness statement that it was the board of directors’ decision made on 30th June 2006 to exclude the respondents’ period of service in the East African Railways Corporation while calculating their pension and terminal benefits. She stated that the period was excluded because it is the government responsible for making the payments for the period prior to 1st July 1977. Sarah Alutu stated that the appellant did not deduct any money received from the government by any of its employees in respect of employment benefits for their service in the East African Railways Corporation. She stated that some of the former employees of the appellant who were absorbed by the appellant from the East African Railways Corporation that were retired or terminated prior to 31st July 2006 were erroneously paid terminal benefits or pension including the period spent in service at the East African Railways Corporation. This error was rectified in April 2010 upon review of the pension applicable to the said pensioners.

[46] Upon cross examination, DW1 stated that following a decision to exclude the period of service in East African Railways Corporation by the board of directors on 30th June 2006, they were verbally instructed by the management to exclude that period in calculating the pension and other terminal benefits for the respondents. She stated that the appellant erred in

issuing some of the respondents with letters of confirmation into pensionable status taking effect from their respective dates of engagement in the East African Railways Corporation. In the same way, she stated that the issuance of the certificates of service including the respondents' period of service in the East African Railways Corporation was erroneous considering that the respondents' service with the appellant commenced on 1st July 1977.

- [47] The question to be considered at this stage is whether the appellant under law or under agreement with the respondents is obliged to pay them pension emoluments for the period that they had served with the East Africa Railways Corporation or such pension emoluments must be calculated commencing on the 1st July 1977 when they were initially employed by the appellant or the earlier Uganda Railways Corporation which it succeeded.
- [48] As a matter of law the appellant did not inherit the pension obligations for the respondents' service with East African Railways Corporation. This was assumed by the Government of Uganda in agreements with the former partner states in the East Africa Community and subsequent laws enacted in Uganda. In fact it is acknowledged that the Government has paid these pension obligations. In law the appellant has no obligation to consider the period of service prior to the 1st July 1977 in calculating the respondent's pension benefits.
- [49] The basis of the respondent's claim is simply that other employees who had previously retired the appellant had calculated their pension benefits to include the period of service in the East Africa Railways Corporation. The appellant's answer is that it had done so in error. The thrust of the respondent's claim is based not in contract but simply estoppel. However, estoppel is a shield and not a sword. It can act as a defence to a claim rather than as a basis for a claim. Had the appellant sought to recover this money from those it had paid they would rightly plead estoppel but it can not be a basis for instituting a claim.

[50] The learned trial Judge took a dim view of the failure of the appellant to produce documentary evidence to the effect that it was the board of director's decision to exclude the respondents' period of service in the East African Railways Corporation while calculating their pension and terminal benefits. Of course it would have been desirable for such evidence to be adduced to provide a complete and comprehensive picture of decision making in the appellant. However, the failure to do so did not create a right that did not exist.

[51] In light of the foregoing I would allow grounds 1 and 2 of the appeal.

Ground 3

[52] Counsel for the appellant basically contended that it was erroneous for the learned trial judge to award each of the respondents UGX 2,000,000 as general damages. The grant of general damages by court is discretionary. General damages are intended to compensate the plaintiffs for the loss or injury suffered as a result of breach of an obligation. They must therefore be a direct, natural or probable consequence of the act or omission complained of. See Stroms Burks Bolag and Others v J & P Hutchison 41 S.L.R 274.

[53] In Omunyokol Akol v Attorney General [2012] UGCA 15, this court stated:

'As for damages which were awarded, the complaint which was raised by the appellant as I understood it is that the trial judge ought to have awarded a separate sum for each claim of damages. A claim for damages if proved by the plaintiff, results in compensation in monetary terms. The principle which has to be borne in mind is that the person who claims to have been injured must be awarded such sum of money which will put him in the same position as he would have been in if he had not sustained the wrong complained of.

Award of damages is an exercise of discretionary powers of the trial court. Usually an appellate court is reluctant to

interfere with such awards because it is considered imprudent to substitute the appellate court's own opinion with that of the trial court. The exercise of discretion should be done with care and on principles that have been laid down.

However, there are two settled areas where an appellate court will interfere with the exercise of discretion. The first is where the trial court acted on wrong principles and the second is where the amount awarded is manifestly excessive or manifestly low that a misapplication of a wrong principle is inferred.'

[54] While awarding the general damages, the learned trial judge stated:

'B. General Damages

The plaintiffs have succeeded in some of their claims for example;

- 1) Unpaid terminal benefits and pension for all plaintiffs taking into account the EARC/EAC period before 1st July 1977.
- 2) Underpaid conservancy allowance for 46, which also affected their pension and terminal benefits

The plaintiffs' claim that as a result of the breaches of their contracts and underpayments by the defendant, they had suffered inconvenience and damage for which they claim damages. This happened through underpayment and delay of their pensions and terminal benefits. I find in favour of the plaintiffs. They have waited long and have been deprived of their payments for quite some time.

I find that a sum of Shs. 2million for each plaintiff will suffice to compensate for the anguish they have suffered.

[55] The respondents claimed various heads of claim which the learned trial judge allowed and which formed part of the basis for awarding the sum of shs.2.000,000.00 as general damages to each respondent for inconvenience they had suffered at the hands of the appellant. The appellant did not appeal against the award under those claims save for the question of the period for which pensionable service should be calculated. Given the passage of time and inflation I am not inclined to disturb the learned trial

judge's award of general damages in as much as the respondents were partially successful.

[56] I would disallow ground 3 of the appeal.

Ground 4

[57] Counsel for the appellant challenged the award of two thirds of costs to the respondents. Costs are awarded at the discretion of the court and they should follow the event. Section 27 (1) and (2) of the Civil Procedure Act states:

‘(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.’

[58] The learned trial judge awarded two thirds of the costs to the respondents because they had succeeded in the major issues that they had raised before court which is correct. I would have had no reason to disturb the order in relation to costs had the appellant not succeeded in grounds 1 and 2. I would allow the respondents 50% of their costs in the High Court given that they partially succeeded.

[59] I would allow ground 4 in part as indicated above.

[60] I would allow this appeal in part with half of the appellant's costs in this court. I would allow the respondent 50% of his costs in the court below.

Decision

[61] As Kibeedi and Gashirabake, JJA, agree this appeal is allowed in part with one half of the appellant's costs in this court. In the court below the respondent shall be entitled to one half of his costs in that court as they were partially successful. The judgment of the High Court ordering the appellant to pay the respondent's pensionable benefits for their service with the East African Railways Corporation prior to the 1st July 1977 is set aside to that extent only.

Signed, dated and delivered at Kampala this 20th day of June 2022.



Fredrick Egonda-Ntende

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Kibeedi, Gashirabake JJA]

CIVIL APPEAL NO. 30 OF 2014

(Arising from High Court Civil Suit No. 08 of 2008)

BETWEEN

Uganda Railways Corporation ===== Appellant

AND

Abby Kasolo Kiberu & 128 Others ===== Respondents

(An appeal from the judgment of the High Court of Uganda [Musoke, J] (as she then was) delivered on 18th October 2013)

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA

I have had the benefit of reading in draft the Judgment prepared by My Lord, Hon. Justice Egonda-Ntende, JA. I concur with the reasoning and conclusions. I have nothing useful to add.

Dated at Kampala this ^{90th} day of *June* 2022

Muzamiru Kibeedi
Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA

Coram: Egonda-Ntende, Kibeedi, Gashirabake, JJA

CIVIL APPEAL NO. 30 OF 2014
(Arising from High Court Civil Suit No. 08 of 2008)

BETWEEN

UGANDA RAILWAYS CORPORATION :::::::::::::::::::::::::::::::APPELLANT

AND

ABBY KASOLO KIBERU & 128 OTHERS ::::::::::::::::::::::: RESPONDENTS

(An appeal from the Judgment of the High Court of Uganda [Musoke J] as she then was delivered on 18th October 2013)

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

I have had the benefit of reading in draft the Judgment prepared by My Lord, Hon. Justice Egonda-Ntende JA. I concur with the reasoning and conclusions therein. I have nothing useful to add.

Dated at Kampala this.....^{20th}.....day of^{June}.....2022.


Christopher Gashirabake,
JUSTICE OF APPEAL