THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 14 OF 2016
(ARISING FROM HCCS NO. 063 OF 2012)
(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)

THE PUBLIC PROCUREMENT AND
DISPOSAL OF PUBLIC ASSETS AUTHORITY} ..... APPELLANT

VERSUS

MRS. MARY PAMELA SOZI} ..... RESPONDENT

(Appeal against the of Judgment of Hon. Lady Justice Elizabeth Musoke, Judge of the High Court of Uganda sitting at Kampala in HCCS No 63 of 2012 dated 27th August 2015)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

The appellant lodged this appeal against the Judgment and orders of Hon Justice Elizabeth Musoke, in HCCS No. 063 of 2012 delivered on 27th August 2015.

The brief background is that the Respondent sued the Appellant, her former employer, in HCCS No. 063 of 2012 for unfair dismissal and prayed for compensation in lieu of notice, gratuity, unpaid leave, a certificate of service, four weeks' net pay, repatriation, general and aggravated damages for unfair termination, and costs of the suit.

The learned trial Judge found for the Respondent and held that her dismissal by the Appellant was unlawful since she was not accorded a fair hearing in terms of Article 42 & 44 of the Constitution and section 66 of the Employment Act, 2006. Secondly, the Respondent was not given sufficient notice according to the terms of her employment. Further, the Respondent was entitled payment for three months' notice in lieu and not the two months she was given. The learned trial Judge awarded the Respondent one month's payment in lieu of notice amounting to UGX 7,800,000/= which was not paid to her, UGX 5,850,000/= as gratuity, UGX 6,578,313/= as

payment for unpaid leave, four weeks' net pay amounting to UGX 7,800,000/=, UGX 60,000,000/= as general damages, a refund of UGX 1,156,374/= deducted from the Respondent's terminal benefits. The Appellant was further ordered to avail the Respondent a certificate of service. Interest was awarded at 15% per annum on the stated sums with costs of the suit. The learned trial Judge declined to award aggravated damages and repatriation payment to the Respondent.

The Appellant was dissatisfied with the Judgment and orders of the learned trial Judge and appealed to this court on eight grounds of appeal that:

1. The learned Hon Justice of the High Court erred in law and in fact when she held that the Appellant's termination of the Respondent's employment was unlawful/ unjustified without sufficient notice to the Respondent.

2. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to one month's payment in lieu of notice amounting to Ug. Shs. 7,800,000/=

3. The learned Hon Justice of the High Court erred in law and in fact when she held that the claims made by the Respondent for gratuity and unpaid leave were not speculative and awarded her the sum of Ug. Shs. 6,578,313/= as payment for the untaken paid leave and Ug. Shs. 5,850,000/= as gratuity.

4. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to an award of general damages amounting to Ug. Shs. 60,000,000/=

5. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to be issued a Certificate of Service by the Appellant.

6. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to a further four weeks' net pay from the Appellant in accordance with Section 66(4) of the Employment Act, 2006.

7. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to interest on items (a)(b)(c)(d)(f) at 15% per annum from the date of filing till payment in full and interest of 6% per annum at court rate from the date of judgment till payment in full.

8. The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to costs of the suit.

The Appellant prayed that the appeal be allowed with costs of the appeal and the declarations and orders of the High Court be set aside.

At the hearing of the appeal, the Appellant was represented by learned counsel Mr. George Kalemera, a Commissioner in the Attorney General's Chambers, and learned counsel Mr. Brian Musota, State Attorney, while the Respondent was represented by learned counsel Mr. Simon Kiiza.

In attendance was also Mr. Ben Turamye, the Executive Director of the Public Procurement and Disposal of Public Assets Authority together with Mr. Uthuman Ssegawa, the Director of legal and investigations of the Public Procurement and Disposal of Public Assets Authority. The Respondent also attended Court.

Both counsel of the parties adopted their written submissions as their address to this court for and against the appeal.

Submissions of the Appellant's counsel

On ground one, the Appellant's counsel submitted that the learned trial Judge erred in law and fact when she failed to take into account the terms and conditions of the employment contract thereby drawing a wrong

conclusion that the Respondent was unlawfully dismissed. Counsel submitted that the learned trial Judge relied on oral evidence to the exclusion of documentary evidence contrary to section 91 and 92 of the Evidence Act. He submitted that if the trial Judge had considered the employment contract instead of oral evidence, she would have come to the correct conclusion that the Respondent was terminated and not dismissed.

Secondly, the Appellants counsel submitted that the termination of the Respondent was a summary termination under section 69 of the Employment Act. He referred to section 65 and 69(1) & (2) of the Employment Act for the submission that the Appellant was entitled to terminate the Respondent's employment summarily, without notice, for a reason or no reason at all. Counsel relied on **Stanbic Bank Ltd v Kiyemba Mutale, SCCA No. 2 of 2010**, **Stanbic Bank Uganda Limited v Deogratius Asiimwe SCCA No. 18 of 2018**, and **Bank of Uganda v Kibuuka & 4 others, CACA No. 281 of 2016** where it was held that section 65 of the Employment Act does not impose a duty on the employer to give reasons for termination.

Thirdly, counsel submitted that the trial Judge did not evaluate the evidence on record showing the Respondent's gross incompetence as an employee of the Appellant. He referred to the testimonies of DW1, DW2 and audit reports tendered in at the trial.

Lastly, the Appellant's counsel submitted that in summary termination, there is no requirement to be heard as provided for under section 69 of the Employment Act, as long as the employer complies with the terms of the contract. Counsel submitted that where the employee is dissatisfied with the termination, he or she may pursue the remedy under section 71(1) of the Employment Act.

The Appellant's counsel abandoned ground two of the appeal.

With regard to ground three of the appeal, the Appellant's counsel submitted that the trial Judge erred in law and in fact when she awarded the Respondent UGX. 6,578,313/= as payment for untaken paid leave and UGX 5,850,000/= as gratuity. He submitted that payments for untaken paid leave

and gratuity are speculative. Counsel relied on **Bank of Uganda v Betty Tinkamanyire, SCCA No. 12 of 2007**, and **Atuzarirwe v The Registration Services Bureau & 3 others, Miscellaneous Cause No. 249 of 2013** for his submission.

On ground four, the Appellant's counsel faulted the trial Judge for awarding the Respondent UGX 60,000,000/= as general damages for unlawful termination. He submitted that the award was erroneous and manifestly excessive. Counsel relied on **Crown Beverages Ltd v Sendu Edward, SCCA No. 1 of 2005** where it was held that an appellate court will not interfere with the award of damages by a trial court unless the trial court acted upon a wrong principle of law or the amount is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. Counsel submitted that the trial Judge erred in law by holding that the respondent was not accorded an opportunity to be heard yet she was on several occasions heard by the Board. He further submitted that the trial Judge erred in finding that the Respondent had worked for the Appellant for a long time, and that the Respondent's termination caused embarrassment to her. Counsel contended that there was no evidence of embarrassment arising from the termination. In the premises, counsel submitted that the award of UGX 60,000,000/= as general damages was speculative. He invited this court to intervene and set aside the award.

On ground five, the Appellant's counsel submitted that the trial Judged erred in law and fact when she held that the Respondent was entitled to be issued a Certificate of Service by the Appellant. Counsel contended that there was no evidence that the respondent had asked for a Certificate of Service. In the premises, counsel submitted that the order was issued prematurely and upon a speculative assumption that the Appellant would not give the Respondent a Certificate of Service.

On ground six, the Appellant's counsel submitted that the Respondent was not entitled to four weeks' net pay provided under section 66(4) of the Employment Act, 2006. Counsel submitted that the Appellant did not fail to comply with the provisions under Part VII of the Employment Act as to

warrant payment of four weeks' net pay. He contended that the Appellant's Board had on several occasions given the respondent opportunities to be heard as evident in the evidence tendered before the trial court. In the premises, counsel submitted that the Respondent's summary dismissal was justified and she was not entitled to four weeks' net pay.

With regard to ground seven, the Appellant's counsel submitted that the trial Judge erred when she awarded the Respondent interest at 15% per annum on the compensatory orders. Counsel submitted that the trial Judge did not give any explanation to justify the interest awarded contrary to Order 21 rule 4 & 5 of the Civil Procedure Rules. Secondly, counsel contended that interest cannot be issued on an expired or terminated contract. He relied on **Roko Construction Limited v Attorney General HCCS No. 517 of 2005** for his submission. Thirdly, counsel contended that the Respondent did not submit on the prayer for interest and did not furnish any authorities to support it. Counsel faulted the trial Judge for awarding the Respondent interest at 15% per annum and yet the Respondent had prayed for interest at court rate in her plaint. He submitted that it is trite law that parties are only entitled to orders prayed for. For this submission, counsel relied on **Ms Fang Min v Belex Tours & Travel Ltd, Civil Appeal No. 6 of 2013 and Civil Appeal No. 1 of 2014,** where it was held that a party cannot be granted relief which he or she has not claimed in their pleadings. In the premises, he invited this court to set aside the award of 15% interest per annum.

In the alternative, counsel submitted that if this court is inclined to award any interest, it should be at court rate for all compensatory orders as this is justifiable under section 26(3) of the Civil Procedure Act which provides for court rate of 6% per annum.

On ground 8, the Appellant's counsel faulted the trial Judge for awarding costs to the Respondent. He submitted that the Respondent was not entitled to any costs having failed to prove the case pleaded against the Appellant. He relied on Section 27 of the Civil Procedure Act which provides that costs follow the event.

In conclusion, counsel prayed that the appeal be allowed with costs.

Submissions of the Respondent's counsel in reply

In reply to ground one, the Respondent's counsel submitted that ground one and two are interrelated and the abandonment of ground two by the Appellant is an admission of ground one.

Secondly, counsel reiterated the trial Judge's finding that the Respondent should have been accorded a fair hearing on the allegations of incompetence made against her by the Appellant. He submitted that the Appellant should have produced evidence of any hearing given to the Respondent in compliance with section 66 of the Employment Act, but it did not.

Further, in the Respondent's supplementary written submissions, the Respondent's counsel contended that the precedent of **Stanbic Bank Uganda Limited v Deogratius Asiimwe, SCCA No. 18 of 2018,** cited by the Appellant is on all fours with the instant appeal and supports the Respondent's case. Counsel submitted that in that case, it was held that if the employer goes on to state reasons for termination of an employee's contract of service, he or she is required, in line with the principles of natural justice, to avail the employee a hearing to allow him or her to defend himself or herself prior to his or her dismissal. He further relied on **Ridge v Baldwin (1964) AC 40** where it was held that a decision reached in violation of the principles of natural justice is void. Counsel submitted that the principles in the mentioned cases apply to the facts of the instant case where the Appellant cited incompetence as the reason for termination of the Appellant's contract of service. In the premises, counsel submitted that the Appellant was required to accord the Respondent a fair hearing, having cited incompetence as the reason for her dismissal.

Thirdly, the Respondent's counsel submitted that it was double standards on the part of the Appellant to claim that the Respondent was given an opportunity to be heard but further claim that under the employment

contract, a hearing was not necessary as the Appellant was exercising its contractual right to terminate a contract of service.

In reply to the Appellant's submission that the trial Judge relied on oral evidence to the exclusion of documentary evidence, the Respondent's counsel submitted that the Appellant did not single out the terms of the document which were excluded in preference for oral evidence. Secondly, counsel submitted that while the Appellant faulted the trial Judge for not applying any principle for interpretation of contracts, it did not mention any principle for interpretation of contracts which should have been applied in the circumstances. Thirdly, counsel contends that while the Appellant submitted that the termination of the Respondent was a summary termination under section 69 of the Employment Act, the Appellant did not specify which particular subsection of section 69, since the section provides for three scenarios of summary termination. Further, counsel submitted that the Appellant, who claims to have given sufficient notice or payment in lieu of notice, cited the provisions of section 69 of the Employment Act out of context since the section only applies where an employer terminates a contract of service without giving notice or with less notice than is required. In the premises, counsel submitted that the trial Judge was justified in coming to the conclusion that the Respondent was unlawfully terminated.

With regard to ground two, the Respondent's counsel submitted that even if the Appellant abandoned ground two, it had a serious bearing on other grounds in so far as it confirmed the trial Judge's findings that the Respondent's contract was unlawfully terminated. Counsel invited this Court to take into account the Appellant's admission that the Respondent was given less notice than she was entitled to under the Employment Act and the employment contract.

In reply to ground three, learned counsel for the Respondent submitted that the contract of service concluded by the parties provided for gratuity and paid leave. He referred to the Respondent's appointment letter at page 17 of the Record of Appeal. Counsel submitted that the precedent of **Bank of Uganda v Betty Tinkamanyire SCCA No. 12 of 2007** was cited out of context

as it relates to future leave, lunch and allowances, while the award in the instant case was in respect of paid leave which the Respondent was entitled to at the time of termination of her contract but which had not been taken. Further, counsel submitted that the awards were not speculative since the parties expressly agreed to them in the contract for service.

In reply to the Appellant's submission on ground four that the trial Judge awarded excessive general damages, the Respondent's counsel submitted that the trial Judge was right to award damages for inhuman and degrading treatment since the Respondent had diligently served the Appellant for 11 years at a senior management position. Counsel contended that as a senior member of staff, the respondent ought to have been treated fairly by according her an opportunity to be heard on the allegations of incompetence. Further, in the Respondent's Supplementary submissions, the Respondent's counsel sought to distinguish the case of **Crown Beverages Ltd v Sendu Edward SCCA No. 1 of 2005,** relied on by the Appellant's counsel for the submission that the award of damages was excessive. He argued that while that case dealt with damages for a defective beverage, the instant case presented dire circumstances in so far as it dealt with the unlawful termination of a civil servant who had served Government for 28 years in several capacities. According to counsel, these dire circumstances justified the quantum of award of general damages. Further, counsel contended that the Appellant should have waited for the Respondent to return to office from her leave. He dismissed the Appellant's allegations of incompetence on the ground that the Appellant could not have retained the Respondent in office for 11 years if she was incompetent. Counsel submitted that the award of general damages would help the Respondent who is of advanced age to plan for her retirement and settle as a long serving Public Servant. In the premises, counsel invited this court to uphold the award of UGX 60,000,000/= as general damages.

In reply to the Appellant's contention that the order for issuance of a Certificate of Service was given prematurely without proof that the Respondent requested for it, the Respondent's counsel submitted that

according to section 61 of the Employment Act, an employer is supposed to issue a Certificate of Service to the employee upon termination of his or her contract of service. Counsel submitted that it was not in dispute that the Appellant had terminated the Respondent's contract of service, therefore, it was obliged to issue a Certificate of Service to the Respondent. Further, counsel submitted that if the Appellant was willing to issue a Certificate of Service to the Respondent, it should have conceded to the claim during trial and not waited for court to make a pronouncement.

In reply to ground six, the Respondent's counsel submitted that the award of four weeks' net pay was based on the Appellant's failure to accord the Respondent a fair hearing. Counsel submitted that in the absence of proof of a fair hearing, the Respondent was entitled to four weeks' net pay provided for under section 66(4) of the Employment Act.

In reply to the Appellant's contention that the award of interest at 15% per annum was excessive and unexplained, counsel submitted that the award of interest is discretional as provided under section 26(2) of the Civil Procedure Act. He submitted that the learned trial Judge upon finding that the Respondent was unlawfully terminated reserved the discretion to award interest as he did. To support his submission, counsel filed supplementary submissions where he relied on **National Enterprises Corporation v Mukisa Foods Ltd, Civil Appeal No. 42 of 1997**, which cited with approval the dictum of Kay L.J in **Jenkins v Bushby (1189) 1 Ch. 484**, where the learned Lord Justice remarked that the court clearly has discretion whether to grant the prayer or not as the court cannot be bound by a previous decision to exercise its discretion in a particular way because that would be in effect putting an end to the discretion. Further, counsel submitted that the precedent of **Ms. Fang Min v Belex Tours and Travel Limited Civil Appeal No. 06 of 2013**, which the Appellant sought to rely on, did not apply to the exercise of discretion. He reiterated the principles in **National Enterprises Corporation v Mukisa Foods Ltd, Civil Appeal No. 42 of 1997** as the right position of the law on exercise of discretion.

Lastly on ground eight of the appeal, the Respondent's counsel submitted that costs follow the event as provided under section 27 of the Civil Procedure Act. He submitted that the learned trial Judge had discretion to award costs as he did judiciously.

The Respondent's counsel prayed that the appeal be dismissed with costs to the Respondent.

Appellant's submissions in rejoinder

In rejoinder to the Respondent's submissions on ground one, the Appellant's counsel clarified that the Appellant's argument is not confusing or contradictory as the Respondent's counsel avers. He reiterated that the Appellant's case is that it terminated the Respondent's contract of service because the contract allowed termination with payment in lieu of notice.

Secondly, the Appellant's counsel submitted that the authority of **Stanbic Bank Uganda Limited v Deogratius Asiimwe SCCA No. 18 of 2018** is distinguishable from this appeal as the law applicable to that case was the repealed Employment Act, Cap. 219 while the law applicable to the instant appeal is the Employment Act, No. 6 of 2006. Further, counsel pointed out that in **Stanbic Bank v Deogratius Asiimwe (supra),** the termination notice stated a reason for termination which is not the case in the facts of the instant appeal.

In rejoinder to the Respondent's submission that abandonment of ground two by the Appellant amounted to an admission that the termination was unlawful, counsel refuted the averment but conceded to the award of the additional one-month payment in lieu of notice amounting to UGX 7,800,000/=.

Thirdly, the Appellant submitted that section 66(4) of the Employment Act, which provides for four weeks' net pay, did not apply to the instant case, since the Appellant terminated the Respondent's employment in exercise of its rights under the contract of service.

Lastly, the Appellant's counsel reiterated the Appellant's main submissions on grounds 3, 4, 5, 7 & 8 and the Appellant's prayer that the appeal is allowed with costs.

Resolution of the Appeal

I have carefully considered the written submissions of counsel for the Appellants and Respondents respectively, the record of appeal and the law and precedents cited by counsel of both parties.

The duty of this court as a first appellate court is to reappraise the evidence on record and draw its own inferences of fact. This duty is set out in Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I No. 13-10 where it is provided that *on any appeal from a decision of the High Court in the exercise of its original jurisdiction, the court may reappraise the evidence and draw inferences of fact.*

In **Peters v Sunday Post Limited [1958] 1 EA 424** the East African Court of Appeal held that the duty of a first appellate court is to review the evidence in order to determine whether the conclusions drawn by the trial court should stand. In reappraisal of evidence, the first appellate court should caution itself regarding the shortcoming of not having had the advantage of seeing and hearing the witnesses testify. The court extensively quoted from **Watt vs Thomas [1947] AC 484** and I reproduce the relevant excerpts. Viscount Simon LC said at page 485 that:

> ... an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon the evidence should stand, but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible determining which side is

telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on questions of fact, but it is a cogent circumstance that a judge of first instance when estimating the value off verbal testimony, has the advantage (which is denied to courts of Appeal) of having the witnesses before him and observing the manner in which their evidence is given.

Further Lord Thankerton summarized the principles a first appellate court should apply at page 487 and they are that:

I. Where a question of fact has been tried by a judge without the jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the judge's conclusion. II. The appellate court may take the view that, without having seen or heard the witnesses it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large from the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question.

For his part, Lord MacMillan said at page 491 that:

The judgment of the trial court on the facts may be demonstrated on the printed evidence to be affected by a material inconsistencies and inaccuracies, or he made be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.

In **Fr. Narsensio Begumisa & 3 others v Eric Tibebaga SCCA No. 17 of 2002,** Mulenga JSC, held that on a first appeal, the parties are entitled to obtain from the appellate court its own decision on issues of fact as well as of law. The facts of this appeal are not in controversy and what is in issue is whether the interpretation of the law in view of the facts was erroneous.

To get to the actual matters in controversy, I have carefully considered the written submissions of the Appellant and Respondent which I have set out

above, the record of appeal, the law and judicial precedents relied upon by counsels. I have further considered the grounds of appeal.

Ground one of the memoranda of appeal forms the crux of the appellant's appeal in that it is the foundation of all the other grounds of appeal. In it the appellant contends that the learned trial judge erred in law and in fact when she held that the appellant's termination of the respondent's employment was unlawful, unjustified, and without sufficient notice. The appellant abandoned ground 2 of the appeal. The rest of the grounds are to be considered in the alternative because if the learned trial judge was justified to find as she did, then grounds 3, 4, 5, 6, 7 and 8 of the appeal are on the question of the appropriate remedies in that the appellant challenges the remedies awarded by the trial court in the said grounds.

Ground 1

> **The learned Hon Justice of the High Court erred in law and in fact when she held that the Appellant's termination of the Respondent's employment was unlawful/ unjustified without sufficient notice to the Respondent.**

Ground one of the appeal was considered when the learned trial judge dealt with the issue one which was agreed in the trial court. Issue one was whether the dismissal of the plaintiff from employment was lawful.

The facts set out by the learned trial judge which were agreed in the joint scheduling conference of the parties were that the plaintiff was employed by the Central Tender Board on 1st September 2001 as Head of Finance. Secondly in 2003, the plaintiff was appointed by the defendant as Director of Finance and Administration, and she served in the same position until her services were terminated on 28th February, 2012. Thirdly upon her termination, the defendant paid the plaintiff two months' salary in lieu of notice and gratuity calculated from 2003 to 2012.

I have carefully considered the pleadings of the parties and the facts material to ground one of the appeal. In paragraph 3 (c) – (j), the plaintiff

averred that she had been employed for 10 years when around December 2011 she got permission to go for her annual leave and was granted permission according to a letter which was later admitted in evidence dated 7 December 2011. This annexure "C" reads as follows:

> Reference is made to your memo dated 6th December 2011 on the above subject.
>
> The Board Chairman has informed me that you approached him on the issue of your leave and he advised you to submit to me a formal request for reconsideration of approval of your leave application.
>
> As you are aware, under the Human Resource Manual, approval of an application for annual leave by the competent authority is not automatic and depends on the exigencies of the business of the Authority. At the time of submission of your request for annual leave two months ago, you had not met your performance benchmarks on a number of agreed targets under the key result areas of your department some of which are still outstanding to date.
>
> Further, the Royal Netherlands Government, in a letter to the Authority dated 25th November 2011, formerly raised concerns on the quality and accuracy of the financial report for the period April to June 2011. This matter is still unresolved and the authority was given a deadline of 28th December 2011 to respond to the queries raised by the Royal Netherlands Government.
>
> In light of the above performance concerns and your appeal for leave to follow up on your private medical issues, I have discussed your request with the Board Chairman and the following position was agreed upon –
>
> 1. That instead of the 30 working days of leave you had applied for; you are required to take all your outstanding annual leave days to date (58 working days) with effect from 7th of December 2011 expiring on 28 February 2012.
> 2. That you formally hand over your office to the Manager Finance and Administration.
>
> This is to bring to your attention the decision of the Authority with regard to your request for reconsideration of annual leave for your action.

The letter was directed to the Director Finance and Administration (the Respondent) from the Executive Director and copied to the Board Chairman.

Subsequently the plaintiff proceeded for leave and returned on 28th February 2012. Upon her return, she found a letter of dismissal had been served on her house help at home and the letter was also admitted in evidence and is dated 22nd February 2012. It reads in part as follows:

> RE: TERMINATION OF CONTRACT OF EMPLOYMENT.
>
> Reference is made to the above subject.
>
> I have been directed by the PPDA Board of Directors to inform you that your contract of employment with PPDA as Director Finance and Administration is terminated with effect from 28th February 2012.
>
> You will be paid your salary for two months in lieu of notice in accordance with the Human Resource Manual and Employment Act. You will receive your accrued gratuity on confirmation of handover of any PPDA property in your possession/custody.
>
> Only half of the PPDA Board and Management, I thank you for the services that you have rendered to the Authority and wish you well in your future endeavours.

The letter was addressed to the respondent/plaintiff by the Executive Director and copied to the Chairman PPDA Board of Directors.

As claimed in the plaint, the plaintiff averred that there was no board meeting to discuss the summary dismissal. Secondly, it was averred that the defendant's executive director had known that the plaintiff was on annual leave and had accompanied her husband to the United States for medical treatment and was set to return on 28th February 2012. The plaintiff averred that the employment was governed by the contract of employment, the Human Resource Manual and the Employment Act 2006. Particularly she relied on section 66 of the Employment Act and alleged that it had been breached by the defendant/appellant. In that she contended that principles of justice and equity were breached by the Employer. Further she contended that the termination was in bad faith.

On the other hand, the defendant's defence was that the contract was terminated by the board of the defendant in the exercise of the defendant's contractual right to terminate the contract and according to clause 10.4 (c)

of the Human Resource Manual and that the plaintiff was fully paid in lieu of notice. They alleged that there was no breach of the Employment Act 2006 or the contract. In the alternative, the defendants defence was that the termination of employment was neither unfair, nor was it in bad faith. The defendant further cited acts of the plaintiff which were alleged to be acts of incompetence. This included failure to submit a financial report by 31st of March 2011 to facilitate handover report of the former Executive Director for the meeting of the board by 26th of May 2011. Because there was no financial report, the matter was postponed and the report was still not ready by 7th June 2011 of 21st of July 2011. The respondent was summoned by the board and granted three weeks to complete the report by 12th August 2011. On 8 September 2011 the plaintiff had not completed her assignment. Further the plaintiff was issued a warning letter on 11th September 2011 and she wrote back with some explanations. By 12th November, the board found that there was gross poor management and decided to terminate the plaintiff's services upon paying her two months' salary in lieu of notice and gratuity in accordance with the contract.

Issues arise from pleadings under Order 15 for 1 of the Civil Procedure Rules. Clearly the issue that arises from the pleadings was whether the plaintiff was summarily dismissed or terminated with notice. This would determine the consequences of the termination in terms of entitlement of the plaintiff/respondent in this appeal and thereby give direction as to whether the learned trial judge erred to award what she did and that is being challenged in the other grounds of appeal.

As far as the first ground of appeal is concerned, the learned trial judge considered the evidence and held as follows:

> I find that the plaintiff was not afforded a right to a hearing in order to justify the termination. Even if the defendant had the right to exercise its right to terminate the plaintiff's employment by paying her in lieu of notice, in the circumstances of this case the invocation of the clause was unjustified and marred with bad faith. The plaintiff should have been accorded a right to a fair hearing before basing her termination of employment on grounds of poor performance and incompetence.

It is therefore my finding that the defendant's termination of the plaintiff's employment was unlawful/unjustified.

I have carefully considered the relevant provision of the Human Resource Manual 2012 and particularly paragraph 10.4 (c) which provides as follows:

> 10.4 Notice period for termination of contract: – In all cases, a contract of service shall not be terminated unless notice is given to an employee except where the contract is terminated summarily or where the reason for termination is attainment of retirement age. Notice shall be in writing and shall be:
>
> (a) Not less than two weeks where the employee has been employed for more than six months but less than one year.
>
> (b) Not less than one month where the employee has been employed for more than 12 months but less than five years.
>
> (c) Not less than two months where the employee has been employed for more than five years but less than 10 years.
>
> (d) Not less than three months where the service is 10 years or more.

There are two important elements to highlight in paragraph 10.4 of the Human Resource Manual. This is that it must be shown whether the contract was terminated summarily or with notice. The second element is to establish whether the employment of the appellant had lasted for more than five years but less than 10 years as a question of fact.

I will start with the second element of the duration of the respondent's employment. It is not in dispute that the respondent was initially employed after receiving a letter dated 2 August 2001 giving the commencement of her employment as 1st September 2001 by the Central Tender Board of the Ministry of Finance, Planning & Economic Development. Secondly, the PPDA is a successor of the Central Tender Board. The respondent exhibited a contract dated 1st July 2006 with the PPDA. The PPDA was established by the Public Procurement and Disposal of Public Assets Act No 1 of 2003 as a successor of the Central Tender Board. Further it is not disputed that the services of the appellant were terminated with effect from 28th February 2012. The defendant on the other hand contended in a written statement of

defence that the respondent was recruited on 1st July 2009 as the Director, Finance and Administration. From these premises, it is the defendant's contention that the respondent to this appeal was employed with effect from 1st of July 2009 and had served for about two years at the time of her termination.

The first matter of law is whether the services of the respondent were continued by the PPDA successor corporation and therefore whether the time of service should be reckoned from 1st September 2001. The second question of fact which is material is that in the joint scheduling memorandum the parties agreed that in the year 2003, the plaintiff was appointed by the defendant as Director of Finance and Administration and she served in the same position until her services were terminated on 28th February 2012. The period in 2003 when the respondent/the plaintiff in the High Court was employed is not indicated. What is clear is that the PPDA Act came into force on 21st February 2003.

Section 98 of the PPDA Act 2003 gives the transitional provisions between the Central Tender Board and the Public Procurement and Disposal of Public Assets Authority and provides that:

> 98. Transitional provisions.
>
> (1) All property, except that property the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Central Tender Board, on the date of the commencement of this Act shall immediately vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting that property.
>
> (2) All legal obligations, proceedings and claims pending in respect of the Central Tender Board shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.
>
> (3) Except as provided for under this Act, this Act shall take precedence over all other enactments establishing Tender Boards or like mechanisms, and the responsible procuring and disposing entities shall within twelve months after this Act comes into force, bring their practices in conformity with this Act.

(4) Section 11 shall not apply to the Board in existence immediately before 3rd March, 2014.

(5) Section 91(5) shall not apply to a decision made by the Authority before 3rd March, 2014.

(6) A procurement process that had commenced before 3rd March, 2014 shall be continued to completion under this Act.

From the agreed facts, it can be concluded that the plaintiff, who is now the respondent, continued in her employment from the Central Tender Board and was taken up by the PPDA Authority. The fact of being employed from 1st September 2001 need not be proved under section 57 of the Evidence Act cap 6 as it is admitted by the defendant. In any case the conclusion is justifiable under section 98 (2) of the PPDA Act which continues the obligations of the Central Tender Board as obligations of the PPDA Authority. It means that all contracts which had obligations of the Central Tender Board continued in force unless brought to an end through termination with contractual consequences. It follows that unless the employment of the respondent was terminated under the old employment terms with the Central Tender Board, it continued under new terms with the PPDA Authority. That means that regulation 10.4 (c) of the Human Resource Manual required that the respondent be given a minimum of three months' notice and not two months' notice. From those premises, the notice was not the contractual notice and therefore not valid. It did not qualify as termination with notice. This is supported by section 69 of the Employment Act 2006 which provides that:

69.Summary termination.

(1) Summary termination shall take place where an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(2) Subject to this section, no employer has the right to terminate the contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

> (3) An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.

Where termination takes place without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term, such termination is a summary termination. It is expressly stipulated that no employer has the right to terminate a contract of service with less notice than that to which the employee is entitled by any statutory provision or contractual term. In other words, the termination with less notice would be unlawful under section 69 (2) of the Employment Act, 2006. Further, the provisions of section 69 (3) make it clear that an employer may dismiss summarily and the dismissal would be justified where the employee has by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service. In the circumstances, where the purported notice was given indicating that it was termination with notice, it follows that because the notice was not adequate, it amounted to a summary dismissal without justification as the grounds could not be infused into the notice because there were no grounds. It purported to proceed and the appellant has submitted that, it proceeded under clause 10.4 (c) of the Human Resource Manual. Particularly, the binding terms of paragraph 5 of the amended written statement of defence of the defendant who is now the appellant avers as follows:

> The defendant further avers that the said termination was carried out by the Board in the exercise of its contractual option to terminate the contract pursuant to clause 10.4 (c) of the Defendants Human Resource Manual and the plaintiff was fully paid in lieu of notice as required by them. (See Annexure D1).

It is only in the alternative in paragraph 7 of the written statement of defence that the defendant averred that the termination was not unfair dismissal because the board in any event had good reasons for termination of the contract. However, there is no stipulation anywhere that the termination was a summary dismissal. It is a fundamental rule of pleading that a party cannot depart from their pleading except by way of amendment.

Order 6 rule 19 of the Civil Procedure Rules allows the court at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Pleadings are the material from which issues arise and this is stipulated in Order 15 rule 1 of the Civil Procedure Rules which provides that issues arise where a material proposition of law or fact is affirmed by one party and denied by the other. Particularly Order 15 rule 1 (3) of the CPR provides that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. The parties framed a general issue in the High Court as to whether the dismissal of the plaintiff from employment by the defendant was lawful. In the Court of Appeal, the appellant's counsel submitted in the alternative that this dismissal was a summary dismissal in terms of section 69 of the Employment Act. The appellant further relied on sections 65 and the 69 (1) & (2) of the Employment Act for the submission that the appellant was entitled to terminate the respondent's employment summarily without notice or for no reason at all. That kind of submission is unacceptable and offends the rules of pleading in that the defence of the defendant was clearly that the termination was with notice. Secondly and in the alternative that it was not an unfair dismissal. In considering whether a dismissal was unfair, there must have been a procedure which was followed. The facts of this case were that the respondent upon returning from leave found that she had been served with a letter which had been served on her house help terminating her services and offering her two months' pay in lieu of notice. The letter dated 22nd February 2012 is self-explanatory and is termination of contract of employment with notice. Paragraph 2 of the letter clearly indicated that the respondent would be paid two months in lieu of notice in accordance with the Human Resource Manual and Employment Act. The appellant is barred by the doctrine of estoppels from asserting a different ground for termination of the employment of the respondent. The doctrine of estoppels is imported under section 114 of the Evidence Act Cap 6 laws of Uganda which provides that:

114. Estoppel.

> When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.

Further, from the premises, I would find, unlike the trial Judge, that the respondent was appointed with effect from 1st September 2001, the period of service is reckoned from 1st September 2001 as Head Finance, which position she continued holding in the PPDA Authority under new contractual terms. To hold otherwise would mean that her services had been terminated under her contract terms with the Central Tender Board whereupon she was employed afresh under the PPDA Act in 2003. I do not accept that proposition and would go with the first proposition that her employment continued under the new Authority. There was no break in the employment of the respondent from the 1st of September 2001 until her employment was re-designated under a new administrative title and under fresh terms in the same role as the head of Finance and Administration. In any case, the PPDA was a successor of the Central Tender Board and as stated above, took over all the obligations of her predecessor in title including the respondent's contract of employment.

The above conclusion would be sufficient to find that the learned trial judge reached the right conclusion that the termination was unlawful because it was a termination not in accordance with the terms of the contract. I find that the respondent was entitled to 3 months' notice having been employed for more than 10 years.

Secondly, the controversy is whether the plaintiff services were summarily terminated. To resolve the controversy, it is unnecessary to consider whether there was any justification or grounds for the summary dismissal. The termination was termination with notice and the appellant is barred by the doctrine of estoppels from asserting another defence to justify the termination.

In the premises, I would disallow ground one of the appeal as being without merit.

Ground two of the appeal was abandoned. Ground 2 was that: **The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to one month's payment in lieu of notice amounting to Ug. Shs. 7,800,000/=**

Ground 3:

The learned Hon Justice of the High Court erred in law and in fact when she held that the claims made by the Respondent for gratuity and unpaid leave were not speculative and awarded her the sum of Ug. Shs. 6,578,313/= as payment for the untaken paid leave and Ug. Shs. 5,850,000/= as gratuity.

In ground three, the appellant's counsel submitted that the trial judge erred in law and fact when she awarded the respondent Uganda shillings 6,578,313/say as payment for leave which was not taken and Uganda shillings 5,850,000/= as gratuity. On the other hand, the respondents counsel relied on the appointment letter of the respondent which provided for gratuity and paid leave.

The learned trial judge noted that the claim of the plaintiff was for the periods of the months of March, April and May 2012 which constituted her period of notice. Secondly, the plaintiff claimed 17 days of leave that was not paid by the defendant for the months of January to May 2012. She found that the claims were not speculative because the period that the plaintiff claimed was at the time when she was entitled to notice, or payment in lieu of notice during the period the plaintiff was entitled to receive all the benefits as if she was still in the employment of the defendant.

I accept the respondent's submission that the payment was contractual and the trial judge applied the contract. In the premises, ground three of the appeal has no merit and is hereby disallowed.

Ground 4:

The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to an award of general damages amounting to Ug. Shs. 60,000,000/=

In ground four, the appellant's counsel submitted that the award of Uganda shillings 60,000,000/= as general damages for unlawful termination was erroneous and manifestly excessive. On the other hand, the respondent supported the award of general damages on the ground of the inhuman and degrading treatment of the respondent who had served for 11 years. He submitted that the employer should have waited for the respondent to return from leave before serving her with a letter terminating her services.

As noted in ground one of the appeal, the respondent's services were terminated with less notice than the contractual notice that she was entitled to. Secondly, in terms of section 69 (2) Employment Act, 2006, an employer has no right to terminate the service without notice or with less notice than that the employee is entitled by any statutory provision or contractual term. The termination of the services amounted to summary termination as is defined in section 69 (1) of the Employment Act. Secondly, it could not be justified under section 69 (3) the Employment Act, 2006 because it was purportedly a dismissal with notice and do not pretend to be a summary dismissal. Thirdly, if the respondent was to be summarily dismissed for incompetence or any other ground, she was entitled to be given a hearing which she was not. The proceedings of the court referred to by the appellant's counsel were proceedings in the normal course in which the respondent was required to submit a financial report. There were no disciplinary proceedings. Under section 68 (1) of the Employment Act, it is provided that in any claim arising out of termination the employer shall prove the reason or reasons for the dismissal and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of section 71 of the Employment Act 2006. Further under section 71 of the Employment Act, if the court finds that a dismissal is unfair, the court may order inter alia the employer to reinstate the employee or order the employer to pay compensation to the employee.

In the circumstances where the respondent's services were terminated with less notice than that to which the employee is entitled and where she was not called or given a hearing, the court had jurisdiction to order the appellant to pay compensation for unfair termination. The issue is therefore whether the damages of 60,000,000/= awarded by the trial judge was excessive.

The question of whether the damages awarded was excessive should also be considered in light of other awards. The learned trial judge found that where services were only terminated, the court awarded general damages for embarrassment and inconvenience and every case has to be considered on the basis of its own facts. The contract was wrongly and unlawfully terminated and the plaintiff was entitled to an award of general damages. She considered the decision in the **Bank of Uganda v Betty Tinkamanyire SCCA number 12 of 2007** where the Supreme Court held that damages should reflect the court's disapproval of the wrongful dismissal and the sum was not confined to an amount equivalent to the worker's wages.

The learned trial judge awarded general damages for embarrassment and great inconvenience caused to the plaintiff due to the unlawful termination caused to the plaintiff. The learned trial judge declined to award aggravated damages. In addition, she awarded four months' pay in accordance with section 66 (4) of the Employment Act, 2006 in the sum of Uganda shillings 7,800,000/=. This was equivalent to one month's pay. She also awarded refund of monies deducted from the plaintiff's terminal benefits amounting to Uganda shillings 1,156,374/=. Lastly, she awarded interest at 15% per annum from the date of filing till payment in full.

The general damages awarded was therefore equivalent to compensation for unfair termination of services. Secondly, it amounted to about eight months' pay and was just less by 2,400,000 Uganda shillings. **Halsbury's laws of England 4th Edition Vol 16** define "wrongful dismissal" in paragraph 302 as follows:

302: "Meaning of 'wrongful dismissal". A wrongful dismissal is a dismissal in breach of the relevant provisions in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled, namely:

(1) the employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and
(2) His dismissal must have been wrongful, that is to say without sufficient cause to permit his employer to dismiss him summarily.

In addition, there may be cases where the contract of employment limits the grounds on which the employee may be dismissed or makes dismissal subject to a contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract, a dismissal for an extraneous reason or without observance of the procedure is a wrongful dismissal on that ground.

The common law action for wrongful dismissal must be considered entirely separately from the statutory action for unfair dismissal. The existence of the latter does not, however, abrogate the common law action which may still be particularly appropriate in two cases:

(a) where the employee is not entitled to bring an action for unfair dismissal;
(b) Where the damages for wrongful dismissal are likely to exceed the statutory maxima placed on compensation for unfair dismissal, as, for example, in the case of a well remunerated employee on long notice or a fixed term contract.

Where an employee is wrongfully dismissed, he is released, by the employer's repudiation of the contract's provisions, in particular from a restraint of trade clause.

As noted above the termination of services was in breach of statutory provisions as well as contractual terms. In those circumstances, the respondent was entitled to compensation under the principle of *restitutio in integrum* where loss is assessed on the basis that the claimant should be restored to a position she would have been in, had the breach of the contractual and statutory provisions not occurred. The East African Court

of Appeal in **Dharamshi v Karsan [1974] 1 EA 41** held that general damages are awarded to fulfil the common law remedy of *restitutio in integrum* which is that; Plaintiff has to be restored as nearly as possible to a position he or she would have been in, had the injury complained of not occurred.

According to **Halsbury's Laws of England Fourth Edition Reissue Volume 12** (1) paragraph 812 general damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms. The losses are presumed to be the natural or probable consequence of the wrong complained of with the result that the Plaintiff is required only to assert that such damage has been suffered.

Further in **Johnson and another v Agnew [1979] 1 All ER 883** at page 896 Lord Wilberforce held that the award of general damages is compensatory:

> i.e. that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed.

Finally, where the court finds that the was wrongful dismissal, it applies the doctrine of *restitutio in integrum* to assess the natural or probable consequences of the wrongful act. Loss of income was in the circumstances the natural or probable consequence of dismissal. Secondly loss of the usual amenities of employment was a natural and probable cause of the wrongful act of dismissal contrary to the contract or statutory provisions. Lastly, damages for pain, suffering, embarrassment cannot be quantified. In the circumstances, an award of about eight months monthly pay as general damages would suffice under the principle of *restitutio in integrum.* The respondent was entitled to a monthly pay of Uganda shillings 7,800,000/=. In the circumstances I would find that the award of Uganda shillings 60,000,000/= as general damages was an award of compensation and was not excessive in light of the fact that the respondent lost her job. It was equivalent to about eight months' pay.

In the premises, I would disallow ground 4 of the appeal as being without merit.

Ground 5:

The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to be issued a Certificate of Service by the Appellant.

I have carefully considered the submissions of the appellant in ground five of the appeal. The appellant's submission is that there was no evidence that the respondent applied for a certificate of service which the appellant refused and therefore it was premature or erroneous to make an order for the appellant to issue the respondent with a certificate of service.

Without much ado it is clear that the appellant concedes that the respondent is entitled to a certificate of service. What the appellant could have objected to is on the question of costs for claiming entitlement through the court to the certificate of service. However, the respondent was entitled to lay before the court all her claims to entitlements and remedies pursuant to a summary and unlawful dismissal. The appellant suffered no prejudice by the order issued by the learned trial judge who had the jurisdiction to issue the order in respect of a matter which was properly before her. In the premises, ground 5 of the appeal lacks merit and is hereby disallowed.

Ground 6:

The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to a further four weeks' net pay from the Appellant in accordance with Section 66(4) of the Employment Act, 2006.

I have carefully considered the submissions based on section 66 (4) of the Employment Act, 2006 in that it is contended for the appellant that it did not fail to comply with the provisions of Part VII of the Employment Act.

Section 66 (4) has to be placed in context. Generally, section 66 of the Employment Act deals with notification and hearing before termination and needs to be set out in full. Section 66 of the Employment Act provides that:

66.Notification and hearing before termination.

(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any provision of this Part, an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

(3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).

(4) Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to 4 weeks' net pay.

Part VII of the Employment Act, 2006 deals with "Discipline and Termination". Notwithstanding that Part VII was not applied, section 66 (1) and the section 66 (2) of the Employment Act, applies without prejudice to Part VII of the Employment Act. Section 66 (4) of the Employment Act, is therefore applicable to a case of dismissal without notice or to a summary dismissal and the award of the four weeks' pay is a statutory award that was justified and consistent with the Employment Act, 2006 as set out above. In the premises, ground six of the appeal has no merit and is hereby disallowed.

Ground 7:

The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to interest on items (a)(b)(c)(d)(f) at 15% per annum from the date of filing till payment in full and interest of 6% per annum at court rate from the date of judgment till payment in full.

On ground seven, the appellant's counsel submitted that the trial judge erred when she awarded interest at 15% per annum on the compensatory orders. He contended that the learned trial judge did not give any reason to justify the award contrary to Order 21 rules 4 & 5 of the Civil Procedure Rules.

Order 21 rules are 4 & 5 of the Civil Procedure Rules provides as follows:

> 4.Contents of judgment.
>
> Judgments in defendant suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision.
>
> 5.Court to state its decision in each issue.
>
> In suits in which issues have been framed, the court shall state its finding or decision, with the reasons for the 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.

It is true that the learned trial judge in her award of interest at 15% per annum, did not give any reasons. The award of interest is only contained in the summary of orders. The real question is whether the appellant was prejudiced. In order to consider whether the appellant was prejudiced, the first ground submitted on was that there was no reason or explanation to justify the interest awarded. Secondly, interest cannot be awarded on an expired or terminated contract. Thirdly, there was no prayer for interest in the submissions. Lastly the plaintiff in the plaint prayed for interest at court rate which is 6% but the trial judge awarded 15% per annum.

I have carefully considered the law, for the court to determine the question of interest as suggested by the appellant's counsel, it had to be an issue arising from the pleadings or agreed upon. The parties agreed to the issue of what remedies were available in the circumstances generally and did not formulate a specific issue as to the question of interest. In the written submissions, the plaintiff prayed for interest at 25% per annum from 28 February 2012 until payment in full. On the other hand, in the written

submissions of the defendant, the appellant's counsel addressed the court on the question of liability to interest. It is therefore not true that the plaintiff's counsel did not address the court on what interest was payable.

In awarding interest, the learned trial judge did not give any reasons and the only question for consideration is whether this was prejudicial to the defendant/the appellant to this appeal. Interest is awarded at the discretion of court under section 26 (2) of the Civil Procedure Act cap 71 which provides that:

> (2) Where and insofar as the decree is for the payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

The court therefore has jurisdiction to award the interest from the date of filing the suit to the date of the decree in addition to any interest on the principal sum from the date of judgement. Secondly, the interest awarded is supposed to be reasonable interest.

The plaintiff filed an action in the High Court on 13th March 2012. Judgment was delivered on 27th of August 2015 about three years and five months later. In the intervening period, the claim of the plaintiff is deemed to have accrued at the time the claim was made save for the award of general damages.

In **African Field Epidemiology Network (EFENET) v Peter Wasswa Kityaba; Civil Appeal No. 124 of 2017 at page 42,** the Appellant contested an award of 24% interest on all the awards of the court on the ground that it was excessive. The court relied on **Stroud's Judicial Dictionary of Words and Phrases, Sweet & Maxwell 2000 Edition** for the proposition that interest is compensation paid by the borrower to the lender for deprivation of the use of his money. Further in **Riches v Westminster Bank Ltd [1947] 1 ALLER 469 HL at 472** Lord Wright held that

'... the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...'

In other words, interest is awarded for the period when the plaintiff or claimant did not have the use of the money which is due. Following that principle, the award of interest on the 60,000,000/= from the date of filing the suit was erroneous because it had not accrued. However, the award of interest on the amount of the other awards from the date of filing the suit was not erroneous.

Coming to the award of interest at 15% per annum, this was not pleaded for as the respondent had prayed for an award of interest at court rate. The learned trial judge however awarded interest at a reasonable rate she deemed fit. The court was extensively addressed by both parties on the award of interest. No prejudice was occasioned to the appellant by the award of interest at 15% per annum which was not excessive in the circumstances.

In the premises, I would partially allow ground 7 of the appeal only on the issue of whether interest could be awarded on the 60,000,000/= from the date of filing the suit to the date of judgement. That was an erroneous award. I would dismiss the rest of ground 7 of the appeal. I would uphold the rest of the awards of interest on the other heads of claim as stipulated in the decree. The award of interest of 15% per annum on the 60,000,000/= from the date of the suit was erroneous. The interest would be awarded at 6% per annum on the 60,000,000/= award from the date of judgment till payment in full.

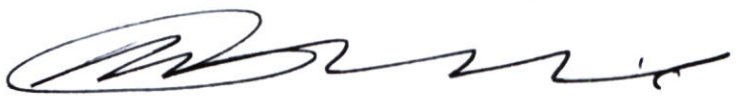
Ground 8:

The learned Hon Justice of the High Court erred in law and in fact when she held that the Respondent is entitled to costs of the suit.

With regard to ground 8, costs follow the event under section 27 of the Civil Procedure Act. The suit of the plaintiff substantially succeeded and therefore it was proper for the learned trial judge to award costs of the suit to the respondent. Ground 8 of the appeal has no merit and is hereby disallowed.

In the premises, I would make an order that the appellant's appeal substantially fails and is hereby dismissed with costs save for ground 7 which was partially allowed to the extent that interest of 15% on the award of 60,000,000/= from the date of filing the suit to the date of judgment is disallowed and instead the interests would run on the award of 60,000,000/= from the date of the Judgment till payment in full at 6% per annum.

Dated at Kampala the 18th day of July 2022



Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: MADRAMA, MULYAGONJA AND MUGENYI, JJA

CIVIL APPEAL NO. 14 OF 2016

THE PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS AUTHORITY ..... APPELLANT

VERSUS

MARY PAMELA SSOZI ..... RESPONDENT

(Appeal from the Judgment of the High Court of Uganda (Musoke, J) in Civil Appeal No. 63 of 2012)

JUDGMENT OF MONICA K. MUGENYI, JA

1. I have had the benefit of reading in draft the lead judgment of my brother, Hon. Justice Christopher Madrama in this Appeal. I agree with the conclusion that the Appeal fails for the reasons advanced therein. I would, nonetheless, highlight the following additional observations with regard to *Ground 7* of the Appeal. For ease of reference, that ground of appeal is reproduced below.

> *The learned Hon Justice erred in law when she held that the Respondent is entitled to interest on items (a), (b), (c), (d) and (f) at 15% per annum from the date of filing till payment in full and interest of 6% per annum at court rate from the date of judgment till payment in full.*

2. Section 26(2) of the Civil Procedure Act (CPA) does, in the following terms, grant trial courts the discretionary mandate to award interest on decretal amounts. It provides as follows:

> **Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.**

3. It is well settled law that an appellate court should not interfere with the exercise of a trial court's unfettered discretion unless it is satisfied that the trial court misdirected itself in some matter and as a result arrived at a wrong decision, or where it is manifestly apparent from the case as a whole that the trial court was clearly wrong in exercise of its discretion and as a result there was a miscarriage of justice. *See* ***Banco Arab Espanol v Bank of Uganda, Civil Appeal No. 8 of 1998*** *(Supreme Court) and* ***Mbogo & Another v Shah (1968) EA 93***. In **Devji v Jinabhai (1934) 1 EACA 89** it was held that where there was no improper exercise of discretion a judge's decision would not normally be upset.

4. As was observed by this Court in **Ali Muteza v Jessica Nakku Aganya & Another, Civil Appeal No. 271 of 2019**, '**courts unfettered discretion may only be qualified by the duty upon them to exercise it judiciously**.' Thus, in **American Express International Banking Ltd v Atul (1990 – 94) EA 10** (Supreme Court, Uganda) it was held that an

appellate court may only interfere with the discretion exercised by a trial court in the following instances:

i. Where the judge misdirects himself with regard to the principles governing the exercise of discretion;
ii. Where the judge takes into account matters that he ought not to consider; or fails to take into account matters that he ought to consider;
iii. Where the exercise of discretion is plainly wrong.

5. Turning to the present Appeal, I am in complete agreement with the conclusion in the lead judgment that it was erroneous of the Trial Court to award interest on general damages (in the sum of Ushs. 60,000,000/-) from the date of the filing of the the suit because the said damages had not yet accrued at that time. I would abide the decision to award interest on these general damages from the date of the judgment until payment in full.

6. The trial court did award an additional 6% interest on the total decretal amount from the date of the judgment until payment in full, which matter is also contested in *Ground 7* of this Appeal. Section 26(2) of the CPA duly provides for '**further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment**.' To that extent, and neither finding the court rate of 6% interest to be unreasonable nor otherwise deducing any improper exercise of the court's discretion, I would respectfully disallow in the Appellant's contestations to the contrary.

7. On the foregoing basis, I do abide the conclusion in the lead Judgment that this Appeal be dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Kampala this 15th day of May, 2022.

Monica K. Mugenyi
Justice of Appeal

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Madrama, Mulyagonja, Mugenyi, JJA)

CIVIL APPEAL NO. 14 OF 2016

BETWEEN

THE PUBLIC PROCUREMENT & DISPOSAL OF PUBLIC ASSETS AUTHORITY::::::::::::::::::::::::::::::::::::::APPELLANT

AND

MRS. MARY PAMELA SOZI :::::::::::::::::::::::::::::::::::::: RESPONDENT

(Appeal against the of Judgment of Hon. Lady Justice Elizabeth Musoke, Judge of the High Court of Uganda, dated 27th August 2015, in Kampala HCCS No. 63 of 2012)

I have had the benefit of reading in draft the judgment of my learned brother, the Hon Justice Christopher Madrama Izama.

I agree with the decision that the appeal only partially succeeds on one aspect of the interest that was awarded, for the reasons that he has given. I also agree with the final order that the rest of the appeal be dismissed, with the orders that he has proposed.

Dated at Kampala this 15th day of July 2022.

Irene Mulyagonja

JUSTICE OF APPEAL