

Employment law: General damages

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.251 OF 2018

(Arising from High Court Civil Suit No.0014 of 2014)

UGANDA POST LIMITED:.....APPELLANT

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VERSUS

CONSOLATE MUKADISI:.....RESPONDENT

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

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JUDGMENT OF HON. JUSTICE CHEBORION BARISHAKI, JA

This is an appeal arising from the decision of Benjamin Kabiito, J delivered on the 5th day of May, 2017 in which he entered judgment in favor of the respondent on the following terms:

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- a) General damages of UGX 150,000,000/= (One Hundred and Fifty Million Only)
- b) Terminal benefits of UGX 8,322,227/= (Eight Million, Three Hundred Twenty Two Thousand, Two Hundred Twenty Seven Shillings
- c) Severance Allowance of UGX 6,050,000/= (Six Million, Fifty Thousand Shillings only.

- 5 d) Interest on items (b) and (c) at the rate of 25% per annum from the date of termination till payment in full.
- e) Interest on (a) above at 6% p.a from the date of judgment till payment in full.
- f) Costs of the suit.

10 The respondent was appointed on probation as Head of Human Resource Department with the appellant company for a period of 4 years with effect from 20th July, 2009. On being appointed, she was issued with an appointment letter and a copy of the employee's terms and conditions of service by the appellant. Following the satisfactory completion of her probation, the respondent was

15 confirmed as the appellant's employee in the position of Head of Human Resource for a period of 4 years commencing on 20th July, 2009. On the 17th of August, 2011, the appellant by letter instructed the respondent to take forced leave purportedly to pave way for investigations into a complaint of discrimination at work, use of unacceptable language and professional

20 misconduct which was made against her by one Acham Christine

Following the letter of 17th August, 2011, an email was circulated to staff stating that the respondent had been sent on leave. On 18th August, 2011, the respondent protested the contents of the letter and following her protest, the decision to send her on forced leave and all earlier communications were

25 withdrawn. On 31st August, 2011, the respondent received an invitation to attend the appellant's Board Meeting on 2nd September, 2011 to defend herself

5 against a complaint lodged against her by a former employee of the appellant. Following the Board meeting, the appellant terminated the respondent's employment with immediate effect. The respondent contended that her contract of employment with the appellant was unlawfully terminated on unfounded allegations made against her by Acham Christine and that the Board of Directors
10 of the appellant who considered her case, contravened the rules of natural justice in the conduct of the disciplinary proceedings that were instituted against her which tainted the decision the Board made against her.

The appellant denied the claim and asserted that the termination of the respondent's employment was proper and in accordance with its terms and
15 conditions of service. Further that the respondent had engaged in acts of insubordination, indiscipline and had used insulting language against Acham which conduct was not befitting of a person in the position of Head Human Resources and Administration of the appellant.

Judgment was entered in favor of the respondent and dissatisfied with the
20 Court's award and orders, the appellant appealed to this Court on the following ground;

***The learned trial Judge erred in law and fact when he awarded the respondent shs. 150,000,000/= (UGX One Hundred Fifty Million Shillings) as general damages which was manifestly excessive in the
25 circumstances and amounted to an illegality.***

5 At the hearing of the appeal, Mr. Nasser Lumweno appeared for the appellant while the respondent was represented by Mr. Yusuf Kagere. With leave of Court, written submissions filed by the parties were adopted and have been considered in this judgment.

Counsel for the appellant submitted that the learned trial Judge awarded the
10 respondent a hefty sum of 150,000,000/= as general damages which in counsel's view was excessive. That although Court had the discretion to award general damages, the discretion ought to be exercised judiciously and not wantonly. Counsel faulted the learned trial Judge for not citing any authority as a basis to guide him when he exercised his discretion. Counsel further submitted that
15 there was no evidence on record to show how the disciplinary proceedings against the respondent were conducted in a manner which had occasioned her humiliation before her family, friends, colleagues or fellow professionals so as to warrant the huge award of damages.

Counsel further submitted that even if the disciplinary proceedings had been
20 conducted in such a manner that had occasioned the respondent to suffer humiliation before her family, friends, colleagues and professional circles, it would still not justify the award of shs 150,000,000/= as general damages which were manifestly excessive in the circumstances of the case. He relied on **Flint V Lovell (1935) 1 KB 360** on whether the amount of damages awarded by the trial
25 Court would justify interference of an appellate Court. Counsel proposed an award of 8,000,000/= for general damages as fair and reasonable considering

5 that the respondent was earning shs. 6,050,000/= per month, had worked for 2
years and 1 month and also taking into account the inconvenience she was
subjected to. He further submitted that the amount of UGX 150,000,000/=
awarded to the respondent by the learned trial Judge was manifestly excessive
as to amount to an illegality and relied on ***Makula International V His***
10 ***Eminence Cardinal Emmanuel Nsubuga & Anor, Court of Appeal Civil***
Appeal No.4 of 1981 for this conclusion. He prayed that the appeal be allowed,
the respondent be awarded a sum of shs.8,000,000/= as general damages and
the appellant be granted costs of this appeal and in the lower Court.

Counsel for the respondent opposed the appeal and submitted that the learned
15 trial Judge based his award of 150,000,000/= as general damages to the
respondent on the unlawful termination of the respondent's employment. That
the Judge had exercised his discretion judiciously and the award was sufficient
given the circumstances of the case. Counsel added that the respondent was
earning a salary of 6,050,000/= per month and it was therefore appropriate for
20 the learned trial Judge to award 150,000,000/= as general damages.

Counsel further submitted that the respondent led evidence to prove that the
manner in which the disciplinary proceedings against her were conducted
occasioned her inconvenience and humiliation before her family, friends and
colleagues. Counsel invited Court to dismiss the appeal with costs to the
25 respondent. He relied on ***Obongo V Municipal Council of Kisumu (1971) EA***
91, for the proposition that in making an award of general damages, Court may

5 take into account factors such as malice and arrogance on the part of the defendant.

In rejoinder, counsel for the appellant submitted that counsel for the respondent misled the learned trial Judge into believing that the salary for the un expired term of the contract which was 23 months, gratuity, allowances and other
10 entitlements such as airtime, medical allowance, lunch subsidy ought to have been taken into account when awarding her general damages for unlawful dismissal. That this should not have been the case. In counsel's view the error committed by both counsel for the respondent and the learned trial Judge led the latter to award a hefty sum of shs. 150,000,000/= as general damages to the
15 respondent. Counsel reiterated his earlier prayers.

I have studied the record of appeal and the judgment of the lower Court. I have also considered the submissions of both counsel and the authorities which were cited.

The duty of this Court as a first appellate court is to re-evaluate evidence and
20 come up with its own conclusion as enunciated in **Rule 30(1) of the Court of Appeal Rules and Banco Arabe Espanol V Bank of Uganda, Supreme Court Civil Appeal No.8 of 1998.**

The learned trial Judge is faulted for awarding the respondent shs. 150,000,000/= (UGX One Hundred Fifty Million Shillings) as general damages
25 for unlawful termination which amount is said to be manifestly excessive in the circumstances and amounted to an illegality.

5 It was submitted for the appellant that the award of shs 150,000,000/= made to
the respondent as general damages was in counsel's view excessive. Counsel
insinuated that in making the award of general damages the learned trial Judge
exercised his discretion wantonly. In reply, counsel for the respondent submitted
that the learned trial Judge had based the award on the fact that the
10 respondent's termination of employment was unlawful and had exercised his
discretion judiciously and the award was sufficient given the circumstances of
the case.

General damages are the direct natural or probable consequence of the wrongful
act complained of and include damages for pain, suffering, inconvenience and
15 anticipated future loss. See **Storms V Hutchinson (1905) AC 515,**

To justify reversing the assessment of damages by a trial Judge, it is necessary
that the appellate Court is convinced that the Judge acted upon some wrong
principle of law or that the amount awarded was so extremely high or so small
as to make the assessment an entirely erroneous estimate of the damage to
20 which the plaintiff was entitled. This principle was followed by the Supreme
Court in **Robert Coussens V Attorney General, Supreme Court Civil Appeal
No.8 of 1999** where Order JSC stated as follows;

*"I turn now to the trial Court's discretion on matters of damages. The law is
now well settled that an appellate Court will not interfere with an award of
25 damages by a trial Court unless the trial Court has acted upon a wrong*

5 *principle of law or that the amount is so high or so low as to make it an
entirely wrong principle of law or that 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."*

It is a settled proposition of law that while assessing general damages, the Court
10 considers the nature of harm, the value of the subject matter and the economic
inconvenience that the injured party may have been put through. ***See Uganda
Commercial Bank V Deo Kigozi (2002) 1 EA 305 and Kibimba Rice Ltd V
Umar Salim, SCCA No.17 of 1992.***

While awarding general damages to the plaintiff now respondent, the learned
15 trial Judge stated as follows;

*"The plaintiff averred in her pleadings that because of the defendant's
unlawful termination, such actions have caused her mental anguish, stress
and contempt from fellow employees and contemporaries. Bank of Uganda
V Betty Tinkamanyire SCCA No.12 of 2007, Court held that; "... the
20 reasoning of the Court of Appeal in Agbettah V Ghana Cocoa Marketing
Board (1984-86) GLRD 16 Should be followed so that the Courts were able
to award damages which reflected the Courts disapproval of a wrongful
dismissal and the sum was not confined to an amount equivalent to the
worker's wages."*

25 *In this respect it is my finding that the defendant's willfully violated the
employer's terms and conditions of service in the manner that the*

5 *disciplinary proceedings and hearings were instituted, conducted and
determined to the prejudice of the plaintiff, that occasioned inconvenience
and humiliation to her family, friends, colleagues and professional circles.
Taking into account, and the fact that the plaintiff had worked with the
defendant for a period of two years, an award of UGX 150,000,000/= (One
10 Hundred and Fifty Million), would be sufficient as general damages.”*

The record of appeal indicates that the respondent had been hired as the Head,
Human Resource and Administration Manager for the appellant Company for a
contract of 4 years commencing from 20th day of July, 2009 to 3rd September,
2011, when the contract was terminated. The evidence on record shows that the
15 respondent's termination of employment was unlawful. The learned trial Judge
discussed the instances where the appellant failed to institute, conduct and
resolve the matter in accordance with the tenets of a fair hearing under the
following 5 heads; failure by the appellant to accord the respondent enough time
to prepare her defence, the offence was not clearly set out in the provisions of
20 the disciplinary code and its procedures, the appearance of the respondent
before the board of the appellant that submitted to external influences and was
eager to demonstrate its submission to the demands of the said forces, the
omission or failure to refer the matter to the Disciplinary Committee of the
appellant that was in place as the proper forum to resolve the matter, the Board
25 of Directors acting as a disciplinary forum and participation of the Managing
Director in the proceedings, discussion and decision. The said instances showed

5 that the whole process of terminating the respondent was marred with a lot of irregularities. The respondent was entitled to a fair and reasonable treatment by the appellant.

The learned trial Judge justified his reasons for awarding a sum of 150,000,000/= (One Hundred and Fifty Million) as resulting from the appellant's
10 unfair and unlawful act in terminating the respondent. It is my considered view that in awarding general damages, the learned trial Judge exercised his discretion judiciously and I find no reason to interfere with the award of general damages of 150,000,000/= the respondent.

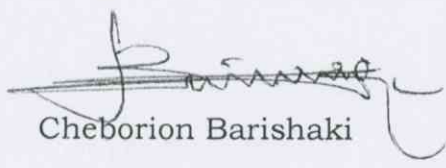
In the result and for the reasons given herein above, the appeal has no merit and
15 is hereby dismissed. I make the following orders;

1. The judgment and orders of the trial Judge are upheld.
2. The respondent is awarded costs in this Court and in the Court below.

I so order

Dated at Kampala this10th..... day of March..... 2022.

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Cheborion Barishaki

Justice of Appeal

THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(CORAM: CHEBORION, MUSOTA AND MADRAMA, JJA)

CIVIL APPEAL NO 252 OF 2018

UGANDA POSTA LIMITED} APPELLANT

VERSUS

CONSOLATE MUKADISI} RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala Benjamin Kabiito, J delivered on 5th May, 2017 in High Court Civil Suit No 0014 of 2014)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Cheborion Barishaki, JA.

I agree with him that the appeal has no merit and should be dismissed for the reasons and with the orders he has proposed in his Judgment and I have nothing useful to add.

Dated at Kampala the 10th day of March 2022



Christopher Madrama

Justice of Appeal

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 251 OF 2018**

UGANDA POST LIMITED ::::::::::::::: APPELLANT

VERSUS

CONSOLATE MUKADISI ::::::::::::::: RESPONDENTS

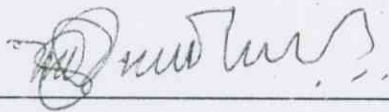
**CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA
HON. JUSTICE STEPHEN MUSOTA, JA
HON. JUSTICE CHRISTOPHER IZAMA MADRAMA, JA**

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment of my brother Hon. Justice Cheborion Barishaki, JA.

I agree that the appeal be dismissed with costs to the respondent both in this court and the High Court.

Dated this 10th day of March 2022



Stephen Musota

JUSTICE OF APPEAL