

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-0640-1994.

FRANCIS MUGALULA & OTHERS ::::::::::::::::::::::::::::::: APPLICANT

- VERSUS -

MULJIBHAI M. :: RESPONDENT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiffs were among the employees of East African Steel Corporation Limited (EASCO). The shareholders of EASCO were Asians of Asian origin (i.e. Madhvani family). Their properties including EASCO were expropriated in 1972 by the Amin's regime. In 1994 the former owners of EASCO repossessed the company in terms of the Expropriated Act and the same was handed over to the defendants by the Live Ministry i.e. Ministry of Finance. As part of the repossession exercise the defendant opted to dismiss the plaintiffs and pay them terminal benefits. The plaintiffs claimed that the defendants paid part of the same leaving a balance of shs.482,463,910/=. Hence this suit.

The first defendant denied any liability on the terminal benefits. The second defendant on the other hand contended that it had fully paid the terminal benefits which were calculated on the basis of individual contracts with the defendant and the existing union agreement and the Employment Decree.

At the hearing which commenced as far back as 3rd September, 1996, the following issues were agreed for determination:-

- (1) Whether the defendant have paid all the plaintiffs all their terminal benefits.
- (2) Whether the first defendant is rightly sued along second defendant.
- (3) Whether the plaintiffs are entitled to the Declaration judgment.
- (4) Whether they are entitled to terminal benefits and if so how much.

The plaintiffs relied on the evidence of two witnesses. So were the defendants:
they were:-

- (1) Francis Mugalura PW1
 - (2) Mr Alirima Tomola PW2
 - (3) Ojiambo DW1
- Mutazindwa Katorogo Dw2.

Below is summary of evidence on record:-

PW1, Francis Mugalura 56 years old testified that he was among the 36 plaintiffs. He stated that he was first employed in 1963 by the Steel Corporation of East Africa Ltd which was based at Masese, Jinja. The above company had several shareholders which included the first defendant. In 1976 the company changed its name to Steel Manufacturers East Africa Ltd. Again in 1985, it changed to East Africa Steel Corporation Ltd. In 1985 an attempt was made to change it to East Africa Steel corporation 1985 Ltd but that did not take off. In 1994 the company was given to Muljibhai Mudhavani. In 1994 the company General Manager wrote to the Deputy Secretary to Treasury showing a breakdown of terminal benefits of EASCO employees (Exhibit P1). From the above list he prepared the total amount of unpaid terminal benefits of the plaintiffs amounting to Shs.459,375,424/= (Exhibit P2). He testified that on 5th August 1994 their lawyers wrote to the General Manager of EASCO claiming for unpaid terminal benefits (Exhibit P3). The reply from the company was that the above claim was erroneous because it was not based on individual contract of employment – (Exhibit P4).

PW1 testified further that in 1991 the terms and conditions of their service were changed by a resolution of the board (exhibit P5). PW1 tendered in court the new terms and conditions of service (exhibit P6). He testified that workers took their

complaints to the Ministry of Trade and Industry on the grounds that they were not being paid their terminal benefits according to the terms and conditions of service whereupon the Permanent Secretary wrote a letter exhibit P7 to EASCO on the subject matter. PW1 stated that he received his letter of termination on 1/10/1994 (exhibit P9). Lastly he testified that he was present when the company was being handed over to 2nd defendant (exhibit P10).

PW2 Alirima Timola 60 years testified that he has been working with EASCO since 1977. He stated that exhibit P1 was known to him as being a document on their terminal benefits. He stated that from the said document he was to be paid terminal benefits of Shs.8,141,905/=. He stated that the total sum was to be shs.9,351,900/= but he had received part-payment of shs.434,098/= leaving the balance at shs.8.917,852/= forming the basis of his claims. He testified that from the same documents (Exhibit P2 and Exhibit P3).

Bogere, Muwonge and Chobe had unpaid balance of shs.4,523,110, 7,751,225/= and shs.1,936,800/= respectively. He stated that after termination he was recalled to work for the company.

DW1 Ojiambo 47 years old testified that he used to work for EASCO before they were laid off in 1994. He stated that after that they were paid terminal benefits as follows in respect of unionized staff workers:-

2 – 10 years were paid 26 days for the complete year of service.

Above 10 years were paid 32 days for complete year of service. He stated that the above formula was used for all workers of the company. He stated that he had never seen a situation where workers were paid for 12 months for each year worked. During cross-examination DW1 stated that he was a leader of junior staff, and was union leader. He stated that he was only conversant with terms of junior staff and not senior staff. He concluded that he was told by the management that the same formula was used for all the laid off workers.

DW2 Mutazindwa Katorogo 42 testified among other things that he used to work for 2nd defendant as Legal Officer/Acting Corporation Secretary. He stated that he participated in drafting the terms and conditions of service of the corporation. He stated that the terms and conditions of service which he drafted was different from the one the plaintiffs were using since they contain additional clauses which had not been approved by the Board. He stated that there were additional clauses which had been struggled in the terms and conditions of service which were not in

the original terms and conditions of service. He stated that paragraph 10(8) was not in the original document.

During cross-examination he stated that the terminal benefits (exhibitP1) were calculated and signed by Dr William Muhairwe. He stated that it was done after his meeting with Dr Muhairwe to clear the terms and conditions of service.

Before the defence called their last witness they made an application to join in the Attorney General as one of the defendants to the suit. The application was opposed by counsel for the plaintiffs for being belatedly made in bad faith. I reserved my ruling on the matter. When I looked at the record of proceedings reckon that the defence had intended to join Attorney General way back in 1996 – on 10th December 1996. that they could wait up to this stage to make the same application defeats my understanding. In any case I do not see the role of Government in the affairs of the defendant after hading over the company to its owners. I therefore find no basis in joining the Attorney General as one of the defendants. I accordingly decline to grant the orders sought.

I now move to the issues for determination.

Issue No.1:-

Whether the defendants paid all the plaintiffs Terminal Benefits:-

In determining this issue the plaintiffs relief heavily on the evidence of Mr Francis Mugalura (PW1) who had served the defendants since 1963. According to PW1 in 1994 when Government of Uganda returned the company to its shareholders, there was an understanding that the workers of the company who included the plaintiffs were to be laid off. Accordingly their terminal benefits were duly calculated by the management and communicated to the Deputy Secretary to the Treasury in February, 1994 (exhibit P1 and attached schedule). The document was prepared and signed by Dr William Muhairwe who was the General Manager of 2nd defendant. PW1 testified that the date from exhibit P1 shows that the total benefits for all workers was shs.1,138,746,125/=. He then extracted the total package of the plaintiffs from the same exhibit in a tabulation form (exhibit P2) which totaled shs.482,468,910/=. PW1 stated that the above benefits were calculated in accordance with the terms and conditions of service (exhibit P6).

The defendants relied heavily on the evidence of DW2 Mutazindwa Katorogo in challenging the plaintiffs' claims. The gist of Katorogo's evidence was that the alleged terms and conditions of service were doctored by the plaintiffs to suit them

in fraudulent interest because they differed from the original terms and conditions of service which he had prepared before leaving the services of the company.

It should be noted that the terms and conditions of service (exhibit P1) was prepared by Dr Muhairwe who was by then the 2nd defendant's Managing Director. PW1 Mugarula produced minutes of the Board meeting which was signed by Mr Sekaziga the chairman of the Board and Mr Ziwa a director where the terms above terms and conditions of service were approved (exhibit P5). None of those personalities were produced in court to contradict the evidence of Mr Mugarula. Counsel for the defendant tried several times to secure attendance of Dr Muhairwe but later on declined. That meant that Mugarula's evidence was never challenged. In fact Mugarula's evidence was not even tested by way of cross-examination.

The only evidence that could have salvaged the defendants should have been that of Mr Katorogo, as he was a senior member of the management. But in his own testimony he stated that he could not challenge the calculations which Dr Muhairwe had made (i.e. exhibit P1). That would mean that exhibit P1, P2, P5 and P6) are regular. Therefore the allegation that the terms of service were doctored would not arise.

On the other hand I also find it ridiculous for a person like PW2 who had put in about 15 years service to be paid terminal benefits of shs.434,048/=. Accordingly I agree with the plaintiffs that defendants did not pay all the terminal benefits. They only part-payment. That was why they complained to the Permanent Secretary Ministry of Trade and Industry who wrote a letter exhibit P7 warning the defendants to pay the same in full. The first issue is therefore answered in the negative.

ISSUE No. 2:-

Whether the first defendant is rightly sued along with second defendant:-

From the evidence of PW1 the first defendant is one of the shareholders of the second defendant. The second defendant was also handed over to the first defendant according to exhibit P10. It was further contended that it was the management of first defendant that took over the operations of the second defendant and paid the partial terminal benefits of the plaintiffs. In terms of order 1 rule 3 of the Civil Procedure Rules, the plaintiffs were right to sue the first defendant for the balance of the terminal benefits. I also agree with counsel for the plaintiffs that order 1 rule 9 of the Civil Procedure Rules allows plaintiffs to join parties if there is doubt as from whom the plaintiffs are entitled to redress. In the instant case both defendant seem to be denying the plaintiffs their entitlements. It

was therefore necessary in terms of Order 1 rule 10 of the Civil Procedure Rules to join both defendants to effectually resolve the issues in controversy. This was more compelling in view of the fact that the first defendant had paid part of the terminal benefits to the plaintiffs. This was therefore a proper matter under Order 1 rule 10 (3) of the Civil Procedure Rules: See **Departed Asians Property Custodian Board (DAPCB) Vs Jaffer Brothers Ltd, Supreme Court Civil Appeal No. 9/98** unreported.

For the above reasons I hold that the first defendant was rightly sued along second defendant.

ISSUE No. 3:-

Whether the plaintiffs are entitled to the Declaration Judgment:-

I have already held that the plaintiffs were entitled to the balance of their terminal benefits which had been partly paid. They are therefore entitled to declaration judgment to that effect.

ISSUE No. 4:-

Whether the plaintiff are entitled to terminal benefits and if so how much:-

The quantum of the claims are tabulated in exhibits P1 and P2. The total claim is shs.482,463,910/=. The entitlement of each plaintiff is also quantified in those two exhibits. I accordingly declare that each plaintiff be paid his entitlement as quantified in the exhibit P1 and P2.

The plaintiffs claimed general damages for loss and inconvenience. However non of the plaintiffs' witnesses gave evidence on the nature and magnitude of the loss and inconveniences. They only claimed balance of the benefits plus interest. It is trite law that general damages must be specifically pleaded and proved. In this case court is unable to award general damages claimed at 15,000,000/= without proof of loss and inconveniences.

The plaintiffs claimed interest on the above at 25% per annum from 1994. considering the period the court took to dispose of this matter, awarding that percentage would be very oppressive to the defendant who never solely contributed to the delays.

I would therefore award interest at 10% (ten) from the date of their entitlements. The plaintiff are awarded costs of the suit. Counsel claimed for a certificate for two counsel claiming complexity of the suit. I not agree with that contention. The

suit was based on available company documents and so there was no complexity at all.

In conclusion judgment is declared and entered for the plaintiffs in terms proposed above.

- (1) Payment of shs.482,463,910/= as terminal benefits to plaintiffs.
- (2) Interest in the above at 10% (ten) from 24/7/94.
- (3) Costs of the suit.
- (4) Certificate of one counsel.

RUBBY AWERI OPIO

J U D G E

10/11/2003.

17/11/2003:-

Plaintiffs present.

Defendants absent.

Both counsel present.

Baryaruha:-

I have just come.

Judgment read in chambers as in open court.

RUBBY AWERI OPIO

J U D G E

17/11/2003.