

**IN THE HIGH COURT OF UGANDA
AT KAMPALA**

CIVIL SUIT NO 266 OF 2008

JUSTUS KASHAMBUZI:.....PLAINTIFF

VERSUS

MAKERERE UNIVERSITY:.....DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUGDEMENT

The plaintiff was a Senior Lecturer at Makerere University until 18/12/2007 when he retired. He sued the defendant for:

- a) Shs 12, 805,846/= as outstanding pension balance under the deposit administration account (DAP) Pension Scheme.
- b) Shs 40,074,031/= as total outstanding commuted pensionable gratuity under the in-house retirement benefits scheme.
- c) Shs 233,745/= monthly pension for 15 years cumulatively in advance with effect from 18/12/2007.
- d) Repatriation transport costs to Rukungiri before departure.
- e) A declaration that he is entitled to remain in his house till payment of all his benefits.
- f) An order of injunction to restrain the defendant from evicting the plaintiff till payment of his benefits.

- g) Punitive or exemplary or aggravated and/or general damages.
- h) Interest at 35% per annum from due date to full payment on all payments under a-d above, and from judgement till payment in full on payments under (g) above.
- i) Costs of the suit.

The plaintiff was represented by Mr. Magellan Kazibwe, while the defendant was represented by Mr. Andrew Kabombo.

After protracted negotiations, the parties agreed to settle the matter out of court. However, the issue of interest was left for court to determine. The parties agreed as follows:

- a) The defendant agreed to pay the plaintiff within 30 days from the date of judgement. The plaintiff's outstanding DAP of Ug. Shs. 12,805,846= and the gratuity Ug. Shs. 40,074,031= together with the accumulated arrears of monthly pension of Ug. Shs. 2,337,450= and to continue remitting the monthly pension for the remainder of the 15 years.
- b) The plaintiff was to vacate the suit premises within 30 days from the date of full payment of the above sums, except the monthly pension which will be remitted monthly for the remainder of the 15 years.
- c) The defendant shall repatriate the plaintiff to his home district in Rukungiri.
- d) The defendant shall pay the plaintiff taxed costs in the main suit

Judgment was entered for the plaintiff in the above terms on 8th April 2009.

On the issue of interest, Mr. Kazibwe referred court to Section 26 of Civil Procedure Act which empowered court to exercise its discretion to determine interest, and prayed that since the plaintiff had asked for 35% per annum the court ought to look at the circumstances of this case to allow interest at that rate. The rate would take into account inflation. Counsel argued further that there was no justification to withhold payment of DAP and gratuity which fell due on retirement date. If payment had been in time, the plaintiff would have put to use those retirement benefits either to trade or any other

profitable venture. Court has in the past awarded interest at commercial rate from the date of retirement until payment in full.

In reply, Mr. Kabombo, while agreeing with the plaintiff's counsel that the question of interest was a matter for court's discretion, prayed that in exercising its discretion, court should take into account the following:

- a) In the defendant's letter dated 24/3/2009, it was suggested that the DAP, subject of this suit was available for the plaintiff's collection at NIC, upon the plaintiff's retirement.
- b) This matter has been determined by the parties with the full cooperation of the defendant. In the same spirit, the interest should not be put so high. The defendant has lent his hand to the negotiations and fully cooperated. A rate of 10 - 15% would be appropriate.
- c) As to when the interest would begin to run, counsel referred court to ***Sietco Builders Vs Noble Builders (U) Ltd, SCCA 31 of 1995***, and prayed that interest should not run from when the plaintiff retired, but from when plaintiff filed this suit. It was filed in November 2008.

In response, Mr. Kazibwe clarified that with regard to DAP being available at NIC, the University had closed its operations with NIC in June 2005 and all the DAP available at the time was paid. The DAP which the plaintiff was claiming was with effect from 11 July 2005 up to the plaintiff's retirement date. The defendant had no relationship with NIC at the moment, so DAP was not available for collection as indicated. Further, the letter of 24/3/2009 referred to was written after the suit been filed. Otherwise, had the plaintiff been informed to collect DAP from wherever it was, he would have collected it.

Counsel reiterated his prayer that Interest should begin running from the date of retirement because that is when the amounts fell due for payment. Had that money been paid, the defendant would not have filed this suit. He distinguished the authority referred to by counsel from the present one in that the plaintiff in **Sietco's case** had sought for

interest from the date of filing his suit, while in the present case, interest was sought from the date of retirement. He prayed for interest at commercial rate of 35% per annum.

I have carefully considered the submissions of learned counsel, the law, and the authorities referred to. It is not disputed that the applicant has been denied the use of his money since 18/12/2007 when he retired. He is, therefore, entitled to interest. The issue is the rate at which the interest should be fixed.

The Plaintiff did not have his money at the due date. Any interest payable to him 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 that deprivation. Interest in such circumstances is paid as a compensation for the deprivation of money that was due. **(See *Ruth Aliu and 126 others Vs Attorney General HCCS No. 1100 of 1998*).**

The plaintiff prayed for 35% interest which he stated to be the commercial interest. Considering the delay the plaintiff has undergone without his benefits, and the points raised in mitigation by counsel for the defendant, I regard interest of 25% per annum as reasonable under the circumstances. I, therefore, do award interest of 25% per annum to be paid on the plaintiff's claim from the date the monies became due till payment in full.

Elizabeth Musoke

JUDGE

14/04/2009

Judgment read by Her Worship, Kabanda E. in the presence of:

1. Mr. Majjellan Kazibwe Counsel for Plaintiff
 2. Mr. Kabombo Counsel for Defendant
- Plaintiff present

Mr. Mukwaya

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Court Clerk

16/04/2009