

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-00-CV-CS-0823-2003

RAJAB KAGORO :::PLAINTIFF

VERSUS

MAKERERE UNIVERSITY :::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The plaintiff's suit against the defendant is for Shs.12,408,464/= being outstanding balance on In-House Retirement Benefits scheme and Shs.4,513,955/= being outstanding pension arrears dating from February 1997 to December 2003. He also claims general damages for inconvenience and losses incurred due to breach of contract.

The substance of the plaintiff's case is that he was an employee of Makerere University in the capacity of a driver from 1962 to 1997 when he retired having reached the retirement age of 60 years; that on retirement he was entitled to a retirement package of Shs.22,197,780/= under In-house Retirement Benefits Scheme in a lump sum; that he was paid Shs.9,789,316/= leaving a balance of Shs.12,513,955/=, and that on top of that, he was to receive a monthly pension of Shs.54,383/= which by the time he filed the suit he had not received. Hence his claim of Shs.4,513,955/= as pension arrears for the period February 1997 to December, 2003.

At the conferencing, he admitted receipt of Shs.4,513,955/= during the pendency of the suit. What remained of the claim was therefore his alleged entitlement of shs.12,513,955/= under the said In-house retirement benefits scheme.

The defence case is that he was subject to in-house retirement benefits scheme a scheme run by the University to take care of any gratuity or pension payments for its employees;

that under the scheme, upon an employee clocking the retirement age, he would be entitled to receive 50% of the calculated benefits immediately and the other 50% would be paid as pension every month for the next 15 years. The substance of the defence case is that the plaintiff was entitled to receive Shs.54,383/= per month as pension under the said scheme; that the claimed arrears of Shs.4,513,955/= was pension arrears under the same scheme and it has since been paid; that the remaining balance can only be paid on monthly basis and not in a lump sum.

At the conferencing the following points were admitted:

1. The plaintiff was an employee of the defendant between 1962 – 1997.
2. He retired from the employment of the defendant upon reaching the retirement age.
3. He was entitled to retirement benefits as provided under the defendant's in-house retirement benefits scheme.
4. On retirement, he received Shs.9,789,316/= as a commuted pension gratuity under the said in-house retirement benefits scheme according to the defendant.
5. A sum of Shs.4,513,955/= originally claimed as monthly pension arrears was paid during the pendency of the suit.

Issues

1. Whether the outstanding balance under the in-house retirement benefits scheme should have been paid at the time he was paid Shs.9,789,316/= or monthly over a period of 15 years.
2. Remedies, if any.

Counsel:

Mr. Lutaakome Simeon for the plaintiff

Mr. Ahimbisibwe Pope for the defendant

1. Whether the outstanding balance under the In-house Retirement Benefits Scheme should have been paid at the time the plaintiff was paid the initial Shs.9,789,316/= or monthly over a period of 15 years.

The plaintiff's evidence is that having retired from the University upon clocking 60 years; he was entitled to payment of pension for the services rendered. The basis of his assertion is Exh. P1, a letter dated 17th December, 1996 to him from the defendant's Secretary to Council to the effect that the Assistant Bursar processes his retirement benefits. Both parties are in agreement that the claimed benefits were based on the University's In-House Retirement Benefits Scheme (hereinafter called the Scheme) and not any other.

Exh. D1 is a document giving the formula of the payments under the Scheme. The Scheme itself came into existence through the 79th meeting of the University Council under Minute No. 958 (iv).

The plaintiff was the sole witness for his side and Mr. Sam Akorimo, the University Secretary, the sole witness for the defence. From Exh. D1, the formula was this:

- (i). Annual Pension, $P = \frac{ab}{360}$

360

a, being the number of completed months of pensionable service;

b, the annual basic salary.

- (ii). The commuted Pensionable Gratuity (CPG) (which is actually the immediate take home package) should be computed as one-half ($\frac{1}{2}$) of the total pension over fifteen (15) years.

Thus $CPG = \frac{P \times 15}{2}$

(iii). The monthly pension thus being:

Total Pension over 15 years – CPG

15 years x 12 months

The above was the formula adopted and approved by the University Council.

The plaintiff also relies on Exh. P4, a retirement Benefits Assessment Form. This Form quite eloquently corroborates the above formula for calculation and assessment of the benefits under the Scheme.

From the evidence, upon calculation, the defendant assessed the plaintiff's initial 50% (that is, the commuted pensionable gratuity, CPG) to be a sum of Shs.9,789,316/= and it was paid to him.

The defendant also used the same formula in the scheme to arrive at a figure of Shs.54,383/= to be paid to him monthly, effective February 1997 for a period of 15 years.

I have already indicated that the Scheme was a creation of the University Council. The plaintiff did not tender in evidence or at all any letter of appointment that indicated otherwise. Therefore, for one to be entitled to any benefits under it, those benefits had to be calculated in accordance with its terms. The terms included that the recipient clocks 60 years of age, gets paid 50% of his total calculated benefits, and the balance is paid in monthly installments over a period of 15 years.

Learned Counsel for the defendant has submitted that the plaintiff has not in any way whatsoever adduced before court any document, authority or other Scheme where he bases his argument or allegation that he ought to have been paid his total entitlements as a lump sum and that indeed no other such scheme run by the defendant exists. Upon revaluation of the evidence on record, I have accepted this submission. The law is that

whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he/she asserts must prove that those facts exist (S.101 (1) of the Evidence Act, Cap.6). The plaintiff was bound to prove the allegations contained in his plaint on a balance of probabilities. He did not do so. In these circumstances, the only logical conclusion to be drawn from the pleadings and the evidence adduced is that the outstanding balance under the Scheme was to be paid in monthly installments over a period of 15 years as provided in Minute No. 958 (iv) of the 79th Minutes of the University Council and also Exh. D1.

I so find.

2. Remedies, if any.

The plaintiff prays for a sum of Shs.12,408,464/= being alleged outstanding balance under the Scheme, a further payment of Shs.4,513,955/= being unpaid pension arrears, general damages, interest and costs of the suit.

The defence case is that he is not entitled to any of the above.

From the evidence, the sum of Shs.4,513,955/= was part of the 50% balance on the Scheme. The sum though claimed in the plaint as un paid pension arrears wasn't a form of pension as is payable under the Pensions Act, Cap. 286. From the evidence of Sam Akorimo, DW1, the plaintiff's employment with the defendant was not in a pensionable office of the Public Service as known under the Pensions Act and the Public Service Act, Cap. 288. The University runs a pension scheme unique to it.

The said sum of Shs.4,513,955/= was duly paid to the plaintiff albeit during the pendency of the suit. The claim has therefore been overtaken by events.

As regards the claimed sum of Shs.12,408,464/= as the outstanding balance under the Scheme, I have accepted the credible evidence of DW1 Akorimo that the 50% balance

was only a sum of Shs.9,789,316/= and not Shs.12,408,464/= which the plaintiff claims in the plaint.

The said sum is payable in monthly installments of Shs.54,383/= effective February 1997 till 2012. There is evidence of remittances of this money monthly to his account No. 10300002004738 with Post Bank (U) Ltd, Wandegya Branch. He (the plaintiff) was untruthful when in the course of the hearing he denied any remittances by the defendant of money to his account. His claim for payment of Shs.12,408,464/= must fail and it fails.

As regards the prayer for damages, the defence contention is that the plaintiff brought an erroneous claim to court riding on the wrong allegation and/or contention that the balance on the Scheme was to be paid in a lump sum whereas not. I could see from the manner of the plaintiff's giving evidence in court that he had not understood the defendant's complex formula of calculating benefits under the scheme. At his level as a driver, I would understand his difficulty. This, however, did not warrant him to deny posting of funds on his account by the defendant. Be that as it may, the defendant was supposed to pay him a pension of Shs.54,383/= every month. For seven years the defendant did not pay. Hence the accumulation of Shs.4,513,955/= by December 2003. This money was paid in August 2004 when the suit was in court. At the hearing, DW1 Akorimo attributed the delay to logistical problems on the part of the defendant. The defendant gets no credit for that long delay.

The failure or refusal by the applicant to pay the pension according to schedule was a breach of the defendant's own promise to release payments to the plaintiff on monthly basis. He was inconvenienced and deprived of his source of living. He regularly traveled from his home District of Kabarole to Kampala to check on that money. There was no success until he filed this suit against the defendant. I am satisfied that this occasioned damage and loss to him for which he deserves compensation. True, therefore, that although the defendant paid pension arrears of Shs.4,513,955/=: it is liable to pay

damages to the plaintiff to compensate him for inconvenience and loss suffered for the seven years when he was denied his entitlement.

Learned Counsel for the plaintiff has proposed a figure of Shs.10,000,000/= as general damages. The defendant has not made any counter-proposal. I am of the view that the figure proposed by learned counsel for the plaintiff is on the high side. Doing the best I can in the unique circumstances of this case, I consider a sum of Shs.2,000,000/= (Two million only) adequate compensation to him for the said inconvenience and loss. It is awarded to him.

The award shall attract interest at the commercial rate of 25% per annum from the date of judgment till payment in full.

As regards costs, considering that the plaintiff has achieved partial success, I would order that he be paid half the taxed costs of the suit.

Orders accordingly.

Yorokamu Bamwine

JUDGE

06/08/2009