

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
HCT-00-CV-CS-0264 OF 2003**

**KAMAGARA HERBERT:.....:PLAINTIFF**

**VERSUS**

**STANBIC BANK UGANDA LIMITED:.....:DEFENDANT**

**BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGEMENT**

Herbert Kamagara, the plaintiff herein, sued Stanbic Bank (U) Limited, (the defendant) for Shs. 17,501,596= stated to be the unpaid balance of his terminal benefits upon termination of his employment with the defendant through voluntary retirement plus interest thereon at Commercial rate of 20% per annum from 28<sup>th</sup> February 2003, the effective date of retrenchment, and costs of the suit.

The facts giving rise to the claim, as pleaded in the plaint, and admitted by the defendant, are to be found in the following paragraphs of the plaint:

- “4. The facts upon which the claim is based are that at all material times the plaintiff was an employee of Uganda Commercial Bank Limited (UCBL) and had been so employed since 16<sup>th</sup> January, 1984.*”**

5. *Sometime in the year 2001 the bank of Uganda pursuant to its statutory powers invited bids from reputable firms for the purchase of UCBL. A letter issued to all staff by the Governor bank of Uganda dated 21<sup>st</sup> September is annexed hereto marked "P1". That the said letter stated the terminal benefits that would be paid to staff that would loose their jobs in the event of redundancy.*
6. *In or about january2002 the defendant acquired UCBL upon payment of US\$19.55 million and subsequently merged its operations into that of the defendant. Upon such acquisition the defendant assumed responsibility for all employee contracts of employment including that of the plaintiff. A copy of the letter dated 22<sup>nd</sup> February 2002 addressed to all staff informing them of these developments is annexed hereto and marked "p2".*
7. *That in the said letter it was stated that during the merger some jobs were expected to be lost and that those staff affected by these changes would be offered a retrenchment package on a "voluntary retrenchment" basis.*
8. *That by a letter dated 11<sup>th</sup> November 2002, the defendant accepted the plaintiff's application for voluntary retrenchment with effect from 28<sup>th</sup> February, 2003 upon the terms that the plaintiff would be paid a retrenchment package computed in accordance with a formula spelt out in a note annexed to the said letter. A copy of the said letter and the*

*said note detailing the computation of retrenchment package are annexed hereto marked “P3” and “P4”.*

9. *The plaintiff avers that as at 28<sup>th</sup> February 2003 which was the effective date of his retrenchment his rank was Banking Officer G11 and was deployed at the defendant’s Jinja Road branch. The letter of deployment is attached hereto marked “P5”.*

By the time the plaintiff retired in February, he was earning a salary of Ug. Shs. 1,672,151=. With the exception of payment in lieu of notice which was calculated using the February 2003 salary, the rest of his package, that is to say, 14 months severance package, long service award, outstanding leave benefits, were all based on the plaintiff’s December 2002 salary of Shs. 1,126,842=.

In support of his case, the plaintiff submitted the following documents, which were exhibited as the plaintiff’s documentary evidence.

1. Letter by Governor Bank of Uganda to all staff of UCBL dated 21<sup>st</sup> September 2001 - **Exhibit P1.**
2. Letter of Defendant dated 22<sup>nd</sup> February 2002 to all staff of UCBL informing them of defendant’s acquisition of UCBL - **Exhibit P1(A).**
3. News updates since Stanbic’s acquisition of UCBL - **Exhibit P2.**

4. Defendant's letter dated 11<sup>th</sup> November 2002 terminating plaintiff's employment on voluntary retrenchment - **Exhibit P3.**
5. Note explaining calculation of retrenchment package - **Exhibit P4.**
6. Defendant's letter dated 14<sup>th</sup> January 2003 redeploying plaintiff - **Exhibit P5.**
7. Plaintiff pay slips for January and February 2003, **Exhibits P6 and P7 respectively.**
8. Defendant's erroneous computation of plaintiff's retrenchment package - **Exhibit P8.**
9. Certificate of Service - **Exhibit P9.**

Apart from the above admitted facts, the defendants, in their written statement of defence, denied that the plaintiff's salary of Shs. 1,672,151= which obtained as at 28<sup>th</sup> February 2008, was applicable for purposes of computing the entire retrenchment package, and instead averred that the salary was only relevant for purposes of computing the plaintiff's payment in lieu of notice. Paragraphs 4 and 5 of the amended written statement of defence stated as follows:

***“4. The defendant denies that the plaintiff is entitled to the severance package, long service award and leave as computed in Paragraph 11(b), (c), and (d) of the plaint. The defendant shall state***

*that it discharged its liability to the plaintiff upon paying him a retrenchment package computed in accordance with Annexure “P8) to the plaint.*

*5. In the alternative and without prejudice to the foregoing the defendant states that:*

- a) On 21<sup>st</sup> February 2002, the defendant purchased 80% of the shares in Uganda Commercial Bank Limited (UCBL) from Uganda Government which retained 20% of the shares in UCBL. In the divesture of UCBL, the Uganda Government was obliged to ensure that provision was made for compensation of the employees of UCBL who were to be made redundant by the defendant.*
- b) On 13<sup>th</sup> November 2002, the operations of UCBL were combined with the plaintiff to form one Bank and the defendant continued to offer employment to the plaintiff under the Uganda Commercial Bank Limited Manual of Personnel Policy, Staff Rules and Regulations, 1998 as amended.*
- c) The defendant avers that it was allowed a period of 2 years with effect from the said date to determine whether to continue to offer employment to the Ex-UCBL staff including the plaintiff and determine the terms of such employment. The defendant further avers that in the said two years period, the Ex-UCBL staff retrenched by the defendant were to be availed a retrenchment package as agent of Uganda Government arrived at in accordance*

*with the Uganda Commercial Bank Limited. Manual of Personnel Policy, Staff Rules and Regulations, 1998 as amended on 20<sup>th</sup> September 2001 which continued to govern the plaintiff's employment after the date of the said acquisition.*

- d) The plaintiff was duly paid a retrenchment package independently calculated by KPMG a firm of Auditors acting for and on behalf of Uganda Government and approved by the Auditor General. In making the said payment, the defendant was merely acting as an agent of Uganda Government.*
  
- e) Save for payment in lieu of notice, payment of leave which accrued after January, 2003 and pro-rata long service value (which was transferred to the Stanbic Bank Pension Fund) the plaintiff's salary as of February 2003 was not relevant for computation of the said package.*

During scheduling, the following facts were agreed:

- 1) There was employment and retrenchment.
- 2) The effective date of retrenchment was 28<sup>th</sup> February 2003.
- 3) In February 2003, the plaintiff's salary was Shs. 1,672,151=.
- 4) It was the December 2002 salary that was used for calculating the benefits.
- 5. A formulae for calculating the package is not disputed:
  - a) 3 month's salary in lieu of notice.
  - b) 14 month's salary and allowances as severance package.

- c) Leave benefits for outstanding leave.

The following issues were framed:

1. Whether the plaintiff's retrenchment package should have been calculated using his salary applicable on the effective date of retrenchment, 28<sup>th</sup> February 2003, and not December 2002.
2. What was the effective date of the retrenchment agreement?
3. Remedies available to the parties.

At the hearing, the plaintiff was represented by Mr. Angeret Sebastian while the defendant was represented by Dr. Byamugisha. The Plaintiff rested his case on documentary evidence, while the defendant offered neither oral nor documentary evidence.

The plaintiff in his submission, dealt with Issue No. 2 first, then Issues 1 and 2. I will follow the same order.

### **Issue No. 1**

What was the effective date of the retrenchment agreement?

Counsel for the plaintiff submitted that this should never have been framed as an issue because it was expressly admitted in the pleadings and was an agreed fact during scheduling. Dr. Byamugisha was of a different view. He submitted that the plaintiff signed the acceptance of retrenchment terms on

12/11/2002. So, the effective date of retrenchment agreement is 12.12.2002. He referred to a paragraph in the letter by the defendant accepting the plaintiff's voluntary retirement which stated:

***“Your application for voluntary retrenchment dated 7/11/2002 refers. We are pleased to advise that your application had been successful and will be effected, should you agree to all the terms noted below”.***

I have read the letter referred to by Dr. Byamugisha which was admitted as Exhibit P3. I have failed to find any reference to the retrenchment date being 12.12.2002 as stated by Dr. Byamugisha. Instead, I am inclined to agree with Counsel for the plaintiff that the fact in issue was admitted by the defendant in paragraph 1 of their Written Statement of Defence when they admitted paragraph 8 of the plaint which stated as follows:

***“That by letter dated 11<sup>th</sup> November 2002, the defendant accepted the plaintiff's application for voluntary retrenchment with effect from 28<sup>th</sup> February 2003”.***

Further, agreed fact number two was that the **“effective date of retrenchment was 28/2/2003”**.

From the available evidence I find that the effective date of retrenchment was 28<sup>th</sup> February 2003. I so hold.



### **Issue No. 1**

Whether the plaintiff's retrenchment package should have been calculated using his salary applicable on the effective date of retrenchment, and not the December 2002 salary.

Counsel for the plaintiff submitted that it was clear from admitted facts in the plaint, during scheduling, as well as the documentary exhibits that the effective date of retrenchment was 28/2/2003, and that the salary obtaining then should have been the one used to calculate the plaintiff's terminal benefits. The plaintiff's pay slips for January and February were admitted as Exhibits, and the defendant used the February 2003 salary to calculate the three months pay in lieu of leave, and so should have done so for the entire package. Further, Counsel submitted that the certificate of service issued to the plaintiff by the defendant, dated March 26<sup>th</sup> 2003 stated that the plaintiff was an employee of the defendant institution from 16<sup>th</sup> January 1984 until 28<sup>th</sup> February 2003 when he volunteered to leave the Bank service under the restructuring programme." The formula for calculating the package was pleaded in the plaint and was admitted as Exhibit "P9" .

Counsel, therefore, concluded that the formula set out in the plaint which was based on the salary of February 2003, was therefore the correct formula, and the plaintiff was entitled to the unpaid balance of the amounts as prayed for in the report.

Defendant's Counsel disagreed, and relied on Section 101 and 102 of the Evidence Act Cap 6, which state as follows:

**“101. Burden of Proof.**

- 1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove those facts exist.**
- 2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

**102. On whom the burden of proof lies.**

***The burden of proof in a suit or proceeding lied on that person who would fail if no evidence at all were given on either side”.***

Counsel submitted that the plaintiff relied on documents which, though admitted as exhibits, their contents were not admitted by the defence. Counsel cited Chief Justice M. Monir’s Law of Evidence 14<sup>th</sup> Edition Vol. 2 at Page 1199 that:

***“Consent by a party to exhibit a document does not amount to an admission of its contents. A party has a right by cross-examination, to show that the document is not genuine”.***

The plaintiff, or any other witness should, therefore, have been called to prove the contents of the documents, and the fact that they were authored by the defendant.

Counsel further submitted that the effective calculation was noted in the defendant's letter dated 4<sup>th</sup> April 2002. He further relied on Section 18 of the Employment Act, Cap 219, which applied at the material time, and which provided that :

***“upon change of employer, the original employer and the new employer shall be jointly liable for all contractual or other obligations originating before the date on which the change took effect; except that the new employer shall not be liable where, in the opinion of the commissioner, where adequate provisions had been made by which the original employer undertakes to continue to discharge the outstanding obligations”.***

Counsel submitted further that the plaintiff was aware of the change in the employer status and that the redundancy benefits had been provided for by Bank of Uganda prior to the taking over by the defendant of UCBL. Section 101 and 102 of the Evidence Act applied, and therefore, the plaintiff had to show why the redundancy package as provided by Bank of Uganda did not apply to him. Since the employment by UCBL was distinct from that of the defendant, and obligations arising from them accrued separately, he had to show by evidence why the whole retrenchment package should be calculated using his February 2003 salary.

Counsel concluded that one retrenchment package was set aside by Bank of Uganda, and there was an independent one for the period served by the plaintiff with the defendant. He argued that Exhibit “P9” detailing the detailed computation of the plaintiff’s benefits by KPMG had not been proved in evidence. The issue, therefore, was not proved.

In reply, Mr. Angeret relying on Section 57, 58, 60, 62 and 63 of the Evidence Act, submitted that what is admitted in evidence need not be proved. Since paragraph 1 of the defendant’s written statement of defence admitted paragraphs 1 - 9 inclusive, of the plaint, which paragraphs referred to documents annexed to the plaint, the documents were thereby admitted as primary evidence without further need for oral evidence to prove them. Oral evidence would only come in where primary evidence was lacking. Further, apart from one, the rest of the documents originated from the defendant. The defendant’s own list of documents listed four of the plaintiff’s documents as documents the defendant would rely on. They were exhibited and admitted by consent. The defendant is estopped from denying them as not authentic. These were:

1. Plaintiff’s application for voluntary retrenchment.
2. Agreement on voluntary retrenchment.
3. Computation of retrenchment package.
4. Plaintiff’s pay slips for 2002 and 2003.

Counsel questioned the relevance of Chief Justice Monir’s text book as far as the Law of Evidence in Uganda was concerned, and submitted that the

quoted passage did not support the defendant's claim that the plaintiff must call oral evidence to prove the contents of documents admitted by consent.

Once the documents were exhibited, the burden shifted to the defendant to show by cross-examination that the documents were not genuine. The record, however, indicated that the defendant expressly declined to avail itself of this right, despite invitation by court.

Finally, Counsel invited court to reject the arguments of Counsel for the defendant that Section 18 of the Employment Act applied since no evidence was produced to support the theory of two separate and independent employment periods and retrenchment packages. It was also contradicted by the Certificate of Service stating that the plaintiff was employed from 16<sup>th</sup> January 1984 to 28<sup>th</sup> February 2003. Paragraph 6 of the plaint which was admitted by the defendant pleaded the fact of the merger and its legal effect. Counsel concluded that the plaintiff had made out his case that his package should have been calculated using his salary as at 28<sup>th</sup> February 2003.

I have carefully considered the submissions of both learned Counsel, the pleadings, the relevant law and authorities cited. It is not in dispute that the plaintiff was employed continuously from 1984, first by UCBL, and around 2002, by a merged UCBL/Stanbic, the defendant. It is also not in dispute that in 2002, the defendant's employees were given an option to retire voluntarily and get a package to be calculated through a given formula. The defendant did apply for voluntary retirement and was paid a sum which is the crux of the dispute. The plaintiff attached to his plaint all the

documentation that shows the history of his employment and termination of employment with the defendant.

The said documentation gives the formula to be used as follows:

- 1) Three months' salary in lieu of notice.
- 2) 14 months' salary and allowances as severance package.
- 3) Leave benefits for the outstanding leave.

Paragraph 8 of the plaint referred to the package and the letter of the defendant dated 11/11/2002 accepting the application for voluntary retirement, and attaching a note explaining the calculation of the retirement benefits. Apart from the admission of paragraph 8 in the defendant's written statement of defence, the formula also formed part of the agreed facts as recorded by Opio-Aweri J. KPMG, the company that was tasked to do the computation, did so and came up with a computation detailed in Exhibit P8, indicating that the salary of February 2003 was used to calculate the payment in lieu notice. For the rest of the benefits, however, the salary of December 2002 was used.

The note attached to the defendant's letter of 11/11/2002 is quite instructive on this issue. It provided a sample calculation basing on the employment details of an imaginary employee retiring under the same scheme as the plaintiff. It is headed "**Note detailing how you can calculate your own total retrenchment package**" and stipulates, inter alia, as follows:

***“K the employee’s current monthly package consists of the following:***

(Underlining for emphasis is mine)

- a) Recognized date of appointment with no unbroken service = 2<sup>nd</sup> March 1987.
- b) Last day at work = 31 May 2002.
- c) Total length of service = 15.49 years.
- d) Cash in lieu of notice = Gross salary x 3 months.
- e) Total leave balance as at end of May 2002 = 20 days.
- f) Annual leave entitlement = 30 days.
- g) Total leave = Leave allowance + Cash in lieu.
- h) Leave Allowance = Basic salary x 12 x 12% x Leave Balance/ Annual leave entitlement
- i) Cash in lieu of leave = Basic salary x 50% x Leave Balance / Annual entitlement
- j) Redundancy/Severance Package = Gross salary x Corresponding bracket based on length of service (As indicated in the table below in L)
- k) The4 employee’s current monthly package consists of the following:

<b>Entitlements</b>	<b>Amounts</b>
Basic salary	916,172=
Electricity	73,500=
Water	31,500=
Housing	518,126=
Gross pay	1,539,298=

L) Calculating your severance package

<b>Years service</b>	<b>Entitlement</b>
Up to 6 years	4 months salary
More than 6 & up to 10 yrs	7 months salary and allowances
More than 10 & up to 15 yrs	13 months salary and allowances
More than 15 & up to 20 yrs	14 months salary and allowances
More than 20 years	15 months salary and allowances
Less Pay As You Earn (PAYE) and staff indebtedness	

Below please find an example of how you can calculate your own total package. Please note you have to use the formula indicated above and substitute your own detailed values to arrive at the total retrenchment package.

1. ***In lieu of notice***

Formula = Gross salary x 3 months

= 1,539,298 x 3

= 4,617,894=

2. Total leave (consists of leave allowance and cash in lieu of leave)

a) Leave allowance

Formula = Basic Salary x 12 x 12% x Leave Balance

Annual leave entitlement

916,172 x 12 x 12% x 20



$$30 = 879,525$$

b) Cash in lieu of leave

$$\begin{aligned} \text{Formula} &= \frac{\text{Basic salary} \times 50\% \times \text{Leave Balance}}{\text{Annual entitlement}} \\ &= \frac{916,172 \times 50\% \times 20}{30} \\ &= 305,391= \end{aligned}$$

$$\begin{aligned} \text{Total leave due} &= 2a + 2b \\ &= 879,525 + 305,391 \\ &= 1,184,916= \end{aligned}$$

3. Redundancy/severance package

Formula = Gross salary x corresponding bracket based on length of service.

(The plaintiff fell in the 14 months bracket).

$$\begin{aligned} &= 1,539,298 \times 14 \text{ months} \\ &= 21,550,172= \end{aligned}$$

4. Long Service Award on pro-rata

Formula =  $\frac{\text{Basic salary} \times 12 \text{ months} \times \text{Total length of service}}{20}$

$$\begin{aligned} &= \frac{916,172 \times 12 \times 15.49}{20} \\ &= 8,514,903= \end{aligned}$$

**Total Retrenchment package = 1 + 2 + 3 + 4**

= 35,867,885=

Now the major issue is which salary should have been used for Nos. (2) and (3) in the case of the plaintiff. The salary slip attached to the plaint as “P7” and exhibited as Exhibit P7, indicated that the plaintiff received a gross salary of Shs.1,672,151= at the time of retrenchment. The Gross salary used by KPMG to calculate these benefits was indicated to be Shs.1,126,842= (the December 2002 salary).

I have carefully examine the evidence by way of documents relied on by the plaintiff and I find that Shs. 1,672,151= the formula indicated in the *Note* for the sample employee, and which the plaintiff was supposed to follow, was stated to be the “*Current employee’s monthly package*” (Underlining mine for emphasis). The key word is “*Current*” This is under item “K”. The plaintiff is therefore correct to claim the same standard when it came to calculating his benefits.

The defendant, however, argues that the plaintiff did not lead evidence to prove the contents of the documents he relied on, since the defendant’s Counsel made it clear that the documents would be “admitted as exhibits but without admitting their contents”. This is inspite of the fact that the majority of the documents were authored by the defendant.

I agree that whoever desires court to give judgement as to any legal right or liability dependant on the existence of facts which he/she asserts must prove those facts exist; and that in this case, the burden of lay on the plaintiff so to prove, and the plaintiff relied on documentary evidence with no oral evidence called. In the plaintiff’s view, he had adduced primary evidence.

It is important to note that the defendant, in his written statement of defence, admitted the paragraphs that made reference to the annexures which were exhibited, and for which he later demanded for proof by oral evidence. (Except Exh P8 which was not expressly admitted). When the documents were later exhibited, the defendant sought to deny the contents. True, as per Chief Justice M. Monir, “**consent by a party to exhibit a document does not amount to an admission of its contents, and a party has a right by cross-examination, to show that the document is not genuine**”. The record however, shows that at the close of the plaintiff’s case, the defendant’s Counsel was asked by Stella Arach Amoko J. whether he wished to cross-examine the plaintiff, and he answered in the negative. Since the defendant chose not to exercise his right to challenge the genuineness of the contents of the exhibited documents the majority of which had been admitted in the written statement of defence, the contents of the said documents are admitted by court as authentic. This is more so because the main documents relied on were authored by the defendant and if he felt the contents were not authentic, he ought to have examined the plaintiff on the same.

The defendant in his submission stated that Exhibit P8 which is a copy of the defendant’s computation by KPMG of the benefits paid the plaintiff, had not been proved, and If it had, it would have been clear what the plaintiff got and what he did not get in respect of the retrenchment package.

P8 was annexed to the plaint under paragraph 12, and exhibited as Exhibit P8. Paragraph 4 of the amended Written Statement of Defence states as follows:

***“The defendant denies that the plaintiff is entitled to the severance package, long service award and leave as computed in paragraph 11 (b), (c) and (d) of the plaint. The plaintiff shall state that it discharged its liability to the plaintiff upon paying him a retrenchment package computed in accordance with Annexure P8 to the plaint”.*** (Emphasis added) I have quoted the original paragraph 4 because paragraph 4 of the amended written statement of defence was left hanging, yet paragraph 4 was not indicated as amended.

In the paragraph quoted above, the defendant referred to Exhibit P8 to support his case. He cannot, therefore, deny the genuineness of its contents.

I, therefore, find that the facts as pleaded by the plaintiff and admitted by the defendant, the facts agreed during scheduling, read together with the documentary evidence whose contents were not challenged through cross-examination, support the plaintiff’s case that his package was supposed to be calculated using the salary of February 2003. The evidence shows that only the payment in lieu of notice was calculated using the correct salary as the basis. The rest of the plaintiff’s benefits, were based on the wrong salary, thereby causing loss to the plaintiff through underpayment.

I further find the reference by the defendant to Section 18 of the Employment Act not applicable to the facts of the present case. There is no evidence of separate and independent employment periods and retrenchment packages. The Certificate of Service exhibited as Exhibit P9 gives the employment period of the plaintiff as from 16/1/1984 to 28<sup>th</sup>/2/2003. It is

continuous and unbroken. UCBL which recruited the plaintiff in 1984 was later merged with the defendant and they became one entity. The legal effect was stated to be that the defendant assumed responsibility for all employee contracts of employment including that of the plaintiff. These facts were pleaded and admitted by the defendant in the written statement of defence.

Paragraph (5) (c) of the amended Written Statement of Defence is to the effect that the Uganda Commercial Bank Limited staff retrenched by the defendant in the first 2 years of the merger were to be availed a retrenchment package as agent of the Uganda Government arrived at in accordance with the UCBL Manual of Personnel Policy, Staff Rules and Regulations 1998 as amended, which continued to govern the plaintiff's employment after the date of the said acquisition. Paragraph 5 (d) states that in making the payments, the defendant was acting as agent for the Uganda Government. In 5(e), the defendant stated that the plaintiff's salary as of February, 2003 was not relevant for computation of the said package, save for leave without pay. No documentary or oral evidence was led by the defendant to prove any of the above. On the other hand, the plaintiff proved through evidence that he was retrenched in February 2003 and that, as per the defendant's *Note* to all employees, in calculating all his benefits, the "***Current monthly package***" obtaining at retrenchment was the one to be used. Therefore, the answer to issue No. 1 is in the affirmative.

The last issue was the remedies available to the parties.

On appropriate remedies, Counsel for the plaintiff submitted that since the plaintiff's package was wrongly calculated and resulted in an underpayment

of Shs. 18,534,405=, the plaintiff should be paid that amount with interest and costs. The amount should carry interest at a commercial rate of 25% per annum from the effective date of retrenchment till full payment, representing compensation to the plaintiff for loss of use of his money since March 2003.

Counsel for the respondent, on the other hand, reiterated his submission concerning the Employment Act and Sections 101 and 102 of the Evidence Act and submitted that the plaintiff produced no evidence to prove the remedies pleaded in the plaint. He further submitted that as for the interest prayed for, no commercial rate was pleaded or proved, so in such circumstances, the court rate would apply.

I have carefully considered the submission of learned Counsel on the issue of remedies. I have already found that there was evidence that the plaintiff's benefits, apart from payment in lieu of notice, were calculated using the wrong salary of December 2003, causing a short fall. The plaintiff is therefore entitled to be paid the difference between the calculation of his benefits using the salary of February 2003, and what was paid to him.

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 compensate for that deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied or a statute or whether the money was due to him for any other reason in law" Interest in such

circumstances is paid as a compensation for the deprivation of money that was due.

Both parties agree that retention of the plaintiff's dues for 9/10 years is inordinate. In view of the delay, I am inclined to award interest to the plaintiff on the payments so far made. Halsbury (supra) is specific, in paragraph 109 (ibid) that equitable interest is payable on the arrears of an annuity where there has been misconduct or improper delay in payment. The plaintiff prayed for 25% interest. Needless to state the rate of interest cannot be fixed arbitrarily. It is related to Bank of Uganda rates charged to Commercial Banks as well as rediscount rates, because, inter alia, these are the factors that affected what the plaintiff lost due to the delay in receiving their dues.

Considering the inordinate delay the plaintiff has undergone without his benefits I regarded interest of 25% claimed by the plaintiff as reasonable. I do award interest of 25% to be paid on the plaintiff's claim, with costs.

Since the applicant has been denied the use of his money since March 2003, he is entitled to interest. Although the rate of 20% commercial rate was pleaded, there was no evidence to justify the same.

I therefore order interest to be paid at the rate of 10% per annum from March 2003 till payment in full.

In conclusion, judgement is entered for the plaintiff for payment to him of the difference between what he was paid and the total benefits calculated using the February 2003 salary, with interest as stated, and costs.

Elizabeth Musoke

**JUDGE**

**16/02/2009**