THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

HCT-00-CV-CS-0122-2008

NAMYALO JOSEPHINE::PLAINTIFF

VERSUS

NATIONAL CURRICULUM DEVELOPMENT CENTRE ::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The Plaintiff brought this suit against the defendant for a declaration that she is entitled to a retrenchment package; and, in the alternative that she was unlawfully terminated, payment of a retirement package, special damages and general damages for breach of contract, interest and costs of the suit.

At the conferencing the parties agreed that:

1. ***The plaintiff was employed by the defendant on temporary terms in 1980 as a Copy Typist.***

2. ***Her services were terminated on 29/06/2007.***

3. ***The plaintiff was registered with the defendant's in-house retirement scheme operated by NIC.***

4. ***Upon termination the plaintiff was paid three months salary in lieu of notice.***

Issues:

1. ***Whether the plaintiff was employed on permanent terms.***

2. ***Whether the plaintiff's promotion, if any, was valid.***

3. ***Whether the plaintiff was paid her retirement benefits under the in-house scheme with NIC.***

4. ***Whether the plaintiff was entitled to any salary arrears.***

5. ***Whether the termination of the plaintiff's services was lawful.***

6. ***Whether there are any unremitted contributions to NSSF, and if so, how much?***

7. ***Whether the plaintiff is entitled to her claim for special duties and overtime allowances.***

8. ***Whether the plaintiff is entitled to payment of benefits as provided by the defendant's financial regulations.***

9. ***Remedies.***

Counsel:

Mr. Mugisa –Mukeeri for the plaintiff.

Ms. Eva Luswata Kawuma for the defendant.

Issue No.1: Whether the plaintiff was employed on permanent terms.

It is not disputed by the defendant that the plaintiff was appointed in the service of the defendant on temporary terms by a letter dated 31/07/1980, EXH P1. The issue is her alleged non-confirmation in service.

Two defence witnesses, DW2 Frank Nsubuga and DW3 Willy Robert Mukanga, testified that the correct procedure of confirmation would be commenced after satisfactory service of a two year period; that the concerned employee's name would then be forwarded to the

NCDC's governing body, the Council, for approval, and be given effect by a formal letter from the Director of NCDC.

The defence case is that save for the appointment letter, EXH. P1, there is no other document on record to show that the plaintiff was in the permanent ranks of the defendant's employees.

The letter of appointment, EXH. P1, was not issued with the Terms and Conditions of service which would ordinarily embody written details of her employment. She was advised that they would be sent to her later. There is no evidence that they were ever sent to her. Accordingly, DW2 and DW3's evidence about the duration of a temporary appointment is to say the least guess work. Be that as it is, there is no direct evidence on record as regards the plaintiff's confirmation in service. A letter from the Director to the plaintiff quoting a Minute Number of the Council meeting that considered and approved her confirmation would suffice as direct evidence. It is unlikely that it exists. In the absence of direct evidence, I will consider the available is circumstantial evidence. Evidence which although not directly establishing the existence of the facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or relation to them. It is sometimes regarded as of higher probative value than direct evidence, which may be perjured, mistaken or exaggerated.

From the evidence, EXH. P3, the plaintiff wrote to the defendant on 8/06/1984 pointing out the fact that she had not been confirmed in service. The letter was thru the Press Superintendent, apparently her supervisor at the time. He/She endorsed on it:

'It is true and her work is satisfactory.'

However, the plaintiff has adduced documentary evidence, EXH. P4, Minutes of the 2nd Session of the 16th Meeting of the Appointments Committee of the defendant held on 20/11/1986. Minute 3/18/86/11 on Review of Staff Promotions shows that the Committee decided that all members of Staff who had satisfactorily served a period of 2 years or more should be confirmed. The plaintiff had by this time clocked close to six

years in service. Therefore, the decision indirectly applied to her. The next action would have been for the Director to forward names of eligible staff, including the plaintiff's, to Council for its necessary action. The Director appears not to have made any submission to Council to that effect.

From the evidence also, matters of appointments and promotions in NCDC are a preserve of Council. The Minutes of the 24th Meeting of the defendant's Council, EXH. P5, show that the plaintiff was promoted to Principal Copy Typist. Min. 4/24/89 (ii) at page 3 refers. She has exhibited a letter of promotion dated 15/01/1990, EXH. P6. The letter placed her in Salary Scale CD8. I will comment on the issue of the salary scale later. The letter signed by the then Director of NCDC, D. N. Sentamu, indicates her as a Principal Copy Typist on promotion from Senior Copy Typist.

She remained at that level till her services were terminated in 2007. On termination she was given a Certificate of Service, EXH. P14, which indicates her as leaving left service of the defendant at the level of 'Principal Copy Typist' on Permanent terms.

From all this evidence, it appears to me rather strange that the defendant should still to insist that the plaintiff was not employed on permanent terms. Her promotions are sufficiently documented, the only missing link being the letter of confirmation from Council through its CEO, the Director. It is firmly established as a rule of law that parol evidence cannot be admitted to add to, vary or contradict a deed or other written instrument: ***Jacobs vs Batavia & General Plantations Trust Ltd [1924] 1 Ch. 287*** at 295.

It is argued by learned counsel for the defendant that whereas it is true that the Appointments Committee of Council decided that all members of Staff who had satisfactorily served a period of 2 years or more be confirmed, names of staff recommended for confirmation did not include the plaintiff's. No such list of staff has been tendered in evidence to support this argument. In fact there is no evidence before court that the Committee considered the plaintiff's letter of 08/06/ 1984, found her wanting in terms of performance, and deferred her confirmation indefinitely.

I have found learned counsel's submission that it was imperative for her to show that her name was forwarded to Council for confirmation a little puzzling. She was a junior staff in the organization, with no apparent managerial responsibilities. She really had no way of telling that the Director had not forwarded her name to Council for confirmation purposes unless so advised. Her reminder, EXH. P3, shows sufficient diligence on her part. Errors and lapses of Council cannot be visited on her.

Learned defence counsel also argued that issuance to the plaintiff of the Certificate of Service in which she is indicated as a permanent member of staff was irregular and issued in error as it has not been shown that Council confirmed her in permanent employment. In light of the clear evidence that she entered service as a Copy Typist in 1980; that in 1984 she reminded the defendant about non-confirmation in service; that in 1986 the Appointments Committee decided that people in her category be confirmed in service; and, that in 1989 the Council promoted her from level of Senior Copy Typist to Principal Copy Typist and enhanced her salary accordingly, I am unable to hold that the certificate of service was issued in error. In any case the defendant had all the means to study her personal file before issuing it.

I am mindful of the fact that confirmation in service is a necessary requirement in Civil Service. It is dependent upon the employee's performance, itself assessed through a system of appraisals. A temporary or probationary employee is one whose employment may or may not be confirmed after a specified period. If the employee does not show suitability for the job, he/she may not be confirmed in service. He/She may then be shown the exit or retained for further assessment of performance. By implication, to be denied confirmation the employee ought to be told about it and advised on the way forward. Relating the above general Civil Service principle to the instant case, in the absence of any probationary period stipulated in her letter of appointment, the presumption is that the confirmation would be within a reasonable time. There is no evidence at all that the termination in 2007 came at a time when the plaintiff was still under assessment for confirmation purposes. Even then in all fairness the delay would be indefensible, unjustified and inexcusable.

She was not told on termination that her performance was unsatisfactory. All she was told was that the post of Copy Typist had been abolished. In all these circumstances, it would appear to me that the plaintiff was confirmed in service but the defendant inadvertently omitted to issue a letter of confirmation to that effect. In the alternative, and this is only true in case I am wrong on the above, she must be deemed to have been confirmed in service upon expiry of a reasonable time. Either way 27 years of committed service cannot by any stretch of imagination be viewed as a reasonable period of assessment for purposes of an employee's confirmation in service. She was in my view employed on permanent terms.

I would answer the first issue in the affirmative and I have done so.

Issue No. 2: Whether the plaintiff's promotion, if any, was valid.

The defendant contends that the plaintiff was never promoted to the post of Principal Copy Typist and that if at all such promotion was ever made, it is invalid on account of contravening the NCDC Act and the NCDC Standing Orders.

Firstly, that the law requires 15 members, including the Chairman, to constitute a Quorum at all meetings of the Council; and, secondly, that the Director as the Secretary and not member of Council ought to be excluded from the Quoram.

I have had a look at Exh. P5, the Minutes of the 24th Meeting of the NCDC governing Council held on 18/12/1989 at Kyambogo. The Council members, including the Chairman, were 10 in number. According to Counsel since, Mr. D. Sentamu (No.11) and Mr. C. Kalinda (No.12) were not Council Members the purported meeting lacked Quorum. Hence the submission that the promotion grounded in the impugned Minutes of Council is invalid.

Learned Counsel for the plaintiff does not agree. According to him, this must be an after thought, brought in bad faith to defeat the plaintiff's claims. He has submitted that Minutes of Council meetings are not ordinarily within the knowledge of non-members

and that his client only got them when her case came to court; that the plaintiff did not know and could not have ordinarily known what transpired in the Council meeting, including the alleged lack of quorum. Counsel is of the view that this is a clear case where the court should invoke the principle of estoppel to avoid an absurdity.

I have devoted considerable thought to this matter.

I must say that it is also a little puzzling to me that the defendant is vehemently relying on weaknesses within its management structure to protest an apparent innocent employee's claim against it, close to two decades after the impugned Council decision.

Firstly, as learned counsel for the plaintiff has in my view correctly observed, Minutes of Council meetings are not ordinarily within the knowledge of non-members. The plaintiff herself accessed them in connection with her case. She was not a member of the Senior Management team to raise inference that she knew or ought to have known the working methods of Council. There is no evidence also that Minutes of meetings of Council were being circulated to all staff.

Secondly, the defendant is a corporate body, bound by the indoor management rule. The essence of this rule is that persons who are dealing with a corporate entity are assumed to know the contents of its public documents, and that therefore any transaction they enter into with it is authorized by those documents. However, they are not bound to do any more, that is, they need not inquire into the regularity and internal proceedings and may assume internal regularity. Applying this principle to the instant case, it is in my view reasonable to expect an employee, such as the plaintiff, to know who in the organization did what. As an example, she was expected to know that promotions in NCDC were a preserve of Council. However, it sounds to me far fetched to expect her to know how Council transacted its business and with who.

Courts have time and again held that they (the courts) should not treat any incorrect act as a nullity with the consequence that everything founded thereon is itself a nullity unless the incorrect act is of a most fundamental nature.

See: ***Nanjibhai Prabohusdas & Co. Ltd vs Standard Bank Ltd [1968] E.A 670.***

Matters of procedure are not normally of a fundamental nature. I do not think that the irregularity complained of, including the placing of the plaintiff in a wrong salary scale, was of such a fundamental nature as to vitiate the decision of Council. Even then whereas the impugned decision was made in 1989, the alleged irregularity was not brought to the plaintiff's, attention till 2007 a period of 18 years. Where was the defendant all along? I would in the premises accept the submission of learned counsel for the plaintiff that this is a clear case where the court ought to invoke the principle of estoppel to avoid an absurdity. Estoppel is a rule of evidence or doctrine of law which precludes a person from denying the truth of some statement formerly made by him, or the existence of facts which he has by words or conduct led others to believe in. Thus a person who stands by and keeps silence when he observes another person acting under a misapprehension or mistake, which by speaking out he could have prevented by showing the true state of affairs, can be estopped from later alleging the true state of affairs. I would in the instant case invoke this rule of evidence against the defendant. To decide otherwise would be to encourage vice and to reward the defendant for its careless errors. It would be a violation of Article 126 (2) (e) of the Constitution which mandates courts to administer substantive justice without undue regard to technicalities. In fairness, the defendant cannot be allowed to deny the plaintiff's appointment and promotion as she absolutely had no hand in any irregularities and/or omissions committed by the defendant in the cause of her employment.

I would therefore find that her promotion was valid and I hold so.

Issue No. 3: Whether the plaintiff was paid her retirement benefits under the in-house scheme with NIC.

It is an admitted fact that the plaintiff was registered with the defendant's in-house retirement scheme operated by NIC. The defendant contends that she was fully paid.

In the plaint, she claims shs.13,245,407/= as un paid benefits under the said scheme for the period 1990 – June 2007. Her witness, PW2 Iragena John, testified that she was owed the said sum. A summary of his computation is on record as Exh. P26.

From the plaintiff's evidence, as at 31/03/1995 the defendant's statement of account with NIC indicated a credit of Shs.106,789/=. According to Exh. P18 the defendant contributed Shs.60,765/=, implying that the balance of Shs.46,024/= was the plaintiff's contribution and interest. In 2005, 10 years later, she was paid Shs.106,789/= as if no further deposits had been made to her credit. During the pendency of the suit, she was paid a sum of Shs.1,257,488/=. Her outstanding claim is now Shs.12,094,708/=.

The defendant has offered some explanation through DW2 Frank Nsubuga, its Finance Secretary. In a nutshell DW2 testified that between February 1993 – June 1996, NCDC staff were paid through Ministry of Education and Sports. And after September 1999 they started contributing to NSSF. No NIC official appeared as a witness for either side. However, the defendant has adduced evidence to show that the Government through the Ministry of Education & Sports took over administration of NCDC payroll from February 1993 up to June 1996. During this period, staff salaries, including that of the plaintiff, were computed and paid directly to individual staff bank accounts. This evidence stands unchallenged.

It is argued for the plaintiff that the defendant was not discharged from its obligation to contribute for the plaintiff to NIC as the Standing Orders were never amended. That may be so. However, the fact remains that during the said period, neither the defendant nor the plaintiff made any contributions to the Scheme. The plaintiff, like all other NCDC staff, received her full monthly salary. Defendant's surrender of its payroll to the Ministry of Education & Sports was a policy matter outside the Standing Orders and beyond its control.

In my view the plaintiff has not proved on the balance of probabilities or at all that she is entitled to any amount in excess of the Shs.1,364,277/= paid to her in 1995 and during the pendency of the suit. Whereas by the time she filed the suit she had not been fully

paid her retirement benefits under the in-house Scheme with NIC, she has since been paid. Her claim of Shs.12,094,708/= is doubtful.

Issue No. 4: Whether the plaintiff is entitled to any salary arrears.

The plaintiff testified that around 1996 the defendant's Council approved an increase of staff salaries; that the said salaries were implemented selectively. Hence her claim that she was not paid increments totaling to Shs.25,799,635/=. To help her arrive at this figure is the evidence of PW2 Iragena John, her former colleague in NCDC. In Exh. P13, para 4.3, the Director of the defendant wrote:

> ***"In July 1996, a proposed NCDC salary structure by NCDC management (copy attached as E2) was approved by the Council."***

It is this purported approved salary structure which forms the basis of the plaintiff's claim. According to the defence witnesses, the impugned salary increments were indeed approved by Council. However, they were rejected by the Secretary to the Treasury. They are now termed 'contingent liability' which is annually disclosed in NCDC Statutory Financial Statements duly audited and certified by the Auditor General.

In financial transactions, a contingent liability means a possible obligation that arises from past events and whose existence will be confirmed only by occurrence or non-occurrence of events not wholly within the control of the entity: ***International Public Sector Accounting Standards (IPSAS).*** From the evidence of the defence witnesses, the continuous reflection in the annual statutory NCDC financial statements is proof that classification of the salary budget shortfalls as a contingent liability was professionally correct and has never been converted into a liability. I have accepted their explanation as plausible. Government has never released this money to NCDC. Much as it (NCDC) is mandated to pay its staff such remunerations and allowances as may be permitted by its standing orders, it does not have a direct vote with the Ministry of Finance and Economic Planning. Its annual estimates to the Government are routed through its parent Ministry, the Ministry of Education and Sports. The Ministry's budget is itself subject to approval by the Ministry of Finance and Economic Planning.

There is evidence that the defendant presented its 1996/97 FY approved salary structure to its parent Ministry. There is also evidence that the Ministry in turn presented the same to the Ministry of Finance. Ministry of Finance, by its reference letter B2/76 – 97/013 (Exh.D3) to the Permanent Secretary, Ministry of Education and Sports on salary allocation to NCDC in the 1996/97 budget, rejected the NCDC estimates. The ST advised that the salary scales for NCDC should only be adjusted where they were below the equivalent of the Civil Service levels. Court believes that NCDC Staff salaries were adjusted in accordance with that directive. This again was a policy matter which NCDC had to implement.

From the above defence evidence which I found credible, the proposed salary increments have never been sanctioned by Government. The plaintiff's salary, like many others from CD8 – CD13, was not adjusted. The reason was that it was above that of their counterparts in the Civil Service. She was put to task to name one or two staff in her category who benefited from the increments and she cited none. For as long as the contingent liability becomes a liability only after the Government through the Ministry of Finance authorizes payment, I would agree that the allegation by the plaintiff that some people were paid from the approved salary structure is not true.

As regards alleged salary arrears resulting from reduction of the plaintiff's salary from CD8 to CD10 for the period January 2006 – June 2007, there is evidence that from 1990 she was paid salary in salary scale CD8 as a Principal Copy Typist. However, according to NCDC Standing Orders, p.49, the post of Principal Copy Typist is in Salary Scale CD10, implying that paying her under CD8 was an error. DW2 testified that the reduction in salary was to correct an anomaly which the defendant had detected. I believe it was.

The irregularity could not remain unremedied on detection. Instead of thanking recoveries from the plaintiff, the defendant, through its Director, decided to forgo it but correct the anomaly by placing her in the appropriate salary scale. This of course had the negative effect of lowering her pay. I am of the considered view that upon detecting the

anomaly the better course was for the Director to make a submission to Council for an appropriate action. The Director decided otherwise. Given that the salary payments had been effected in error, the deducted amount cannot be treated as an entitlement recoverable from the defendant as special damages. The reason for the law's refusal to uphold such claims is commonly put in the Latin maxim ***ex turpi causa non oritur actio*** ('no claim arises from a base cause').

All in all the plaintiff's entire claim for salary arrears is doubtful. I have disallowed it.

Issue No. 5: Whether the termination of the plaintiff's services was lawful.

In a complaint of wrongful termination of this nature, court must look to the Standing Orders as an embodiment of the terms and conditions of employment for an answer. Unlawful and/or wrongful termination would, in the context of such a contract of employment, relate to the manner of removing the employee from the employment for reasons which did not justify the action taken under the agreement and which is therefore in breach of the contract of employment or doing so in a manner that was in contravention of the contract of employment. Whatever the case, once an employee alleges unfair termination, it becomes incumbent upon the employer to show that the termination was fair and in accordance with the terms and conditions of service binding both parties. In the instant case, therefore, the defendant has to satisfy court that there was a proper reason for the termination and that in all circumstances it acted reasonably in treating the reason for the termination as sufficient reason for dispensing with the plaintiff's services.

Applying the above principles to the facts herein, there is evidence that when the plaintiff noticed the salary reduction, she complained to the Finance Secretary of the defendant [Exh. P7]. This was on 30/04/2007. The Finance Secretary made a remark on it:

> ***"From the surface her complaint is genuine. However, there is need to study her personal file."***

This was on 4/05/2007.

No written explanation was offered to her. She instead received a letter of termination, Exh. P8, on 29/06/2007.

According to EXH. P8, the reason for the termination was that the post of Copy Typist had been abolished and the plaintiff's qualifications were short of the minimum requirements for the post of Secretary. Whereas according to the Standing Orders the power to terminate the plaintiff's appointment was vested in the Council, she was terminated by the Director on the purported directive of the Appointments Sub-Committee of Council. Surely even if a proper reason existed for her termination, the proper procedure ought to have been followed whether or not after all the Council would be in agreement with the decision of the Appointments Sub-Committee.

This was mistake No. 1.

And whereas the letter of termination is headed "Retirement from the Service of the Centre," implying that the defendant had perhaps opted to retire her for good cause, which would have entitled her to retire honourably with full benefits, in the letter she was told that the defendant had actually decided to terminate her services from the Centre effective 30/06/2007. And the reason for termination: ***because the post of Copy Typist was abolished, it ceased to be an established post in the services of the Centre during the Restructuring exercise as per Kiwanuka Report***.

The plaintiff was by then no longer a Copy Typist but a Principal Copy Typist. The post of Principal Copy Typist existed in the Standing Orders, albeit in Salary Scale CD10, and the reason advanced to justify the termination was not provided for in the Standing Orders. So she was not retired under Compulsory retirement in public service; removed for any good cause; or found to be guilty of misconduct that justified summary dismissal.

This was mistake No. 2.

The defendant is a public institution. It is expected to follow laid down procedures, not to act arbitrarily to terminate services of its employees as was obviously the case herein.

The plaintiff had merely complained about the unexplained reduction of salary. Instead of offering her an explanation the defendant sacked her in an apparent act of retaliation.

From the evidence, the plaintiff was not an under-performer. She had put in 27 years of committed service and was on her way to normal retirement. She was in my view removed from service maliciously. Like any other employee, she was entitled to protection from victimization, discrimination or removal from office without just cause. The callous manner of her termination was in breach of the Standing Orders. It was unlawful and oppressive.

I would answer the 5th issue in the negative and I do so.

Issue No. 6: Whether there are unremitted contributions to NSSF, and if so, how much?

The plaintiff's claim is for Shs.7,792,730/= (in the plaint). During the pendency of the suit the defendant remitted to NSSF a total sum of Shs.2,222,151/= on two occasions, implying that by the time the suit was set down for hearing there were indeed unremitted contributions to NSSF. Hence the reduction of the plaintiff's claim to the current Shs.5,570,574/=. No evidence was adduced from NSSF to show that for the period under review, the plaintiff may have been entitled to any more money from the defendant on account of any unremitted contributions. DW2 Frank Nsubuga, the NCDC Finance Secretary's evidence is that with the remittance of the Shs.2,222,151/= to NSSF in the course of the hearing, the defendant owes her nothing more.

In the absence of any evidence from NSSF to tilt the balance one way or the other, I am unable to hold that there are any more unremitted contributions to NSSF. The alleged unremitted balance in the sum of Shs.5,570,574/= is also doubtful. I would disallow it and I have done so.

The 6th issue is answered in the negative.

Issue No. 7: Whether the plaintiff is entitled to her claim for special duties and overtime.

She claims overtime allowance of Shs.2,169,713/= and special duty allowance of Shs.80,000/=.

In the Standing Orders, Exh. P20, at p.115, payment of over time is allowed. There is evidence, EXH. P16, that the plaintiff did the work for which she was never paid. The supervisors would certify the claims and on reaching the Director, who arguably had a final say on them, he/she would just 'sit' on them. At the hearing, the current Director was asked as to what could have become of those claims. She had no idea. True, the approval of the payments was at the discretion of the Director. From the evidence, however, the Director did not reject or query them. He/She just ignored them. By the time the plaintiff left office they had accumulated to Shs.2,169,713/=.

I would in the circumstances of this case allow this claim and I have done so.

Issue No. 8: Whether the plaintiff is entitled to payment of benefits as provided by the defendant's Financial Regulations.

From the evidence, the Regulations were made to give effect to Section 25 (2) of the NCDC Act, Cap. 135. In my view, contrary to the defence submission on this point, the Regulations when operational applied to all existing staff members of the defendant. If any contrary intention had been intended, such intention would have been expressly stated.

The amount claimed under this head is Shs.13,352,196/=, arrived at as per PW2 Iragena's computation in EXH. P26.

The defendant has resisted this claim on three broad grounds:

(i). That the plaintiff had not been confirmed in service;

(ii). That the claim is based on a wrong salary scale; and

(iii). That the Financial Regulations did not apply to the plaintiff.

Grounds (i) and (iii) lack merit. I have already made my position clear on them. There is, however, merit in Ground (ii). Her position as Principal Copy Typist placed her in Salary Scale CD10 and not CD8. She is lucky that the plaintiff has opted not to recover from her any amount paid to her in excess of her lawful salary entitlement. She is not entitled to a sum of Shs.13,352,196/= or at all as a retrenchment package because not only is the computation based on a wrong salary scale but it is also based on alleged salary increments that have never been operationalized by Government and earned by the plaintiff. All this renders the claim doubtful. It is safer for court to disallow it than to allow it.

I would answer the 8th issue in the negative and I have done so.

I now turn to general damages.

She claims general damages for lost earnings on retirement benefits. She claims that if her benefits were deposited timely with the relevant schemes, they would have earned interest and she would have easily accessed them when needed. It has been submitted on her behalf that she has suffered the deprivation and anguish to sue and go through the trial to get what she is clearly entitled to. She has in this regard prayed for a sum of Shs.30,000,000/= in general damages.

She also claims general damages for wrongful termination. I have already indicated that from the evidence, her termination stemmed from her own inquiry as to the reduction of her salary. Instead of offering her explanation, which she was at liberty to accept or

reject, the defendant chose to treat her as a dishonest person and terminated her services on flimsy grounds. Her prayer under this head is for a sum of Shs.50,000,000/=.

The plaintiff was an old member of staff though in the category of support staff. She was terminated at the age of around 54 years, having worked for the defendant for twenty seven (27) years. She was about to reach normal retirement age and get her hard earned benefits. Given her age, education and type of work, she cannot now be gainfully employed and she has not indeed been able to find employment elsewhere. The defendant's wrongs were compounded by its lack of compassion, its callousness and indifference towards a person who had devoted a cool 27 years of service to it. It is in my view just and fair that she be awarded general damages for lost benefits due to the defendant's lapse in judgment and callousness. I consider the combined proposed award of Shs.80,000,000/= on the high side for a person of her station in life. Considering the payment to her of three months salary in lieu of notice; the delay by the defendant of remittances to NIC and NSSF which no doubt had effect on interest on those remittances; and in light of the defendant's wrongful act which deprived her of a retirement package, an award in the sum of Shs.30,000,000/= (Thirty million only) as general damages would meet the ends of justice.

In the final result, I would enter judgment for the plaintiff against the defendant and make the following orders:

a). Declaration that she was wrongfully and unlawfully terminated.

b). Special damages: Shs.2,249,713/= being special duties and overtime allowances.

c). General damages: Shs.30,000,000/= (Thirty million only).

d). Interest on the decretal sum in (b) and (c) above at the rate of 20% from the date of judgment till payment in full.

e). Costs of the suit.

Orders accordingly.

Yorokamu Bamwine

JUDGE

11/05/2010

11/05/2010:

Mr. Mugisa Mukeeri for plaintiff

Plaintiff present

Defendant’s Counsel absent.

Court:

Judgment delivered in the presence of the defendant’s Finance Secretary Mr. Nsubuga.

Yorokamu Bamwine

JUDGE

11/05/2010