

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

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CIVIL SUIT NO. 53 OF 2005

- 1. BAKOOMA RUTH NABIRYE,**
- 2. ZIRABA STEPHEN AGGREY & 92 ORS.: PLAINTIFFS**

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VERSUS

IGANGA DISTRICT ADMINISTRATION: DEFENDANT

BEFORE: THE HON. LADY JUSTICE FLAVIA SENOGA ANGLIN

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JUDGEMENT

The Plaintiffs brought this suit against their former employer, the defendant, seeking special and general damages plus interests that arose out of their unlawful retirement by the defendants from their duty stations, without notice, compensation or payment of terminal benefits.

It is on record that, the plaintiffs were employed as Parish chiefs by the defendant on permanent and pensionable terms. However, when the standard for which Chiefs may be employed was set higher by Government policy, the defendants decided that the Plaintiffs were no longer fit to hold their jobs and accordingly terminated their services in the manner already mentioned in this judgement.

The Plaintiffs filed this suit on 10/6/2005.

The Defendants were issued with summons to file a defence but apparently they neglected to do so.

According to counsel for the Plaintiffs, judgement was granted in favour of the Plaintiffs.

However on 25/10/2006 a written statement of defence was filed with the consent of counsel for the Plaintiffs. While the Defendants admitted retiring the Plaintiffs, they contended it was lawfully done through the District Service Commission. The
5 retirement was meant to improve efficiency in the operations of the District.

The Defendants further denied any liability of any kind to the Plaintiffs either jointly or severally, but on the other hand did not dispute the claim for pension/gratuity, only claiming that it was prematurely claimed before the Audit/verification exercise by the
10 Auditor General's office. They prayed for the dismissal of the suit with costs.

What follows on the court record is lengthy notes of mentions and adjournments.

Eventually, on 21/1/2009, the court proposed that defendants be allowed time to expedite
15 computation of the benefits for each of the plaintiffs to include gratuity, pension, payment in lieu of notice (6 months), leave entitlements, if any, salary arrears within 2 months, so that the parties could file a consent judgement by 30/4/2009. Both parties agreed to the proposal and matter was adjourned to 2/6/2009 for mention.

20 From that date up to 8/4/2010 the case was repeatedly adjourned for reasons that are set out on record but which I do not find necessary to repeat here.

On 8/4/2010 the defendants were still not in court and had failed to come up with the amounts to be paid to each of the plaintiffs. However, the plaintiffs had come up with a
25 figure. Counsel for the plaintiffs prayed court to fix a hearing date. The case was adjourned to 12/5/2010 with orders that defendants be served.

On 12/5/2010 counsel for both parties were in court. Counsel for the plaintiff submitted that the only issue for decision was quantum. Whereupon counsel for the defendants
30 replied that the District was willing to pay salary arrears for three months. However, on the issue of gratuity and pension he submitted that the District had a duty to forward each

plaintiff's personal file to the Auditor General's office for verification of the claims. That some of the files had been forwarded and those plaintiffs were receiving monthly payments in their respective Accounts.

- 5 For those whose files had not been sent to the Auditor General, counsel informed court that the District undertook to expedite the process.

Upon objection of counsel for the plaintiffs court ordered plaintiffs to proceed. Scheduling was done. Facts were stated for each party and 2 issues were framed for

10 determination to wit:

- 1) What amount of money is due to the plaintiffs.
- 2) Whether the defendant is liable to pay the amounts due to the plaintiffs.

15 Hearing took off on the same date with one witness PW1 being called. The witness narrated the facts of the case and came up with figures that were due to each of the plaintiffs. This was from a report dated 10/5/2010 that was admitted in evidence as Exhibit P.1.

20 Adjournment was granted to counsel for the defendant to enable him study the report and cross-examine the witness. The case was adjourned sine die pending fresh fixture by the court.

When the suit was called for continued hearing on 18/12/2010 both counsel informed
25 court that they had agreed in principle that they get judgement in the following terms:

Every plaintiff is entitled to:

- 1) Gratuity
- 2) Monthly pensions
- 30 3) Six months in lieu of notice
- 4) Salary arrears if any

- 5) Repatriation where applicable
- 6) Taxed costs of the suit.

5 Court then directed the parties to prepare and file a consent judgement to be endorsed by court. The consent judgement was to be filed by 21/1/2011. The matter was fixed for mention.

10 Hearing notices were extracted by the plaintiffs for 18/4/2011. On that date counsel for plaintiffs and 6 plaintiffs were present. But defendants and their counsel were not in court.

There being evidence of service by way of affidavit of service, court granted counsel for plaintiffs application to proceed exparte.

15 Consent judgement was never filed as directed by court.

20 Counsel for the plaintiffs then submitted that the matter was only for proof of quantum of damages. He presented PW1 to court stating that the witness had finished examination in chief and was awaiting cross-examination when counsel for defendants sought adjournment to enable him cross examine at a later date.

Since neither the defendants nor their counsel were in court, he prayed court to allow him close plaintiffs' case and make submissions.

25 The prayer was allowed.

30 In his submissions counsel for the plaintiffs gave the brief facts of the case as already set out, at the beginning of this judgement and also the about the on and off adjournments and finally the order of court to the defendants to compute the benefits due to the plaintiffs and file consent judgement by 30/4/2009. Observing that neither consent judgement nor computation was ever filed, counsel stated that court then authorized the

plaintiffs to get a public auditor to do the computations. This was done by Clayton & Co. Certified Public Accountants and it appears on record as Exhibit P.1.

5 Further that computation were worked out in open court and minor amendments were done giving a grand total due to all the plaintiffs as Shs. 1,711,473,306/= Uganda Shillings.

10 That when it came to salary arrears, both counsel conceded that it would amount to double payment if the plaintiffs were allowed to earn pensions and salary arrears for all this time. That both of them therefore agreed that the plaintiffs were only entitled to 3 months salary arrears each. That the amount for the other 3 months was already deducted and the gross total remaining should be the amount awarded to the plaintiffs.

15 Counsel also prayed for taxed costs on the ground that the case has been in court since 2005.

20 I listened to the submission of counsel for the plaintiffs, and I very carefully went through the proceedings on record. Thereafter, I gave the best consideration that I could to all the issues raised in the case. I find that, despite all the numerous chances given to the defendant to defend the case, they did not show much interest in doing so.

25 The opportunities granted to the defendant to compute what is owed to the plaintiffs and file a consent judgement were also ignored. This leaves no other reasonable conclusion than that they are liable to the plaintiffs.

30 The report giving the computations due to the plaintiffs done at the plaintiffs instance with leave of court was admitted on record without objection by counsel for the defendant – See Exhibit P.1. from Clayton & co. Accountants dated 10/5/2010. It sets out the summary of gratuity, pension arrears, six months payments in lieu of notice, salary arrears and transport.

The letter (report) indicates that the computations are only for those Chiefs whose basic salary was availed.

5 The total in the report amounts to Shs. 1,247,311,150/=. However, it is on record and without objection by counsel for the defendants that the agreed total is Shs. 1,217,945,126/=. 10

The chance to cross-examine the witness of the plaintiffs (PW1) who presented the figure in the report was not utilised by the defendants. This left the evidence of the plaintiffs regarding what is due to them unchallenged.

For all the reasons set out herein, court finds that the plaintiffs have proved their case to the required standards.

15 The total amount of money due to the plaintiffs is Shs. 1,217,945,126/=. And the defendants are liable to pay the amounts due to each plaintiff as set out in the report (Exhibit P.1) less that amounts that may have so far been paid to each of the plaintiffs' Accounts, if any.

20 The costs of the suit are also given to the plaintiffs. It is trite law that "costs follow the event unless court for good cause orders otherwise."

Interest is also allowed on the total sums due and on the taxed costs at court rate, from the date of judgement until payment in full.

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Flavia Senoga Anglin
JUDGE
27/4/2011