

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL SUIT NO 660 OF 2002**

**YOVAN BWAMBALE & 1016 OTHERS ::::::::::::::::::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

The plaintiffs in this suit numbering 914 are former employees of Uganda Rayon Textiles Mills Ltd and Mukisa Foods Ltd both Subsidiary Companies of the National Enterprises Corporation. Their Services together with those not before this Court were terminated during the years 1992 and 1993 when the Companies were repossessed by the former Asian owners. Upon repossession of the companies by the Asian owners the plaintiffs were rendered redundant. They claim that following the termination of their services they were not paid their terminal benefits including gratuity, redundancy, long service and other allowances.

The defendant's contention is that the terminal benefits of the plaintiffs were fully paid upon their being laid off and in the alternative but without prejudice to the above that if at all the plaintiffs were not paid the computation should apply the terms and conditions set out in the National Enterprises Corporation Act.

Subsequent to the filing of this suit, another suit (High Court Civil Suit No. 48 of 2003) was filed by about 475 of the former employees who are not parties to this suit. At first there was controversy as which plaintiffs sued in which suit but at the end of the controversy 914 former employees prosecuted their suit separately from that of the 475 former employees whose suit was tried by His Lordship Justice Musoke Kibuuka, who, on the 18.08.2011 entered judgment upon admission under Order 15 Rule 6 of the Civil Procedure Rules. He pronounced himself as under:-

***“In the same way, this Court allows the applicants’ motion. It enters judgment, upon admission, under Order 15 Rule 6 of the Civil Procedure Rules in Civil Suit No. 009 of 2003. It grants to the applicants the following reliefs, which they sought as plaintiffs, in Civil Suit No. 009 of 2003:***

- ***a declaration that the plaintiffs (applicants) are entitled to payment of gratuity in accordance with the contracts of employment between each one of them and the second defendant.***
- ***an order that the first defendant pays to each plaintiff his or her due entitlement of gratuity.***
- ***an order awarding interest at the rate of 8% per annum, on each plaintiff’s gratuity, from the date of filing the suit to the date of payment in full.***
- ***Court has not heard any arguments on the issue of general damages. It has considered the option of ordering the parties to settle the issue of general damages or, in the event of failing to do so, to return to Court for it as was the case with Civil Suit No. 1029 of 1998 (Charles Abola and two others vs. Attorney General). I have realized the difficulties such an order might entail and especially in light of the fact that this case has already spent some nine years in the Courts of law. I also recognize the fact that the claim for general damages emanates directly from the denial to the plaintiffs of their***

*gratuity, the admission of which is the subject matter of this judgment on admission. Accordingly, I have decided to make an award of general damages of a uniform sum to each plaintiff. I am encouraged by the holding in Crown Beverages Ltd vs Sendi [2006] EA 43 to the effect that the amount of awardable damages is always a matter of discretion for the Court to determine. I accordingly award a sum of shs. 2.000.000/= to each plaintiff as general damages.*

- *an order awarding interest upon the general damages, at 8% per annum. From the date of this ruling to the date of payment in full, and*
  
- *an order awarding the costs of Civil Suit No. 248 of 2003, to the plaintiffs”.*

This Court is faced with exactly the same issues as were faced by His Lordship Justice Musoke Kibuuka. The basis for his judgment on admission was a legal opinion expressed in a loose minute by the Ag. Director – Civil Litigation to the solicitor General tendered in this Court as exhibit P. 26. This loose minute gives rise to the first issue which is as to whether by reason of exhibit P. 26 there was admission of liability entitling the plaintiffs to get judgment.

The internal memo as Mrs Robinah Rwakoojo currently the Ag. Director Civil Litigation who represented the Attorney General in this trial describes it is in my opinion a very sound analysis of the issues that are central to this case and if it was to be found as His Lordship Musoke Kibuuka did that the memo amounted to an admission under Order 15 Rule 6 of the Civil Procedure Rules the plaintiffs in this suit would be entitled to a judgment like the plaintiffs in Civil Suit No. 248 of 2003 Matovu Luka and others vs Attorney General (supra).

Mrs Robinah Rwakoojo's contention about Exh. P. 26 is that the document was an internal memo to which the plaintiffs were not privy and therefore privileged. She cited Section 4 of the Official Secrets Act (Cap 302) and Sections 123 and 124 of the Evidence Act Cap 6 for her proposition that the document is inadmissible. I have perused the law cited and neither the provisions of the Official Secrets Act nor those of the Evidence Act are applicable to this document. I also do not comprehend as to why the defendant would 'internally' admit that the plaintiffs are entitled to their benefits and even come up with a formula for their payment and when he comes to Court he denies that the plaintiffs are entitled to any benefits. I wonder if the legal basis for the internal opinion changes when the matter is called in Court when the issues under consideration are the same.

If I may refer to exhibit P. 26 three issues were raised. The first issue was as to whether or not the plaintiffs are entitled to terminal benefits and if so what terms and conditions of service are applicable. The conclusion was that the terms and conditions of service which the plaintiffs enjoyed while serving under Uganda Rayon Textiles Mills and Mukisa Foods Ltd apply with full legal force to the services rendered under NEC. The second issue raised was as to whether the plaintiffs are entitled to payment and the answer was that they were entitled to payment of terminal benefits in accordance with the URTM/MFL terms and conditions of service which apply to NEC. The third issue was as to who would be responsible to pay and the answer was that the Ministry of Finance/Privatisation Unit was responsible. The resolution of the issues raised in the memo leaves me in no doubt that the Attorney General admitted liability in unequivocal terms and I agree with His Lordship Musoke Kibuuka when in his ruling he states as follows:-

***“Now, an admission, under Order 15 Rule 6 of the Civil Procedure Rules was defined by the Court of Appeal of Uganda in the Kibalama case (supra).***

The Court stated:-

*“Under Order 11 Rule 6 (now Order 15 Rule 6) judgment can be entered at any stage of the suit where an admission of facts had been made. Such an admission, however, must be unequivocal in order to entitle the party to judgment without waiting for determination of any other questions between the parties”.*

*In a persuasive judgment of the Court of Appeal of Kenya in Agricultural Finance Corporation vs. Kenya National Insurance Corporation, Civil appeal No. 271 of 1996, the court took the view that where the admission is not ambiguous, the Court ceases to have a discretion whether to enter a judgment or not. It must do so”.*

I agree and I have already stated the determination of the issues raised by the author of Exh. P. 26 was unequivocal and judgment should have been entered for the plaintiffs as in the case of **Matovu Luka and 474 others**. This Court is not inclined to differ from that judgment given that the suit arises from the same facts.

The resolution of the above issue also resolves the second issue as to payment of their claims for terminal benefits. A judgment in admission in terms of the judgment in Luka Matovu & others (supra) caters for the claim of terminal benefits accruing to the plaintiffs.

Lastly is the issue as how much the plaintiffs are entitled to. Evidence was adduced that the Auditor General commissioned a firm of Auditors to compute the claims of all the former workers of Uganda Rayon Textiles and Mukisa Foods Ltd which according to Mr. Bitalo David (PW. 2) was done.

A number of exhibits were tendered in this respect but in my view information regarding the 914 plaintiffs in this suit should be extracted and compiled in one document which will be the basis

for the payment of each of the plaintiff's terminal benefits. Given that this case has taken such a long time to resolve this should be done expeditiously and in any case within one month from the date of judgment to facilitate execution of this judgment.

Finally an issue was raised as to identity of the plaintiffs in this suit who may be mixed up with the plaintiffs in civil suit No. 248 of 2003 Matovu Luka & others decided by His Lordship Musoke Kibuuka. There was even a suggestion that there may be some ghost claimants. This is a matter that can easily be sorted out at execution because I do not envisage a situation where a former employee gets paid in one judgment and later claims execution in another judgment.

The former employees of the two organizations are known and the question of ghosts emerging should not arise at this stage.

For avoidance of any doubt judgment will be entered for the plaintiffs in the same terms as in the judgment of Hon. Musoke Kibuuka in Civil Suit No. 248 of 2003 as follows:-

- a) A declaration that the plaintiffs are entitled to payment of gratuity in accordance with the contracts of employments between each of them and the second defendant.
- b) An order that the 1<sup>st</sup> defendant pays to each plaintiff his or her due entitlement of gratuity.
- c) An order awarding interest, at the rate of 8% per annum on each plaintiff's gratuity from the date of filing the suit to the date of payment in full.
- d) An award of a sum of shs 2.000.000= to each plaintiff as general damages.
- e) An order awarding interest upon the general damages at 8% per annum from the date of this judgment to the date of payment in full.

f) An order awarding costs of this suit to the plaintiffs.

**Eldad Mwangusya**

**J U D G E**

**09.05.2012**

**09/05/2012 at 3.17 p.m**

Davis Ndyomugabe for plaintiffs

Rwakoojo for defendant

Clerk – Milton

About 100 plaintiffs in Court

**Court:**

Judgment read in open chambers

**Keitirima John Eudes**

**DEPUTY REGISTRAR**

09/05/2012

