



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-00-CV-CS-0033-1997**

DR MENGE STEPHEN ----- PLAINTIFF

VERSUS

MBARARA DISTRICT LOCAL GOVERNMENT ----- DEFENDANT

Before: Hon. Justice Nshimye Allan Paul M.

JUDGMENT

REPRESENTATION

The Plaintiff was represented by M/s Kahungu-Tibayeita & Co Advocates, while the Defendant was represented by the Attorney General's chambers.

BACKGROUND

The plaintiff filed a plaint against Mbarara District Local council in the High Court at Mbarara on 21 October 1997. This was followed by a written statement of defence filed by the defendant at the court registry on 25th March 1998. On 27th May 1998 the plaintiff filed an amended plaint in which he claimed general and special damages for;

1. Unlawful arrest
2. Unlawful detention
3. Criminal trespass
4. Violation of rights to privacy
5. Forced labour.
6. Forcible and unlawful retirement
7. Ultimate and unlawful retrenchment /dismissal.

In a judgment delivered on 28th August 2012, Hon. Justice Andrew K. Bashaija held that that the suit was time-barred under Section 3 of The Civil Procedure and Limitation (Miscellaneous Provision) Act Cap 72. The plaintiff being dissatisfied with the decision of Hon. Justice Andrew K. Bashaija filed Civil Appeal 153 of 2012 by lodging a Memorandum of Appeal in the Court of Appeal on 5th November 2012.

The Court of Appeal quorum was in agreement that Civil Appeal 153 of 2012 succeeds and the appellant (plaintiff herein) is entitled to the orders set out in the Judgment of His Lordship Christopher Madrama JA, who on 6th May 2019 held that;

“In the premises, grounds one and two of the Appeal which will deal with the issue of whether the plaintiffs action is time barred, is allowed to the extent that the action which survives deals with the infringement of fundamental rights and freedoms. The appellant had a right to apply for redress which right could not be limited by Section 3 of the Civil Procedure and Limitation (Miscellaneous Provision) Act by defining the alleged infringement as a tort. To that extent the judgment of the High Court is set aside to enable the plaintiff to prosecute his suit alleging infringement of fundamental rights and freedoms and for redress. This matter is remitted to the trial court for trial of the suit or determination accordingly.”

This case, High Court 33 of 1997, was then reinstated at the High court in Mbarara in accordance with the orders of the Court of Appeal in Civil Appeal 153 of 2012. The parties then requested the High court for time to mediate the Matter. On 22nd March 2022, they signed a consent judgment in High Court 33 of 1997, which was endorsed by court on 1st April 2022 making it a judgment of the High Court.

The terms of the Consent Judgment as agreed by the parties and endorsed by court are;

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1. That Dr. Menge the Plaintiff should contact the Ministry of Agriculture Animal Industry and Fisheries to have his name reinstated on the MAAIF payroll with effect from 2nd May, 1995 so that his salary arrears since then are processed and paid by the Ministry.

2. *That Dr. Menge be reinstated in formal employment pending the attainment of the mandatory retirement age of 60 years.*
3. *That upon the attainment of the mandatory age of 60 years, payment of pension and gratuity commensurate for the position of Veterinary Officer be effected.*
4. *That alternatively, the Plaintiff be considered for early retirement as he has only one year to reach the compulsory retirement age of 60 years.*
5. *That the issue of whether the Plaintiff be paid damages and the quantum be determined by this Honourable Court when both counsel have filed and exchanged their written submissions.”*

The parties limited the High Court to determining whether the Plaintiff is entitled to damages and if so, what quantum as was stated under paragraph 5 of the consent judgment.

SUBMISSIONS

The Parties proceeded by written submissions, wherein the Plaintiff’s submissions were filed on 9th February, 2022 and the Defendant replied on 26th October, 2023. The Plaintiff filed submissions in rejoinder on 3rd November, 2023.

Plaintiff’s submissions

It was prayed for the Plaintiff that he deserves damages worth UGX1,000,000,000/= (Uganda Shillings One Billion) only given that the duration he would have served since 1987, and the prejudice he suffered at the hands of the Defendant’s officials. Counsel cited **OBONYO AND AMOR VS MUNICIPAL COUNCIL OF KISUMU (1971) EA 91** for the position that when a Court is making a general award, it may take into account factors like malice or arrogance on the part of the Defendant which is regarded as increasing injury suffered by the Plaintiff.

Defendant’s submissions

Counsel started by raising a preliminary objection to the effect that the consent judgment entered into by the Plaintiff and Defendant is incompetent since it seeks to enforce orders and create liability against a third party – the Ministry of Agriculture, Animal Industries and Fisheries, which is not a party to the suit.

On the merits of the matter, counsel submitted that special damages must be specifically pleaded and strictly proved, see **NABWAMI GRACE VS ATTORNEY GENERAL CIVIL SUIT NO.223 of 2015**. That the Plaintiff did not adduce any evidence for example expenditure on medical expenses to prove the special damages he claimed for including salary arrears, accommodation and medical expenses. It was argued that the Plaintiff was lawfully removed from staff accommodation and that he is not entitled to salary arrears since he was paid all entitlements and terminal benefits upon retrenchment.

Counsel further cited **LUZINDA MARION BABIRYE VS SSEKAMATTE AND 4 OTHERS CIVIL SUIT No. 366 of 2017** for the holding that general damages are awarded at the discretion of Court and are awarded to compensate the aggrieved for inconveniences accrued as a result of the actions of the Defendant. That the Plaintiff has failed to prove any damage, loss or injury he suffered as a result of the Defendant's actions. Counsel contended that the Plaintiff was never subjected to render forced labour and that the Plaintiff is not entitled to an award of damages.

Plaintiff's rejoinder

I reply to the Defendant's objection, the Plaintiff argued that the Court of Appeal rightly held that he was an employee of the central Government, a holding the Defendant did not challenge, and that the same cannot be re-adjudicated here. It was further submitted that the Permanent Secretary instructed the responsible officer to pay the Plaintiff's retirement benefits from the date of appointment 30th January, 1987, up to the mandatory retirement date 15th July, 2017. The Plaintiff thereafter reiterated his earlier submissions.

PRELIMINARY OBJECTION

I will first determine the preliminary objection raised by the Defendant to the effect that the consent judgment entered by the Plaintiff and Defendant is incompetent since it seeks to enforce orders and create liability against a third party – the Ministry of Agriculture, Animal Industries and Fisheries, which is not a party to the suit.

The argument of the defendant amounts to challenging the validity of a consent judgment one year and six months after it signed by them on 22nd March 2022

and endorsed by this Court on 1st April 2022. The Attorney General is an advisor of government, which government includes the Ministry of Agriculture, Animal Industries and Fisheries as well as the defendant in this case, this means that the Attorney General legal input was at the centre of the negotiations that were reduced into a consent between the parties. If the Defendants had any reservations to the consent judgment, they could have challenged before it was endorsed by court.

I also note that the defendant who as I have stated above is represented by the Attorney General, did not file any formal application to challenge the consent judgment after it was endorsed. The defendant could have filed a formal application challenging the same within a reasonable time, advancing reasons that would justify the setting aside of a consent judgment, which as I have stated above has not been done in this case.

The defendant has always been well represented by the Attorney General, in that regard, basing on the reasons above, I am inclined to overrule the defendant's preliminary objections.

DETERMINATION – DAMAGES

The parties in paragraph 5 of their consent judgement endorsed by court agreed that;

“That the issue of whether the Plaintiff be paid damages and the quantum be determined by this Honourable Court when both counsel have filed and exchanged their written submissions.”

This means that this court's role in this matter was reduced to determine whether damages are due and if so determine the quantum. This is what I will now proceed to address.

The principle of the law is that Special damages must be pleaded and proved as was held by the Supreme Court In **GAPCO (U) LTD Vs A.S. ALI TRANSPORTERS (U) LTD SCCA 07 OF 2007**

I have perused the Amended plaint, I find that in paragraph 22, the plaintiff outlines the special damages as constituting money spent on transport, accommodation meals and stationery but does not attach any quantum. This presupposes that he would have to prove the same on court record when adducing his evidence.

I have perused the court record after 6th May 2019 when the Court of appeal remitted the file back to the High Court ordering that the case be tried. This implies that there is no evidence on court record of any proved special damages. This court cannot award a quantum as special damages, when they have not been proved on court record in a course of a hearing, in that regard an award of special damages is not available to the plaintiff.

In principle General damages are at large and are assessed by the Court based on the injury, suffering and inconvenience caused as was held by the Supreme Court in **OMUNYOKOL VS ATTORNEY GENERAL SCCA 06 OF 2012**.

I have perused the Amended plaint, I again find that in paragraph 22, the plaintiff particularizes the general damages claim as emanating from physical pain, torture, embarrassment, hardship, loss of salary, redundancy and unlawful retrenchment he suffered as a result of the defendants' actions.

I have also perused the court record after 6th May 2019 when the Court of appeal remitted the file back to the High Court ordering that the case be tried. I find that the parties requested for time to negotiate and subsequently filed a consent judgment that was endorsed by this court on 1st April 2022.

In the consent Judgment signed by both parties, the first three paragraphs state that;

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1. That Dr. Menge the Plaintiff should contact the Ministry of Agriculture Animal Industry and Fisheries to have his name reinstated on the MAAIF payroll with effect from 2nd May, 1995 so that his salary arrears since then are processed and paid by the Ministry.

2. That Dr. Menge be reinstated in formal employment pending the attainment of the mandatory retirement age of 60 years.

3. *That upon the attainment of the mandatory age of 60 years, payment of pension and gratuity commensurate for the position of Veterinary Officer be effected."*

I note that the first three paragraphs of the consent judgment reproduced above confirm the allegations in the Amended plaint that the plaintiff had been retrenched, he was no longer earning a salary and the consent judgment was remedying that problem by ordering his reinstatement and payment of his salary arrears among other agreed positions.

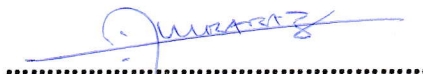
I find that the terms of the consent judgment prove the particulars of the general damages stated in the amended plaint. In that regard the plaintiff is entitled to an award of general damages for the irregular halting of his formal employment.

I note that in the case at hand the parties have in the consent judgment agreed that the plaintiff be reinstated on the pay roll with effect from 02 May 1995 and his salary arrears be paid. This implies that I only have to determine the quantum for general damages due to the plaintiff.

In determining the quantum to award as general damages, I am guided by the decision of the Supreme Court in **OMUNYOKOL VS ATTORNEY GENERAL SCCA 06 OF 2012**, where the Supreme court awarded shillings 50,000,000 as general damages to an appellant who had lost his job as a result of an unlawful decision of the Public Service Commission. This award of general damages by the Supreme Court was on top of an order for him to be paid a computation of salary for the period of infringement.

In conclusion, therefore order;

1. that the plaintiff is awarded general damages of shillings fifty million (50,000,000) for the irregular halting of his formal employment.
2. The defendant shall pay costs of the suit to the plaintiff.


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NSHIMYE ALLAN PAUL M.
JUDGE
24-05-2024