

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO 62 OF 2006**

**1. SEBABI DEOGRATIUS**

**2. JACOB NGOBI** ..... **PLAINTIFFS**

**3. MUTUSYA STUART & 126 OTHERS**

***VERSUS***

**UGANDA REVENUE AUTHORITY** ..... **DEFENDANT**

**BEFORE: HON. JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

The plaintiffs, all former employees for payment of the Uganda Revenue Authority (hereinafter referred to as the defendant) filed twelve separate suits against their former employees for their benefits of employment that were wrongly denied to them by the defendant and/or its servants in the course of and upon termination of their employment and for specific declaration as to their entitlements. In the same suits they had made claims against the NSSF for a declaration that it had defaulted on its statutory obligations in as far as their NSSF contributions are concerned. The suit against the NSSF was subsequently withdrawn.

On 26.06.2009 all the twelve suits were consolidated into C.S No. 62 of 2006 in order that all the suits are tried together since the claims were similar, were against the same defendant and raised the same issues.

A scheduling conference was conducted on 11.09.2007 wherein the parties stated their respective cases but during the course of the trial a re-scheduling of the case was done by way of joint

conference notes. From the joint scheduling notes filed by the parties the following facts were agreed:-

1. The plaintiffs were at different times employed by the defendant between the years 1992 to 2005.
2. The plaintiffs were terminated and some plaintiffs voluntarily retired from the employment with the defendant.
3. Following their termination or retirement, the plaintiffs were paid long term service awards at a rate of 2.5% in accordance with the old Human Resource Manual whose operation ended in July 2004.
4. The plaintiffs' claim is that they should have been paid long service awards at the rate of 15% in accordance with the new Human Resources Management Manual which came into effect on 1<sup>st</sup> August 2004.
5. The plaintiffs also claim to be public servants liable to pension.
6. The plaintiffs claim payment in lieu of uniform allowance.
7. The plaintiffs claim further payment in lieu of notice.
8. The plaintiffs claim that the above claims notwithstanding, the whole computation of benefits were erroneous.

The following issues were framed:-

1. Whether the plaintiffs are entitled to gratuity under the new HRMM calculated at 15% of gross annual pay.
2. Whether the plaintiffs are entitled to further payment in lieu of notice of termination.
3. Whether the plaintiffs are entitled to pension under terms of employment.
4. Whether the calculation of the plaintiffs' benefits was erroneous.
5. Whether the plaintiffs are entitled to payment in lieu of uniform allowance.
6. Whether the plaintiffs are entitled to special and general damages.
7. Costs.

The plaintiffs tendered on the following documents in support of their case.

1. Appointment letters of employment tendered and marked Exh. P.1
2. Termination letters tendered and marked Exh. P.2
3. Computation of terminal benefits.
4. Correspondences between the plaintiffs and defendant tendered and marked Exh. P.4.
5. Human Resources Manual tendered and marked Exh. P.5 and 6.
6. URA Internal memo dated 17<sup>th</sup> March 2005 tendered and marked Exh. P.7.
7. URA Internal memo dated 17<sup>th</sup> March 2005 tendered and marked Ex. P.7. URA internal memo dated 30<sup>th</sup> March 2005 tendered and marked Exh. P.8.
8. URA Internal memo dated 4<sup>th</sup> August 2004 tendered and marked Exh. P.9.

9. Minutes of meeting between URA and Birungyi, Barata and Associates of 20<sup>th</sup> October 2005 tendered and marked Exh. P.10.
10. IGG's letter to URA of 9<sup>th</sup> August 2005 tendered and marked Exh. P.11.
11. URA letter to IGG of 17<sup>th</sup> August 2005 tendered and marked Exh. P.12.
12. URA/PAYE/7A of 25<sup>th</sup> March 2005 (death benefits) tendered and marked Exh. P.13.
13. Payment Voucher No. 037947 of 11<sup>th</sup> October 2004 tendered and marked Exh. P.14.

On the other hand the defendant filed the following documents in support of her case:-

1. New HRMM 2004 tendered and marked Exh. D2.
2. Old HRMM 1992 tendered and marked Exh. D.1
3. BOD minuted of the 168<sup>th</sup> meeting tendered and marked Exh. D.4.
4. BOD minutes of the 166<sup>th</sup> meeting tendered and marked Exh. D.5.
5. Internal Circular dated 04.08.2004 tendered and marked Exh. D.6.
6. URA Internal memo dated 17.03.2005 tendered and marked Exh. D.7.

After the scheduling wherein the above facts and documents were admitted without any dispute it was agreed between the parties that it was not necessary to adduce any oral testimony because all the issues raised were legal issues that could be determined on the basis of the documentary evidence and the law cited. Counsel were allowed time to file written submissions which they did. From the submissions of the defendant it transpired that a number of other suits namely HCCS No. 484, 526, 527, 529 and 530 all of 2005 had been consolidated into HCCS No. 528 of 2005 –William Mukasa Vs Uganda Revenue Authority where similar issues were raised and resolved by Hon. Justice M.S Arach Amoko as she then was on considerations that will be taken into account if they are still relevant.

The first issue is as to whether the plaintiffs are entitled to gratuity at the new HRMM calculated at 15% of gross annual pay and I will give a brief background as to the genesis of the issue.

The defendant is a statutory body created by the URA Act (Cap 196) Laws of Uganda. From its creation the terms of employment were governed by the Human Resources Management Manual of 1992 admitted in this trial as Exh. D.1. Under this manual there were three levels of staff as follows:-

- i. Management (Assistant Commissioner) and above appointed on 3 year contracts.
- ii. Non Management staff (below Assistant Commissioner) appointed on permanent and pensionable terms.
- iii. Temporary staff.

The plaintiffs were in the 2<sup>nd</sup> category and according to the 1992 manual they were entitled to a Long Service Award at 2.5% on leaving the defendant's employment. Management staff were entitled to 12% gratuity and it goes without saying during the course of one's employment it was possible to move from one category to another and the movement would attract a change of terms if the employee moved to the bracket of 12% gratuity instead of 2.5%.

It was agreed by the parties that the 1992 manual was replaced by a new manual which came into effect on 01.08.2004. This manual was exhibited at the trial as Exh. D.1. Clause 3 thereof was as follows.

***“3.2(a) All appointments to the authority shall be on contract.***

***(b) There shall be three types of contract: Management contract, Staff contract and other contracts.***

### ***3.3.2 Staff contracts***

***(a) Every employee from the rank of Principal Revenue Officer and below shall be appointed on staff contracts***

***(b) Contract period, staff contract, appointment shall be for years (48) months.***

### ***3.2.3 Other contracts***

These could be either specialised skills assignment contracts or post retirement contracts, all of which will normally be for a shorter period.

### ***3.2.3 Gratuity***

***(a) On completion of a contract, the employee appointed under 3.2.1 of this manual shall be eligible for a gratuity equivalent to 24% of the gross annual salary for each completed year of the contract. In any case, the gratuity shall be 15% of the gross annual salary.***

***(b) If the employee leaves employment before the end of his contract he shall be paid gratuity on a pro rate basis.***

***(c) No employee shall be entitled to gratuity unless has completed a minimum of one year of service to the Authority.***

My understanding of the this clause is that on the implementation of the new manual fresh or new appointees would be governed by the new manual while the old employees like the plaintiffs would be converted also by appointment to be brought under the operation of the new manual rather than the old manual under which they had been employed. In my view if an employee was appointed “on permanent and pensionable terms” it was not automatic that he or she would convert to an “appointment on contract.” He or she would have to be offered the contract in order to claim under it. This is one of the factors considered in the case of William Mukasa Vs Uganda Revenue Authority already cited where Lady Justice M.S Arach Amoko as she then was held as follows:-

***“The plaintiff’s complaint is that they are entitled to gratuity calculated at a rate of 15% of their gross annual salary as provided by the new manual and communicated to them in the circular of 4<sup>th</sup> August 2004 [Exh. P.7].***

***The defendant’s submission is on the other hand that all through the plaintiff’s employment with the defendant they were never appointed on contract and their employment was always on permanent and pensionable terms. They held appointment letters to that effect. They were entitled and were rightly paid a Long Service Award of 2.5% as per clause 14.7(a) of the old manual. Under the same document, gratuity was paid to staff on contractual terms. Such staff had been issued with appointment letters to that effect, clearly stating that they were on contract.***

***Upon careful consideration of the submissions and the evidence on record I must say I find merit in the defendant’s position.***

***The terms and conditions of service of an employee is contained in the appointment letter. The plaintiff’s appointment letter (Exh. P.2) was exhibited in court. It is dated 6<sup>th</sup> May 1992. This was under the old manual.....”***

I agree with this judgment. The only letter of appointment produced at this trial was that of Ngobi Jacob which was tendered as Exh. P.1. It is dated 8<sup>th</sup> November 1993. Nobody produced any evidence that any of the plaintiffs was appointed on contract under the new HRMM and the claim that they are entitled to gratuity calculated at 15% of gross annual pay is unsustainable and the 1<sup>st</sup> issue is therefore answered in the negative.

The second issue is as to whether the plaintiffs are entitled to further payments in lieu of notice of termination. Under S.2 of the Employment Act, 2006 “termination of employment” means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as, expiry of contract, attainment of retirement age, etc. “Termination” has the meaning given by Section 65. Section 65 provides as under:-

“65. Termination.

1. *Termination shall be deemed to take place in the following instances –*
  - a. *where the contract of service is ended by the employer with notice;*
  - b. *where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee;*
  - c. *where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee; and*
  - d. *where the contract of service is ended by the employee, in the circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.*
  
2. *The date of termination shall, unless the contrary be stated, be deemed to be –*
  - a. *in the circumstances governed by subsection (1)(a), the date of expiry of the notice given;*
  - b. *in the circumstances governed by subsection (1)(b), the date of expiry of the fixed term or completion of the task;*
  - c. *in the circumstances governed by subsection (1)(c) or subsection (1)(d), the date when the employee ceases to work for the employer; and*
  - d. *in the circumstances when an employee attains normal retirement age.”*

The significance of this provision is that the circumstances under which the plaintiffs left the employment of the defendant were not strictly under the provisions of this Act.

A decision was taken by the Board and according to the Retrenchment computation of Ngobi Jacob tendered as an exhibit and marked Exh. 20 the package included the following:-

1. 5 months consolidated pay
2. 15 days pay for June 2005
3. Long Service Award
4. Commutated Leave Pay
5. Transport Allowance

The package also included deductions which are not relevant to the issue. In my view it cannot have been the intention of the Board to pay more than the five months consolidated pay. The package covered the payment in lieu of Notice provided for under the HRMM. The Board minute URA/08/2005 (Exh. D.4) clearly states staff were to be paid severance pay equivalent to 3 months salary to staff that were leaving. So if they were paid five months the two months were for payment in lieu of Notice.

The third issue is as to whether the plaintiffs are entitled to pension under their terms of employment. The issue was raised and resolved in the case of William Mukasa Vs Uganda Revenue Authority where Lady Justice Arach Amoko cited with approval the case of URA Vs Boniface Quinto Ojok, Civil Appeal No. 33 of 95 where the Supreme Court of Uganda after citing of Article 175 of the Constitution held that employees of URA are not Public Officers for purposes of pension under Article 254(1) of the Constitution. She stated thus:-

***“In the case of URA Vs BONIFACE OJOK, Civil Appeal No. 33 of 95, the Supreme Court settled this issue. This is what Order JSC (RIP) observed and held in his judgment at page 281 after citing Article 175:***

***In my view this is a contextual definition of public officer. The definition applies to chapter ten of the Constitution and it appears to be limited to provisions of that chapter only. Chapter ten establishes and concerns the Public Service Commission, the Education Service Commission and the Health Service Commission. In the circumstances, i am unable to agree that the employees of URA are public officer under chapter ten of the Constitution, and therefore URA is a government undertaking for purposes of exemption under Section 5(3) of the Decree 75. In the circumstances I do not think that definition of ‘Public Officer’ applies to public bodies or corporations such as the URA.”***

***This court is bound by that Supreme Court pronouncement.***

***For that reason, I hold that the plaintiff is not a public officer for purposes of pension under Article 254(1) of the Constitution. This issue is answered in the negative.”***

I agree with the above position. First of all as rightly stated by Lady Justice Arach Amoko this court is bound by the Supreme Court decision. I also wish to observe that if the argument of the

plaintiff has all along been that they are governed by the Human Resources Manual of the defendant I do not comprehend as to the circumstances under which the Human Resources Manual would apply and the circumstances under which the Public Service Standing Orders for example would be applied. To mention two examples the Long Service Awards paid to the plaintiffs do not exist under the Public Service Standing Orders and neither do the contributions to the National Social Security Fund which the plaintiffs claimed in this court.

This issue would also be answered in the negative.

The last issue argued is as to whether or not the plaintiffs are entitled to special and general damages but from the resolution of the above issues no damages are available to the plaintiffs.

Therefore this court finds no merit in this suit which is dismissed with costs to the defendant.

**Eldad Mwangusya**

**J U D G E**

**30.04.2013**

Delivered by the Deputy Registrar this ..30<sup>th</sup>.. day of..April.. 2013

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**Asiimwe Tadeo**

**Ag. DEPUTY REGISTRAR**

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