THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 0132 OF 2010

TABARO-SINARUHAMAGAYE IGNATIUS::::::::::::::::::::PLAINTIFF

VERSUS

NATIONAL CURRICULUM DEVELOPMENT CENTRE::::::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

This suit was filed by the plaintiff, for special and general damages, and other entitlements arising out of the alleged failure by the defendant, the plaintiff's former employer, to pay him the proper and full terminal benefits, pension, payment in lieu of leave and related entitlements upon retirement from the defendants' employment.

It is not disputed that the plaintiff was first appointed into the service of the defendant in May 1975 as a Specialist, Science – Secondary. He was later appointed as the in-charge of the defendant, and later as Deputy Director on contract having reached retirement age. It is the plaintiff's case that according to

his terms of service, he was entitled, inter alia, to retirement benefits under the defendant's Superannuation Scheme operated by National Insurance Corporation (NIC), social security benefits under the National Social Security Fund (NSSF), terminal benefits under the defendant's Financial Regulations and Guidelines, housing, and transport/fuel allowance. Further that the defendant did not pay the plaintiff his said entitlements fully, which occasioned him special damages.

In their written statement of defence, the defendant averred that it operated an in-house retirement benefits' scheme for its staff for the period 1989 to 1999; the plaintiff had been informed of the value of his entitlement under the scheme; the plaintiff's entitlement under NSSF was remitted directly to the Fund; the plaintiff's claim for salary arrears was a contingent liability and the Government had never released any funds to settle the alleged liability. As regards transport/fuel allowance, the defendant averred that the plaintiff was ferried to and from work, and was later provided with the defendant's vehicle and driver. In respect to the claim for housing allowance, the plaintiff was housed in the defendant's house, and later his allowance was consolidated with his salary. Furthermore, the plaintiff was overpaid on his claim for retirement benefits under the Financial Regulations and Guidelines by Shs. 7,463,103= which the defendant is now counterclaiming.

The following facts were agreed by the parties:

1) The plaintiff was employed by the defendant in the posts stated.
2) The defendant operated an in-house retirement scheme with NIC.

The agreed issues were:

1. Whether the defendant's obligation to operate a retirement benefit scheme in respect of the plaintiff extended to the period before 1989 and after 1999.
2. Whether the plaintiff is entitled to the sum as claimed in the plaint or at all.
3. Whether the defendant fully remitted the plaintiff's entitlements to NSSF.
4. Whether the plaintiff is entitled to salary arrears.
5. Whether the plaintiff is entitled to pay in lieu of untaken leave.
6. Whether the plaintiff is entitled to housing allowance.
7. Whether the plaintiff is entitled to transport/fuel allowance as claimed.
8. Whether the plaintiff is entitled to claim terminal benefits under the defendant's Financial Regulations & Guidelines for the period he was under the permanent employment with the defendant.

9. Whether the defendant/plaintiff in Counterclaim is entitled to the sum counterclaimed.
10. What remedies are available to the parties?

The plaintiff was represented by Mr. Mukeeri Mugisha, while the defendant, by Mr. Elijah Wante. Counsel were directed to file written submissions which they did. The issues are resolved in the order they were presented.

Whether the defendant's obligation to operate a Retirement Benefit Scheme in respect of the plaintiff extended to the period before 1989, and after 1999;

It was submitted for the plaintiff that under his terms of service with the defendant, he was entitled to retirement benefits with the defendant's in-house retirement scheme operated by NIC. The scheme was contributory, and the plaintiff was entitled to a monthly saving of 20% of his basic salary; 5% of which was deducted from his salary, and 15% was the defendant's contribution.

At the trial, the plaintiff testified that he was given an appointment letter a copy of which was admitted in evidence as exhibit P1. The said exhibit stated in part in paragraph 2 thus;

> ***"..... in the meantime, I enclose the provisional terms and conditions of service for the professional staff of the Centre***

which have been forwarded to the Ministry of Public Service for approval in respect of the Superannuation Scheme."

The plaintiff adduced Exhibit P2 as the terms which were enclosed and referred to in his appointment letter. Clause 9 of Exhibit P2 provided for the Superannuation Scheme which made it compulsory for all members of staff, unless otherwise specified in a member's appointment letter.

Counsel for the plaintiff relied further on Section 25 (2) and S. 38 (1) (c) of the National Curriculum Development Centre Act, Cap. 133 which empowered the defendant to make standing orders to provide for pensions, gratuities and other such payments for retirement. The respondent had enacted the Standing Orders (Exhibit P18) which provided in Part 1 Section 11.a (at p. 108) for the operation by the National Curriculum Development Centre of Senior Staff Superannuation Scheme with NIC, which was to be compulsory.

The plaintiff's case is that he is entitled to retirement benefits under the scheme under NIC from 1975 to June 2005, the period he worked for the defendant. He testified that he suffered deductions from his salary to contribute to the said scheme; therefore the defendant's obligation to contribute to the scheme extended to the period before 1989.

As regards the defendant's obligation to contribute to the scheme for the period beyond 1999, the plaintiff testified that he had never been advised that the scheme had stopped; the benefits under the scheme were a condition of his terms of service enshrined in the defendant's Standing Orders. Although DW1, the defendant's Internal Auditor, Mr. Bwire Robert Makanga, had relied on Exh. D2 to state that a decision had been taken by the defendant's Governing Council to halt contributions to NIC in preference of NSSF, the plaintiff denied ever receiving Exhibit D2 which in any case was authored by the Finance Secretary, and addressed to no one.

Counsel further contended that even if the communication was taken to mean stoppage of the scheme, it would be of no effect as it would have been *ultra vires* the powers of the Finance Secretary, because the Standing Orders made the Scheme compulsory, and it was also a fundamental term of the applicant's contract of service. Further still, DW1 had testified that he had never worked with the plaintiff hence his evidence was hearsay (See S. 59 of the Evidence Act). Further still, for such stoppage to be effective, it required an amendment of the Standing Orders with the approval of the Minister. (See Exhibit P18 Introduction Page 1 paragraph 1 (8).

Counsel further submitted that the averment by the defendant that the retirement scheme under NIC was stopped in favour of

NSSF was untenable because the Standing Orders were made in 1989 after the NSSF Act which was made in 1985, and its provisions were well known before an additional scheme was established by the respondent. He relied on ***Muljibhai Madhvani & Co. Ltd & Steel Corporation of EA Ltd Vs Francis Mugarura & 36 Others SCCA No. 13 of 2006*** to state that when a company has a document for its terms and conditions of service, which specified payment plans and benefit options, an employee should be allowed to rely upon those terms and conditions.

Counsel concluded that the defendant was obligated to contribute to the scheme for the plaintiff for the period beyond 1999.

Counsel for the defendant was of a different view. He submitted that the defendant had through its DW1, the Internal Auditor of the defendant, in his statement on oath admitted that the scheme was indeed set up and that the plaintiff was a beneficiary with a contribution of 5% being deducted from his basic salary, and 15% of his basic salary being paid by the defendant; and that for a period between 1996 and 1999 their payroll was taken over by the Ministry of Education and deductions to pay towards this scheme had to be sourced from the Consolidated Fund and not the defendant. Counsel referred court to the authority of ***Namyalo Josephine Vs NCDC HCCS No. 122 of 2008*** which was based on the same facts, and where court had believed the testimony presented by the defendant that the Government did take over

this scheme between 1993 – 1996. For that reason during October 2010 the defendant requested, and the Auditor General computed the plaintiff's NIC entitlements to be Shs. 2,780,411. (See Annexture A to DW1's witness statement). However, no payment was made to the plaintiff in respect of that computation because of a previous erroneous payment that had been made to him on 9/9/2008.

Counsel contended further that DW1 had deponed that the defendant had operated the NIC scheme from January 1989 to August 1999; and only ceased to make payments towards scheme during September 1999 as a result of a directive by NSSF to the defendant to begin making statutory contributions under the NSSF Act, as savings for the plaintiff and other employees of the defendant. However, due to financial constraints, the defendant could not sustain payments to both schemes. After September 1999, the defendant made no remittance to the NIC scheme on behalf of its employees, a fact that was communicated to the plaintiff and other employees of the defendant by a circular of the Finance Secretary tendered as Exhibit D2. The circular was placed on the defendant's notice board, and was available for all the members of staff to read; and since the plaintiff was part of management, he ought to have been aware of all these developments at the defendant.

On the argument that the said circular would be of no effect as it emanated from the Finance Secretary of the defendant who assumed the powers of the Governing Council, Counsel replied that the circular was very clear that the Finance Secretary was acting on the directives of the Governing Council. And on the submission by the plaintiff's Counsel that Exhibit D2 did not eliminate contributions to NIC but simply prioritized payments to the NSSF over those of the NIC, Counsel replied that this was not so; no direct or implied mention was made that would lead to the conclusion that the defendant offered to continue with payments to the NIC Scheme. Further, the stoppage of the NIC scheme did not require amendment of the Standing Orders because the obligation to pay contributions to NSSF is a statutory obligation which overrides the provisions of the Standing Orders which were internal regulations of the defendant. Further still, although the Standing Orders were made and came into force after the NSSF Act, there was no evidence that this was a factor that was considered by the drafters of the Standing Orders, which are silent on the NSSF.

Counsel concluded that the plaintiff had not proved his claim; and that all the entitlements of the plaintiff were fully discharged by the defendant.

I have considered the submissions of learned Counsel on either side on this issue. The plaintiff made a claim for Shs.

18,759,667= as unremitted contributions to NIC, alleging that by virtue of his employment, he was entitled to contribution to the NIC Scheme extending to the entire duration of his tenure at the defendant. It is not in dispute that the defendant operated an in-house retirement scheme with the National Insurance Corporation (NIC) whereby the defendant was obligated to contribute the equivalent of 15% of the plaintiff's basic salary, and the plaintiff to contribute 5% as a deduction from his salary. Although the plaintiff's claim is from 1975 when he started working for the defendant, up to June 2005 when he retired from pensionable service of the defendant, the defendant, in its written statement of defence averred that it only operated the scheme from January 1989 to August 1999. The basis of plaintiff's claim is his appointment letter which referred to the said scheme.

Although the plaintiff testified that he suffered deductions to contribute to the said scheme, he produced no evidence to that effect, despite the legal maxim that he who alleges must prove. Without any sort of proof to that effect, I am not convinced to the balance of probabilities that the plaintiff suffered cuts from his salary as contribution to the NIC Scheme before it started operating in 1989. I am therefore inclined to believe the defendant that the scheme started in 1989, and before that no contributions were made by either party.

The defendant also submitted that the only period when contributions were not made during the relevant period was during 1993 – 1996, when the defendant's payroll was taken over by the Ministry of Education.

Further, in a letter to the plaintiff from the defendant dated 19/8/2010 relating to the recovery of Shs. 7,463,103= allegedly advanced to the plaintiff in error, the defendant's Director admitted the plaintiff's entitlement to unremitted contributions between 1996 – 1999 which the defendant suggested should be offset from the amounts that were overpaid to the plaintiff on 10/9/2008.

It appears to me that the calculation by the Auditor General of the contributions for the period 1996 – 1999, the only contention appears to be that this amount was not paid to the plaintiff basing on the ground that he had been overpaid as a result of miscalculation of his gratuity. What is clear is that the amount owing under this claim is not contested. As to whether it may be offset by the defendant will be determined later when court is determining whether there was an overpayment or not.

The plaintiff further alleged that he had never been advised that the NIC scheme had stopped, despite the circular relied on by DW1 in his testimony (Exhibit D2) informing the staff of the stoppage of contributions to the scheme in favour of the NSSF

retirement scheme. Although DW1 did not have the minutes containing the decision of Council on the matter, he offered some explanation of the reasons behind the stoppage of the NIC scheme; which reason was stated to be the financial constraints faced by the defendant. DW1 also stated that the decision was put on the notice board for all staff to see. I also note that in his testimony the plaintiff stated that he did not loose salary to both schemes at the same time.

The court record shows that when asked in cross-examination whether it was not true that the defendant had in 1999 notified staff that they were stopping deductions in favour of NIC to start payments to NSSF, the plaintiff had replied that there must have been communication to that effect. And when he was referred to Exhibit D2, he stated that he saw the communication, and that deductions on his salary were henceforth being made to NSSF; and later that although the communication came, staff were not happy with it.

From the above, the court finds that the plaintiff had notice of the stoppage of the scheme in 1999, and there is no evidence that the move was resisted by the plaintiff. The fact that the communication was made by the Finance Secretary did not affect its effectiveness since the Finance Secretary clearly indicated that he was conveying a decision of the Board.

Further, I find no inference from the circular (Exh. D2) that the defendant had offered to continue with the payments to NIC Scheme. I further agree with the defendant's submission that stoppage of the NIC Scheme did not require an amendment to the Standing Orders as contended for the plaintiff in the submissions, since the obligation to pay contributions to the NSSF is statutory one which overrides the provisions of the Standing Orders which are internal regulations of the defendant.

The plaintiff has therefore failed to prove this claim hereunder. Apart from the uncontested unremitted payments, for the period 1996 – 1999, the rest of the issue is answered in the negative.

Whether or not the defendant fully remitted the plaintiff's entitlements to NSSF;

The plaintiff made a claim of Shs. 12,847,214= as a balance for unremitted contributions to the National Social Security Fund (NSSF). PW2 testified that he had computed the said amount at the request of the plaintiff, and according to the plaintiff's Counsel's submissions, this was uncontroverted. It is however, contended for the defendant that full remittance was made of all the plaintiff's entitlements to the NSSF.

The plaintiff argued that no contributions were made on his behalf until around September 1999 (the period immediately after the

NIC scheme was discontinued and which was the case for all the other employees) and not NSSF 1985 when the law was enacted. The defendant however argued that any computations should be restricted to the period September 1999 to June 2005, when the plaintiff ceased to be an employee of the defendant.

It is further contended for the defendant that if there were any unremitted contributions by defendant to NSSF in respect of the plaintiff's entitlements it should be NSSF to claim or demand from defendant and not the plaintiff; that it was only the NSSF that could entertain such a claim, and not the defendant. This, therefore, made the present claim redundant as the plaintiff had no locus to make this claim against the defendant. The defendant prayed for dismissal of the claim.

I have considered the rival arguments of the parties. I find that the plaintiff has not proved his allegation that the defendant did not discharge all its obligations from September 1999 when contributions to the NSSF began, to June 2005 when he retired. I indicated earlier that the rule of evidence is that he who alleges must prove. The plaintiff did not bother to bring evidence from NSSF to prove his allegations of non-remittance by the defendant of its contributions on his behalf. I am therefore unable to allow this claim.

As for the claim for non-payment by the defendant of its contributions to NSSF with effect from 1985 when the NSSF Act was enacted to 1999 when contributions were commenced, I agree with the defendant that it is up to NSSF to declare that the defendant had defaulted by not embracing the NSSF as soon as the Act was enacted. NSSF has not done so. In any case, the defendant has clearly stated that it was not feasible to operate two schemes at the same time. At least there was another scheme being operated by the defendant for the benefit of the plaintiff, out of which he was benefiting the equivalent of 15% of his basic salary as contribution from the defendant. There is no proof that the plaintiff's salary was being deducted in respect of NSSF prior to 1999 when the scheme was embraced. The issue is answered in the negative.

Whether or not the plaintiff is entitled to salary arrears, untaken leave and other allowances claimed;

The plaintiff claimed for salary arrears, claiming that in 1996, the defendant increased salary for staff which was not implemented and when it was, it was done selectively. He claimed a sum of Shs. 8,608,950=.

The defendant, admits through DW1, in paragraphs 21, 22, 23, 24, 25, 26 and 27 of his statement on oath dated 3/10/2012, that there was a proposed salary structure that would have increased salaries of employees whose salaries fell below that of their

counterparts in the Civil Service but the plaintiff did not fall in this category. He further explained that the proposed salary structure was never implemented since the increments were rejected by the Ministry of Finance, Planning and Economic Development. The proposed increment is now deemed and termed as a "*contingent liability*" which is disclosed as such in the defendant annual statutory financial statements, and that this was exhaustively explained to the plaintiff through his lawyer in the defendant's letter attached as P. Exhibit 9.

I find that the issues raised hereunder were the same raised in ***Namyalo Josephine Vs National Curriculum Development Centre HCCS No. 122 of 2008.*** The issue was dealt with in detail. It is same Counsel, Mr. Mukeeri who represented the plaintiff. I don't intend to delve so much in the arguments above regarding this issue. Suffice it to say that I agree with the findings and conclusion of my brother, Bamwine J (as he then was) when he believed the explanation given by the defendant that there is a budgetary shortfall which is reflected in the audited accounts as a contingent liability, which has never been converted into a liability as Government has never released money to the defendant to pay its staff the revised salaries; which raised salaries have never been sanctioned by Government. It is further noted that the same issue still arose in ***Namyalo Josephine Vs NCDC MA No. 100 of 2011*** but the attempt by the applicant therein to obtain a review of HCCS of 122 of 2008 (supra) was rejected. I

find that nothing has changed to merit any fresh consideration by this court, and I fully agree with the findings and conclusion in HCCS 122 of 2008. I find that this claim has no merit.

Transport/Fuel Allowance;

The plaintiff claimed a consolidated travel allowance of 40 litres of petrol per week when he was a deputy director, calculated at Shs. 8,320,000= for 104 weeks (2 years) at a sum of Shs. 2000 per litre which PW2 testified was obtaining at the period. The plaintiff in his testimony denied having used the Institutional vehicle.

The defendant admitted through paragraph 20 of DW1's witness statement that the plaintiff was entitled to transport or fuel allowance. The witness further stated that he had confirmed from personal files of the plaintiff and records held by the defendant that for the period that the plaintiff was a Deputy Director of the defendant, he was availed with an official car Registration No. UAA 070 and a driver called Lubega whose wages were paid fully and the car was fuelled by the defendant to the extent to which the plaintiff was entitled.

The defendant therefore contended that this claim should, accordingly, fail.

From the evidence available on file, I find that the defendant is not able to prove that the plaintiff was paid for the period he

worked as a deputy director. DW1 testimony that he looked at the plaintiff's file and the records and saw that the plaintiff was allocated a working car and driver is not backed by any evidence, like copies of what he saw in the plaintiff's file and defendant's records. The burden of proof is on the defendant to prove that a vehicle was availed to the plaintiff together with fuel for the stated period. I therefore believe the plaintiff that he was not availed his entitlements under this claim, and I allow his claim for transport/fuel allowance for the period when he was Deputy Director at the defendant, as claimed.

Housing Allowance;

The plaintiff testified that as deputy director he was entitled to a house or housing allowance, but he was given neither a house nor a housing allowance for the period July 2005 to June 2007, when he served in that position of Deputy director. Exhibit P18 did incorporate the provisions of the Standing Orders into the provisions of his contract.

The plaintiff relied on defendant's Standing Orders Part 1 Section C, C.k which provides that a senior officer not housed by the Centre will be paid a housing allowance to be determined by the Finance and General Purposes Committee from time to time, (page 63 of Exhibit P18) and Section C.p (2) of the Standing orders (p.65 of Exhibit P.18) that;

> ***"the Deputy Director would be accorded a free grade 2 furnished house; free house telephone, and a consolidated***

travel allowance of 40 litres of petrol per week, none of which the plaintiff was accorded to him."

The plaintiff therefore seeks to recover Shs. 6,480,000= for that period. PW2 also testified that the plaintiff was entitled to housing allowance of Shs. 270,000= per month as the sum last fixed by the defendant's Council in 1996.

The defendant did not agree. In his evidence DW1 stated that the plaintiff was paid his salary as a consolidated package which included his housing allowance in line with the Government policy on civil service housing payment.

I find that DW1's evidence was not so helpful as there was no evidence to prove that such a policy existed, and if it did, if it also affected the member of staff who was on contract, and not in the civil service. I am therefore unable to accept the evidence of DW1 in this respect without any further proof. I find that the plaintiff has proved his claim for housing allowance, beyond the balance of probabilities.

Payment in lieu of leave;

The plaintiff claimed for payment in lieu of untaken leave for one year. He testified that when he was appointed the in-charge of the defendant he could not go on leave. After the director was

appointed he applied for leave but it was not granted. He therefore claimed for leave for 2004 and sought a month's pay in lieu thereof of Shs. 1,293,200=.

In reply the defendant, through DW1 testified that the plaintiff took most of his leave, and when he stayed, it was his unauthorised decision to stay at work. I also note from the defendant's evidence that the plaintiff often took his leave. Not taking leave was, therefore, not his habit.

Counsel for the plaintiff relied on S. 54 (5) of the Employment Act which states:

> ***"An employee is entitled to receive, upon termination of employment, a holiday with full pay proportionate to the length of service for which he or she has not received such a holiday or compensation in lieu of the holiday."***

The defendant contended, however, that the plaintiff was entitled to leave and that there were clear provisions to be followed by any employee who wished to proceed on leave which according to the Standing Orders of the defendant, would require certain procedures which would involve documentary evidence. It was, therefore, incumbent upon the plaintiff to have availed evidence to the court to support this claim, which he did not do.

The defendant's Internal Auditor had stated in his statement on oath that he confirmed from the plaintiff's personal file and records and also maintained during cross examination that the plaintiff took all his leave he was entitled to and if there was any time when the plaintiff did not take leave and decided to stay at work that was his own decision and it was unauthorised.

The court notes that the plaintiff, in his statement and at cross-examination, explained why he did not take leave that year, and though he presented no documentary evidence to show that he had indeed applied to take leave and it had been denied, his explanation, which was not rebutted by the defendant was convincing to court. Further still, the defendant did not adduce evidence to show that the plaintiff took the leave he is now claiming payment for. I, therefore, find that the plaintiff is entitled to the payment in lieu of leave as claimed.

Whether or not the plaintiff is entitled to a claim for terminal benefits under the defendant's Financial Regulations and Guidelines for the period he was under the permanent employment with the defendant;

In 2005, the defendant passed its Financial Regulations and Guidelines (Exhibit P17). Regulation 32 thereof entitles an officer who has been in the service of the defendant to retirement

benefits equivalent to 20% of the employees' basic salary for the period served. The regulation states:

> ***"Provisions of the NSSF Act shall be adhered to ....."***
>
> ***"The retirement benefits of 20% of the basic annual salary of the employee for the period served shall be paid to the permanent employee under the following terms;***
>
> ***iv) On retirement after attaining 60 years of age.***
> ***v) A member of staff shall qualify for retirement benefits after serving 5 consecutive years at the centre." (Emphasis added).***

The plaintiff testified that after retirement, he was paid some money but not all, and he based his claim on salary earned from 1975 to June 2005 when he retired. He claimed Shs. 5,050,415= as the amount outstanding.

In response, the defendant in their counterclaim alleged that the plaintiff was overpaid, as the regulations governing the pay were enacted in 2005, and they did not have retrospective effect. Further, that the regulations being bye laws should be governed by the same principle governing Acts and other legislation; that is to say, they should not act retrospectively.

Counsel for plaintiff contended however that the wording of the regulation with emphasis on the words "period served" was

meant to cover the whole period of the plaintiff service; and if there had been a different intention, there would have been a qualification to limit its effect on the existing contracts of service. Counsel relied on ***Namyalo Josephine [2011]*** (supra) to affirm his point; which reliance was contested by Counsel for the defendant who submitted that the case was not about the period served, but about the categories of employees serving the defendant.

I must say I am persuaded by the submission of the plaintiff's Counsel on this issue. I agree that the byelaws may not be retrospective. By that I understand it to mean that those who had retired prior to the coming into force of the byelaws cannot claim benefits there under. However, those employees who were still in employment had to benefit from the byelaw. Indeed if a contrary intention had been intended, it would have been expressly stated. The "period served" therefore refers to the entire period served by the employee with the defendant under permanent terms.

I therefore find that the plaintiff is entitled to retirement benefits under the Financial Regulations and Guidelines for the whole period he served on permanent terms. The question of overpayment through miscalculations by the defendant does not therefore arise. The fact that the scheme was stopped in 2008 by the defendant due to financial constraints does not affect the liabilities that had accrued, including the plaintiff's benefits.

Whether the defendant/plaintiff in counterclaim is entitled to the sum counterclaimed;

The defendant counterclaimed for Shs. 7,463,103= as the sum allegedly overpaid to the plaintiff when it made some advance in 2008 of Shs. 9,363,640= (inclusive of taxes). In addition, the defendant contended that it had exercised set off of the plaintiff's entitlement for NIC against the said overpayment. In reply the plaintiff denied that there was an overpayment, and further, that the alleged overpayment was over taxed. DW1 testified that the Financial Regulations and Guidelines came into force on 1/1/2005 therefore the plaintiff benefit under this head should have been Shs. 1,960,437= representing 20% of the basic salary for the period January 2005 to 5th July 2005.

I have already discussed the application of the Financial Regulation and Guidelines, and found that they applied to the plaintiff's entire period of service with the defendant. The effect is that the counterclaim falls flat on its face.

The defendant contends that the auditor verified the outstanding claims for defendant's staff retirement benefits including that of the plaintiff, and stated that the plaintiff was overpaid by Shs. 7,403,203= which should be recovered. The court's view is that the Auditor General was misled into basing himself on the interpretation of the byelaw by the defendant which was based on

a wrong interpretation of the Financial Regulations and Guidelines to exclude the period prior to the coming into force of the byelaw.

I further agree with the plaintiff's contention, and I agree with the plaintiff, that the computation is also wrong because the difference between Shs. 9,363,640= and Shs. 1,960,437= is Shs. 7,403,203=.

It was further alleged by the plaintiff that the alleged sum of Shs. 9,363,640= was overtaxed. The defendant computed income tax of 30% resulting into a deduction of Shs. 2,809,292= leaving Shs. 6,554,548= to net of tax for the plaintiff. The plaintiff gave formulae which he states should have been applied. He did not entirely explain in evidence what was the basis of his allegedly correct formulae. Counsel only talked of "the 3rd Schedule under tax band 4" but did not indicate where the schedule is to be found. Neither was this supported by any of the witnesses who testified. I shall therefore disallow this claim of over-taxation, especially since it first appeared in the submissions. Parties have to stick to their pleadings.

Be the above as it may, the counterclaim is not proved and is disallowed. The balance of the unpaid terminal benefits under the Financial Regulations of the defendant shall be paid to the plaintiff. He claimed Shs. 5,050,415=.

Remedies available to the parties;

It was submitted for the plaintiff that he was entitled to special damages, interest at 25% p.a. from date of filing until payment in full, general damages for lost earnings and non-use of the plaintiffs' entitlement, as well as anguish and insensitivity of the defendant towards the plaintiff plus costs of the suit.

The plaintiff prayed for dismissal of the suit and costs, and also judgment in their favour as counter-claimants with costs.

The plaintiff prayed for the following:

i) Special damages as claimed.
ii) Interest at 25% p.a. from the date of filing until payment in full. Counsel submitted that the plaintiff has been deprived of the use of his entitlement since they fell due and inflation had gone up. Hence the plaintiff's entitlements had lost real value.
iii) The plaintiff also claimed for general damages for lost earnings and non-use of the plaintiff's entitlements. He further claimed for general damages for anguish and insensitivity of the defendant towards the plaintiff, who had worked for the defendant for nearly 30 years. He had suffered anguish.
iv) He also prayed for costs of the suit.

In reply, Counsel for defendant submitted that the defendant fully paid all the plaintiff's terminal benefits and other claims upon his retirement from employment of the defendant. The plaintiff had failed to adduce any reliable evidence or to prove his claims for special and general damages, interest and costs. Hence the defendant prayed that the reliefs sought by the plaintiff should be disallowed. On the counterclaim, it was submitted that the defendant had been able to prove his counter-claim against the plaintiff and it should be allowed.

I have already indicated the claims that I have allowed and the reasons therefore. However, since the plaintiff was prevented from using his monies when they became due, the prayer for interest shall be granted. I also believe that the plaintiff has suffered alot of anguish and embarrassment for the treatment he has received from the defendant after working for the defendant for over 30 years, to the level of Deputy Director. I shall, therefore, grant him general damages of Shs. 10million.
In conclusion, the suit is determined in favour of the plaintiff to the extent indicated during the resolution of the issues.

The defendant shall pay the plaintiff the following:

1) Payment of contributions unremitted to NIC by the defendant for the period 1996 – 1999 to the tune of Shs. 2,805,633=.
2) Transport/Fuel allowance of Shs. 8,320,000=.

3) Housing allowance of Shs. 6,480,000=.
4) Payment in lieu of leave of Shs. 1,293,200=.
5) Balance on unpaid terminal benefits under the Financial Regulations of the defendant – Shs. 5,050,415=.
6) General damages of Shs. 10,000,000=.
7) Interest on items (1) – (5) at the rate of 20% per annum from the date of filing of the suit till payment in full.
8) Interest on 6 above at court rate from the date of judgment till payment in full.
9) 2/3 of the costs of the suit and costs of the counter-claim to the plaintiff.

It is so ordered.

Elizabeth Musoke
JUDGE
22/08/2014