

3. The above appointment entitled the plaintiff in addition to that salary 90% pay by the defendant on medical bills for self and immediate family annual leave of 21 working days, workmen's compensation, Education subsidy for 3 biological children and other benefits and the defendant's terms and conditions of service. These are the above details are stated in Exh. P.2 Exh P.2 also stated that the plaintiff's salary carried an automatic 3% annual progression.
4. In only six months of employment the plaintiff's salary was on 9th .06.2008 increased from 646,575 to 875,500 as gross pay see. Exh P.3.
5. On the same day of 9/06/ 2008 which was the completion of her probation period her employment was confirmed. Exh P.4 is her letter of confirmation.
6. On the 20th May 2009 the plaintiff's salary was increased to the 901,765 for 875,500/=.

It appears that apart from the automatic 3% progression on salary the plaintiff did not get any other salary increments until when she left this post. That would mean that her salary was shs 9,28817 in 2010 shs 1,01668/= and shs 1,047,180 in 2011 and finally shs 1,078595/= In 2012 before she was elevated. There is no evidence on record to the contrary on her salary increments if any existed.

7. On the 20th Feb 2013 the plaintiff was appointed to the post of village Director S.O.S Children Village Entebe. The appointment was on probation of 6 months. It carried a gross salary of shs 1,954,189 as net pay of shs 1.368,223/= per months.
8. The other benefits attached to the appointment were like all in the first appointment but it added accommodation and finally pay bills for water, gas and electricity. The contract was to commence on 1st March 2013. Exh. P.6 confirms the above and it so commenced.
9. However in a surprising turn of events after about one month and 17 days the defendant in Exh p.7 terminated the plaintiff's employment contract referring to a meeting with the plaintiff that after noon, the National Director confirmed the decision of the management that the plaintiff's employment was terminated.
10. Exh P.7 the letter of termination gave 2 reasons as the grounds of the termination. namely
 1. That her medical history rendered her unsuitable and socially unacceptable to be in that level of position. It is claimed that was discovered as a result of an investigation at CV. Entebe in March 2013.

2. That the plaintiff was found to have a link with the anonymous email letter that alleged the existence of serious child abuse cases in Entebbe

11. Both grounds were not explained in detail. There was no documents relating to medical History or the alleged e-mail in evidence of either side.

12. It is upon the above facts that the plaintiff instituted this suit to recover compensation for unlawful termination of her employment, general damages, interests and cost of the suit. She claimed that shs 200,225,000 be paid to her as compensation.

13. At the trial learned counsel Enock Berate represented the plaintiff while Mr. Bwenje represented the defendants. The advocates agreed on facts and issue.

14. It was agreed that all facts relating to the plaintiff's employment be admitted facts. Similarly all documents relating to the plaintiff's employment be admitted in evidence and were not disputed.

That way Exh. p.1 to p.7 were admitted and exhibited.

15. The agreed issues were stated as follows;

1) Whether the plaintiff's employment with the defendant was lawfully terminated

- 2) Whether the plaintiff was entitled to any payment from the defendant and if so whether she received the payment
- 3) Remedies to the parts.

16. The plaintiff appeared as the only witness for the prosecution after the closure of the plaintiff's case Mr. Bwenje for the defence told court that he was not calling evidence. He further conceded that submissions be made only in respect of damages and compensation. He told court that issue one was conceded to as there was no hearing conducted .It meant as he submitted that issues 2 and 3 were the only issues for closing submission. Although on a close look the two issues are the same as both related to damages and compensation or related awards like costs and interest.

17. Whether the plaintiff was entitled to any payments from the defendant and if so whether she received the payment.

18. At the trial the defendant proved through Exh D.1 that shs 12,193,782/= that amount of money was paid under the following headings.

i). End of service

Benefit.....11,334.296

ii). Annual bonus.....	.651,396
iii). Payment in lieu of	
Annual leave.....	1,954,189
iv). Payment in lieu	
Of notice.....	3,908,378
Less	(5,354,477)
Net paid.....	12,493,782

19. The plaintiff and her counsel admitted that the above amount was paid to her and received on her bank account, In Oct 2014

20. I found it important to start with the severance pay claim which appears in paragraph 3 and 4 of the plaintiff's submissions S. 87&92(2) and the authority of George Semboze -vs- Uganda Red Cross HCCS No. 49/1977 were cited to this court According to the plaintiff's counsel shs 46,900,536 must be paid as severance pay. The first claim is shs 23,450,268 as the sum equivalent to one year's pay.

21. Section 87 (a) shows that the plaintiff would qualify to be paid severance allowance. Her service was under ex p-7 clause 1 was terminated due to a medical condition. S.87(c) refers to termination due to physical incapacit.Under S.2 of

the employment Act 2006 physical incapacity or disability is defined among other things to mean presence in the body of organisms capable of causing illness or also refers to physical illness. Matters stated in Exh p.7 as medical history would be taken to relate to illness physical or organismic.

22. However this court's study of S. 87 of the employment Act has not revealed that the section gives any formula of calculating severance allowance.

23. It is only 87 of the Act which states as quoted below for purposes of clarity

“Calculation of severance pay shall be negotiable between the employees and the workers or the labour union that represents them”

24. The section above only shows that severance payable is negotiable it is then difficult to appreciate how the learned advocates for the plaintiff arrived at the demand of shs 23,450,268 at severance fee payable to the plaintiff S-92 (2).

25. Reference is made to clause 12.4 of Exh.D13 the **SOS Children Village(U) Employee Hand book & Terms and Conditions of Service Jan 2009** which gives Law severance

pay would be calculated in respect of the defendant. It states that **severance pay payable by SOS shall be equivalent to one(1) month's salary for every complete years of service with SOS up to the maximum of**

(12) years.

26. Exh P.6 under which the plaintiff was appointed showed that her appointment was in accordance with the obtaining SOS Uganda Terms and Conditions of service. On the 20/02/213 the plaintiff endorsed and accepted the appointment and she signed by stating that as Brenda Nambata she accepted them after.

27. Exh D.3 provided the terms and conditions of service Clause 12.4 is part of these terms I would therefore take it that the formular it provided as quoted earlier is the one applicable to the calculation of the plaintiff's severance pay. Under clause 12.4 severance pay is called "**and of service benefit**"

28. Exh D-1 show how the service benefit was calculated in conformity with clause 12.4 of Exh D3. it is calculated as shs 1954189x5.8 years

Equally to shs 11,334,296 that meant basic salary of one month for each worked times the number of years worked.

29. I agree on a balance of probability the defence offered better evidence Exh D.1 providing net severance pay was calculated and paid. The plaintiff demand in the submission is not supported by any evidence> opp **Page P.T.O 15.** Shift with respect I believed

30. I also decline to apply S 92(2) of the employment Act. This section is applicable to employers who refuse to pay severance allowance. Exh D.1 prove the defendant paid this allowance and the plaintiff received and accepted this payment. She did not explain in her evidence that the payment was inadequate. But even if she had explained there was no better evidence that Exh D3 on the formular to calculate severance pay._

>With respect I believed learned counsel Enock Barasa eaned by arguing that the payment under Exh D.1 relating to “end of service benefit” under clause 12.4 of Exh D 3 was deferente from severance pay and went ahead to make another claim for shs 23,450, 2 68. That was a Mis interpretation of “**End of service benefit**” under clause 12.4 of Exh D.3. Better evidence that Exh D3.

31. The plaintiff’s counsel prayed that payment be made under S. 78 (1) of the employment Act. He prayed that shs

1,954,189 being salary for four weeks be paid as the dismissal was unfair.

32. In the defence submission in rejoinder learned counsel vehemently Argued that it was agreed that the present dismissal was unlawful. That there is no way an un lawful dismissal would also be termed unfair. He refered this court to section 73.

33. Secondly that unfairness is neither pleaded nor any issues was framed on it. He refereed this court to the Supreme Court decision of.....

INTERFREIGHT FORWADERS(U) LTD VS- EAST AFRICAN DEVELOPMENT BANK SCCA NO 33 OF 1992 and quoted the passage below from the judgment of ODER JSC (RIP)

“ issues are framed on the case of the parties so disclosed in the pleading and evidence is directed at the trial to the proof of the case so set and covered by the issues framed there in. A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case.

Inconsistent with what he alleged in his pleadings except by way of amendment of pleading”

34. In conclusion counsel argued that the unfairness of the plaintiff's termination is not covered in the issues framed at scheduling conference and this cannot be determined by the court.

35. I respectfully agreed as I am bound to my Lord ODER'S statement of the Law in the **Interfreight forwarders** case (supra). The issue framed before this court was unlawfulness of the termination. unfairness being not an issue before this court no final finding can be made on it in the judgment.

36. However for reasons of setting the records straight in the present case by reason S.71 (4) .S.73,S-75 (g) S.2 definition of disability which I earlier stated and the contents of Exh P-7 which state that the plaintiff was dismissed upon medical grounds among others I entirely believed that the plaintiff was as well unfair. It is not true to argue with respect to the defence counsel that there is no way a dismissal would be unfair and unlawful. It all depends on the ground upon which the termination is based. Some may be related to unfairness while others may purely relate to unlawfulness. I did not consider the plaintiff claim here simply because she did not

plead it and no issue was framed relating to unfairness of termination.

37. The plaintiff claimed an award of general damages counsel suggested shs 115,000,000/= to be appropriate given the manner of the plaintiff's termination. This court was referred to the authority of **BANK OF UGANDA -VS- BETTY TINKAMANYIRE SCCA 12 OF 2007** and quoted the passenger below.

"The illegalities and wrong of the appellant were compounded further by its lack of compassion callousness and indifference to the good and devoted services the respondent had rendered the acts of the appellant were not only unlawful but also degrading..... in my view a good case has been shown for the respondent to be eligible for an award of aggravated damages"

In reply counsel for the defence argued that there was no legal basis for the claim. He added that the **Bank of Uganda -vs- Betty Tinkamanyire** case was distinguishable from the present one. That in that case the respondent was a senior member of the Bank who travelled abroad on official duty. When she came back she found her office and seat occupied by her successor. Further her name was listed on the Banks

notice Board as one of the alcoholics, late comer and fraudster in the appellate bank.

38. The Supreme Court awarded aggravated damages of shs 100,000,000/= owing to the clear callous conduct of the bank during the termination of the respondent's employment that had been proved by the evidence of the respondent.

39. He concluded that the present case apart from EXH P.7 there is no evidence of aggravation in conduct. That the plaintiff also failed to mitigate her loss by finding another job which she failed to do.

40. This court has looked at the pleadings particularly prayers. They are orders for compensation for shs 200,225,000 general damages, interest and costs paid & any other reliefs. Aggravated damages were not one of the reliefs the plaintiff sought.

It would be erroneous for this court to make an award that was not prayed but only submitted on.

41. However in his submission counsel did not seek aggravated damages. He actually prayed for general damages but cited a case where aggravated damages were awarded. Before citing the bank of Uganda -vs- Tinkamanyire case the learned advocate submitted

“ we submit that the plaintiff is entitled to general damages on account of the manner of termination at least 115,000,000”

[he pleadings shows that general damages were pleaded.]

42. In defending against one award of general damages that such quantum as prayed in the plaint should be awarded, the defendant learned counsel for the defence cited to this court the authority of **GULABANI USHILLAN -VS- KAMPALA PHAMACEUTICALS LTD SCCA 6 OF 1998 WHERE MULENGA JCS (RIP) held** inter alia

“The law in case of unlawful termination of a contract of employment with a stipulation of termination by either party is that the employee is entitled to recover damages equivalent to remuneration of the period stipulated in the termination notice”

45. Counsel then referred to Exh p.3 which stated the period of notice before termination to be 2 months and concluded that the damages payable to the plaintiff was shs 3,908,378.

46. I entirely as I am so bound to agree with the above position of the law. My lord **Kasule Remmy AG Judge** (as he then was)

in **TUMUSIIME FIDELIS -VS- AG HCCS NO. 88/2003** after citing the same rule added.

“I would add that it is premised on the principle of restitution intergrum. Damages are intended to restore the wronged party into the position he would have in there had been no breach of the contract.....and in case of a contract terminable by notice if the termination provision is complied with the employee would serve the stipulated notice period and receive remuneration for that period or would be paid in lieu of the notice”

47. I still agree that is law as we have it today. According to Exh D1 shs 3.908,378 was paid and received by the plaintiff.

47. Finely I hold that Exh D.1 represents all the claims that were due from the defendant to the plaintiff at termination and as it was not pleaded that the dismissal was unfair but only unlawful no further damages can be awarded.

This suit succeeds to that extent as Exh1. The payment in Exh D-1 came after the institution of this suit. The suit was instituted on 06.06 2013 and payment was effected on 18/06/2013 PW1 told court her account was only her created in October 2014 when this trial had commenced I award costs of the suit to plaintiff.

.....

NYANZI YASIN

JUDGE

29th 01/ 2015