THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 111 OF 2015

JOHN OKALANY :: APPLICANT

Versus

1. CIVIL AVIATION AUTHORITY
2. ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA :::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING:-

This is a ruling in an oral application for judgment on admission under Order 13 rule 6 of the Civil Procedure Rules. The applicant is represented by Prof. Barya & Mr. Deo Bitaguma while the 1st respondent is represented by Mr. Isaac Walukagga. The 2nd respondent is represented by Mr. Richard Adrole (SA).

The brief background to this application is that by letter of appointment dated 29th May 2008, the applicant was appointed by the 1st respondent's Board of Directors as the General Manager Entebbe International Airport.

While working in early 2015, the applicant got ill and sought sick leave from the 1st respondent which was granted. His treatment was funded

by the 1st respondent. He steadily recovered. However while away for treatment on the 16th day of June 2015, the Minister of Works and Transport wrote to the Managing Director of the 1st respondent alleging that the applicant has been unable to take full charge of his office for the last three years. The Minister then directed the Managing Director to re-deploy the applicant to any other "insensitive position".

Subsequent to this the applicant's job was internally and later externally advertised in the Daily Monitor News papers of 8th July 2015 and the New Vision of 13th July 2015. All this happened without the involvement of the applicant. The applicant was aggrieved by the turn of events and felt he was being treated unfairly, irregularly and illegally. He thus filed Miscellaneous Cause No. 111 of 2015 for Judicial Review and orders of Certiorari, mandamus, prohibition, injunction and other declarations.

Before the application could be heard on its merits, the Minister withdrew his instructions and the advertisements for the job and recruitment process were cancelled. The applicant was however demoralized by the events which appeared hostile. He consequently requested that since he was of retirement age, he should be allowed to retire with full benefits in lieu of pursuing this application. The applicant was advised and he issued a notice of early retirement to the 1st respondent.

The 1st respondent through their lawyers intimated to this court that they had no problem allowing the applicant to retire. The only issue related to the calculation of certain amounts of the benefits. The parties had some disagreements and the 1st respondent dragged its feet in deciding the total retirement package of the applicant. When the 1st respondent appeared to renegade on its earlier admissions, learned counsel for the applicant made this application for judgment on admission.

From the record, the admissions by the respondents on which this application is based are as set out by learned counsel for the applicant. These admissions were made on 28th October 2015, 3rd December 2015, 23rd March 2016 and 1st April 2016.

On those dates the uncontested retirement benefits were put on record by learned counsel for the 1st respondent. Further to this learned counsel for the applicant stated the uncontested retirement benefits as follows:-

1. ***Gratuity being 3 months' pay per year worked for 24 years of UGX 1,196,895,096/=;***

2. ***4 months' salary of UGX 66,494,172/=;***

3. ***Long Service Award USD 1200;***

4. ***Golden Handshake of Sewing Machine*** *(I wonder whether this is Golden!);*

5. ***2 complementary Air tickets for 2015 USD 8000.***

6. ***13th cheque (50%) monthly salary UGX 8,311,772/=;***

7. ***Certificate of Service;***

8. ***Repatriation = 1 month pay UGX 16,623,543/=;***

Out of the claim package three items were not agreed upon and these are:

9. ***Rental Refund – UGX14,400,000/=***

10. ***Salary arrears – UGX11,706,174/=***
11. ***Leave***

a) ***Ordinary leave 173 (days) x 16,623,543/= ÷ 22 = 130,721,497/=;***

b) ***Leave on Public Holidays, weekends and days off duty being 146 days x 16,623,543/= ÷ 22 = 755,616/= x 2 (factor) x 146 – 220,639,872/=***

Learned counsel for the applicant also submitted that this court should help the applicant retire and the items which are not agreed upon can be handled separately.

They also submitted that this court should grant them costs of this application. They relied on the case of ***Jamil Senyonjo Vs Jonathan Bunjo HCCS No. 180 of 2012*** wherein Bashaija J, found that after entering judgment on admission the only issue that remains is deciding damages and costs.

In reply to the applicant's application, learned counsel for the 1st respondent started by noting that this matter was adjourned for mention and there was no anticipation whatsoever that the applicant's counsel would apply for judgment on admission.

Secondly, learned counsel submitted that the main application seeks for orders essentially restraining the 1st respondent from terminating the services of the applicant. That there is no single prayer for early retirement, payment of benefits and neither has an amendment ever been sought to include any claims which are being sought in the so called judgment on admission application. That the suit before court and the application for judgment on admission are completely disconnected which he has been always mentioning while trying to find a solution to the applicant's early retirement application.

Learned counsel further submitted that this application is premised on Order 13 rule 6 of the Civil Procedure Rules, but that provision is quite instructive to the extent that it provides that no judgment on admission can be found where there is no suit on the subject that is being stated to be admitted by the party.

Learned counsel for the 1st respondent also submitted that there is no suit relating to early retirement and the applicant is still an employee of the 1st respondent who has never retired. That there is no proof that has been furnished to this court that the applicant's retirement has either been accepted or rejected. Therefore the application for judgment on admission is misconceived because the 1st respondent has not admitted any facts.

Regarding the prayer for costs, learned counsel for the 1st respondent submitted that costs as provided for by the Civil Procedure Act and Rules follow the event and that event is determination of a legal dispute which has been placed before court. That since there is a non-existent suit regarding early retirement arrangement between the 1st respondent and the applicant and the same has never been the subject of any proceedings before court, it would be a fuss for court to award costs.

Mr. Adrole learned counsel for the 2nd respondent associated himself with the submissions of learned counsel for the 1st respondent and added that the case was coming for mention and not to proceed with the matter. That the 2nd respondent does not employ the applicant and has no knowledge of the benefits that accrue to the applicant. That it is on that basis that judgment cannot be entered on admission against the 2nd respondent who is not involved in any way in handling of issues to do with the retirement of the applicant.

Regarding the issue of costs learned counsel for the 2nd respondent submitted that he associates himself with the submissions for the 1st respondent and they should not be granted.

In rejoinder Dr. Barya learned counsel submitted that the application for judgment on admission is not against the Attorney General but is rather against the 1st respondent as employer of the applicant. That the Attorney General is only part of these proceedings because of the actions of the Minister for illegally attempting to terminate the services of the applicant. Therefore the Attorney General is here consequentially.

Regarding his application for judgment on admission, learned counsel submitted that the admission must be clear and unambiguous whether in the pleadings or from any other source that is before court. That whereas it is true that this was an application for Judicial Review but the parties agreed before court that instead of proceeding with the application, the applicant be allowed to retire early. That all this is on record. In other words that in order to resolve the disputes that were before the court parties agreed on the manner in which the dispute should be resolved. Therefore early retirement arose from the application on agreement of the parties. That the judgment on admission does not therefore prejudice anybody since it was an agreed position. Dr. Barya finally submitted in rejoinder that it is true that the applicant is still in office but this is because he has not been paid his retirement benefits. He reiterated his earlier prayers.

I have carefully considered the submissions by respective counsel. I have studied the proceedings and considered the law applicable.

Learned counsel on both sides have correctively alluded to the correct principles concerning judgments on admission. The law on judgment on admission is provided for under Order 13 rule 6 of the Civil Procedure Rules wherein it is stated that any party may at any stage of a suit, where an admission has been made, either on the pleadings or otherwise, apply to the court for such judgment or orders as upon the admission he or she may be entitled to, without waiting for the determination of any other questions between the parties. The court may upon the application make such order, or give such judgment as court may think just.

It is my considered view therefore, that an admission may be express or may arise by implication from the material facts in the statement of claim. It has to be clear and unambiguous and must state precisely what is being admitted in order for judgment on admission to be in order. See ***Jamil Senyonjo Vs Jonathan Bunjo HCCS No. 180 of 2012*** per Bashaija J.

The judgment on admission must be explicit and not open to doubt.

With the above clear legal principles about judgments on admission, this court is enjoined to find whether the facts of this case and the

application for judgment on admission by learned counsel for the applicant can be granted.

Although learned counsel for the applicant applied for judgment on admission, this court is inclined to find that basing on the facts before it, this case falls under the ambit of compromise of a suit. This is so because an admission is a statement in which someone admits that something wrong or bad has been done by them.

In the instant case, there is no such statement admitting any wrong doing on the part of the 1st respondent. In fact the 1st respondent only accepted the applicant's proposal for early retirement in lieu of the pursuit of the application for Judicial Review.

As rightly submitted by learned counsel for the applicant's it is true that this was an application for Judicial Review but the parties before court agreed that instead of proceeding with the application, the applicant be allowed to retire early.

In order to resolve the disputes before court the parties agreed on the manner in which the dispute should be resolved. Therefore early retirement arose from the application for Judicial Review on agreement of the parties.

A compromise is an agreement made between two people or groups in which each side gives up some of the things they want so that both sides are happy at the end.

In the instant case the applicant came to court seeking Judicial Review but he is willing to let go of that application if in lieu of pursuing the application he is allowed to retire early with all benefits.

Both parties to this application have resolved before this court that they are agreeable entirely that the applicant can retire. As a result, the applicant is willing to give up the pursuit of the application and the 1st respondent is willing to pay the applicant his due retirement package. The parties even went ahead and exchanged correspondences negotiating the terms of the retirement package which are largely undisputed except for three matters as I outlined in this ruling. It is therefore my finding that for all intents and purposes, this suit has been compromised within the meaning of Order 25 rule 6 of the Civil Procedure Rules which provides that:

> ***"6. Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court may, on the application of a party, order the agreement, compromise, or satisfaction to be***

recorded, and pass a decree in accordance with the agreement, compromise or satisfaction so far as it relates to the suit."

Therefore, what remains for this court to do is to make a decree in the terms as stated on court record both in the correspondences filed in court and the submissions on agreed points which would form the agreement and compromise so far as it relates to the suit. It is important that the parties agree on the issues at stake. Once the agreement is reached like in this case then the applicant cannot be expected to claim for any damages or costs.

Consequently, under Order 25 rule 6 of the Civil Procedure Rules the agreement reached by both learned counsel shall be reduced in a decree as against the 1st respondent as follows:

1. **The applicant is allowed by the respondent to retire early;**
2. **The applicant shall be paid gratuity being 3 months' pay per year worked for 24 years totaling to *UGX 1,196,895,096/=;***
3. **The applicant shall be paid *four months' pay of UGX66,494,172/=;***
4. ***Golden handshake as provided in the CBA;***

5. **The applicant shall be paid *2 complementary Air tickets for 2015 USD 8000.***

6. **The applicant shall be paid a *Long Service Award comprised of 2 return tickets of USD 1200;***

7. **The applicant shall be paid *13th cheque (50%) monthly salary UGX 8,311,772/=;***

8. **The applicant shall get a *Certificate of Service;***

9. **The applicant shall get *Repatriation due the equivalent of one month's pay of UGX 16,623,543/=;***

Any disputed claims by the applicant may be claimed separately.

I so order.

Stephen Musota
J U D G E

14.09.2016

14.09. 2016:-

Mr. Adrole for the 3rd respondent.

Mr. Ayebale Robert holding brief for Prof. Barya for the applicant.

Mr. Semakula Mukiibi on brief for Mr. Isaac Walukaga for CAA.

Milton Court Clerk.

Mr. Adrole Richard:-

We are here to receive the judgment.

Court:-

Judgment read and delivered.

Ajiji Alex Mackay
DEPUTY REGISTRAR

14.09.2016.