

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 395 OF 2006

1. AMANDUA RONALD

2. BAGEYA MOSES

3. BARASA FRANCIS

4. BASHIR ADAM

5. KALENGE ALI

6. KATONGOLE JAMES

7. LUBULWA HENRY

8. LYANZI DENIS

9. NSIMBI MILTON

10. ODOI SILVER

11. OSABIT OGULE PETER

12. OWORI CHARLES

13. OWORI CHARLES PAUL

14. EMIRU JOHN MICHAEL

15. OKURUT MILTON



..... PLAINTIFFS

VERSUS

1. BANK OF UGANDA

2. STANBIC BANK UGANDA LIMITED ::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiffs' claim against the defendants jointly and severally is for payment of severance package, interest thereon at commercial rate plus costs of the suit. The plaintiffs' further claim against the second defendant amounts wrongly deducted from their pension allegedly as taxes and interest thereon at commercial rate of 22% plus costs of the suit.

According to the amended plaint filed on the 19th May 2008 the plaintiffs' cause of action is that on or about 8th April 1999 the 1st defendant acting under statutory powers conferred on it under the Financial Institutions Act took possession of Uganda Commercial Bank Ltd and subsequently sold it to the 2nd defendant as a going concern on or about 22nd February 2002.

That at the time of takeover the plaintiffs were employees of Uganda Commercial Bank Ltd and as a result of the said sale, Uganda Commercial Bank Ltd (UCBL) was legally merged with the 2nd defendant and the plaintiffs' contracts of employment were transferred to the 2nd defendant upon the same terms and conditions.

Prior to the said sale, the 1st defendant by circular to all the employees of UCBL dated 21st September 2001, represented to all staff of UCBL including the plaintiffs that it was to sell UCBL as is to a reputable Bank and although redundancy was expected to result, the employees should not worry because all employees who would be declared redundant following such sale would be paid enhanced redundancy packages spelt out in the letter.

Upon purchasing UCBL the 2nd defendant started an organizational restructuring to merge the operations of UCBL to itself and stated in the circulars to all staff and employees that they should not worry about the promised retrenchment and represented that all employees who

would lose their jobs due to the organizational restructuring would be offered a retrenchment package computed in accordance with the same formula as that promised by the 1st defendant. That the defendant further promised that before any employee is retrenched, he or she would be consulted and would be given one month's notice to retire voluntarily. That the plaintiffs believed and relied on the representations by both the defendants that they should not be worried about the retrenchment and that if they were affected, they would be paid a package.

The plaintiff further contend that in breach of its promise the 2nd defendant did not give the plaintiffs notice to retire voluntarily in that by similar worded letters dated 6/8/2014, all the parties were terminated on ground that there were not positions for the plaintiffs within the Bank's core functions.

The plaintiff contend that the circumstances of their termination amounts to redundancy and that it was the result of the sale and merger of the two Banks and that both defendants are liable to pay them the retrenchment package in accordance with the formula set out in the circulars issued by the defendants basing on their length of service as per the certificates of service issued by the 2nd defendant.

The defendants filed a written statement of defence. In it, the 2nd defendant admitted that it terminated the plaintiffs' services by letters dated 26th August 2004 but defended itself that the move was in accordance with the terms and conditions of service in the plaintiffs' respective contracts of service signed between them and the 2nd defendant between December 2002 and January 2003.

Further that the plaintiffs received payments of their terminal benefits upon termination of their employment and accepted the said payment of all their claims against the 2nd defendant.

During the scheduling conference, the following issues were framed for court's determination:

1. *Whether the plaintiffs have a valid claim against the 1st defendant;*
2. *Whether the plaintiffs were entitled at Law to severance/redundancy payments on termination of their services;*
3. *Whether the receipt by the plaintiffs of payment in full and final settlement esttopes them from any further claim against the defendants;*
4. *What remedies are available.*

At the hearing of this suit the plaintiffs were represented by Mr. Sebastian Angeret while the defendants were represented by Mr. Masembe Kanyerezi.

The plaintiffs led the evidence of two witnesses, namely Moses Bageya (PW1) and Omondi Martin (PW2). The defendants led evidence of one witness namely Vincent Kitutu (DW1).

PW1 Moses Bageya testified that he stopped work on 30/8/2004 and was given a letter of termination similar to Exhibit P9. That the reasons given for termination were two, to wit;

- (1) That the Bank Master implementation had come to an end and it is where he was working together with his colleagues in this case;***
- (2) That despite the Bank's efforts to absorb most of them with the core Bank functions, it had failed.***

That the Bank Master 7 was a project that the 2nd defendant introduced to upgrade the then UCBL such that all branches would be connected to the Headquarters.

PW2 testified that in 2004 he left employment of Stanbic Bank and was given a letter which he identified in court dated 16/1/2004 headed offer of voluntary retrenchment package yet he had not volunteered to leave employment. He further testified that he was offered a package which included three months' pay in lieu of notice, leave pay, pension fund, severance pay, transport home and deductions. He stated that the basis for being paid severance was because they were

retrenched and that he was issued a certificate which showed he worked in the Bank from 1998 to 2004 non-stop.

For the defendant, DW1 Vincent Kitutu Manager Employee Relations Stanbic Bank testified that upon the merger, Stanbic Bank took over the 15 employees of UCBL who are the subject of this suit. He stated that Amandua had served for 18 years at the time of his termination, and at ten years or more he was entitled to three months' pay in lieu of notice. DW1 read the exhibit 'D' which is to the effect that the Bank Master Seven Plan Implementation Project had come to an end and that despite management efforts to absorb as many team members as possible into the core bank functions, it was not possible. He testified further that severance pay was not a contractual term but an ex gratia payment. That the applicants for voluntary retirement were not entitled to be retrenched and therefore to the package.

I have considered the pleadings in this suit, the submissions by respective counsel, the evidence and the law applicable. I will go ahead and resolve the issues as listed starting with issue 1.

Issue 1: Whether the plaintiffs have a valid claim against the 1st defendant

It was learned counsel for the plaintiffs' submissions that the 1st defendant having abandoned the opportunity to address this issue before hearing and having agreed to have it proceeded with to the hearing on the basis of the plaint as presented is now estopped from maintaining that it does not disclose a cause of action or that is barred by statute.

On the other hand learned counsel for the defendant submitted that the 1st defendant is protected by Section 48 of the Financial Institutions Act. Further that the plaint does not plead that any action complained of in relation to the 1st defendant was done in bad faith nor was any evidence of bad faith led at the trial. He concluded that the suit in relation to the 1st defendant is barred by law.

I do agree with the submissions of counsel for the defendants. Section 48 of the Financial Institutions Act provides that:

“No suit or other legal proceedings shall lie against the Central Bank or any Officer of the Central Bank for anything which is done or is intended to be done in good faith pursuant to the provisions of this Act.”

As rightly submitted by learned counsel for the defendant the plaintiffs did not plead bad faith in their plaint nor did they prove that whatever the 1st defendant did was done in bad faith.

In *Mwesigwa & Another Vs Bank of Uganda HCCS No. 588 of 2003* (Bamwine J.) (as he then was) held *inter alia* that:

“Under S.49 of the Statute, no suit shall lie against the Bank of Uganda or any of its officers for anything which is done or intended in good faith pursuant to the provisions of the statute. Accordingly Bank of Uganda is protected against suits arising out of seizures of Financial Institutions unless the aggrieved party is able to show that what the Bank of Uganda did was not in good faith.”

In his submissions in rejoinder learned counsel for the plaintiffs suggests that the protection of the 1st defendant under Section 48 of the Financial Institutions Act is not an absolute immunity from legal action but that it is limited to matters of pleading. He also contends that the objection is a point of law which is determinable at the beginning of the trial and not at the conclusion thereof.

It is on record that on 23rd April 2009, the parties agreed to file written submissions in regard to issue 1 which was a point of law. The time frame within which to file the submissions was given.

However, on 16th December when parties appeared, Mr. Angeret informed court that they had a problem with the issues and invited court to allow them recast them. Court did allow them and issue 1 Whether the plaintiffs have a valid claim against the 1st defendant was recast.

Therefore the court having allowed the request to recast the issues and learned counsel for the plaintiff having agreed to the issue recast, he was well aware of the existence of the issue. There is no indication on record that the said issue was abandoned otherwise that position would have been recorded which is not the case.

Consequently I will find that in view of the reasons I have given herein above, I agree with the submissions by learned counsel for the defendant that the plaintiffs have no valid claim against Bank of Uganda. I will find issue 1 in the negative.

Issue 2: Whether the plaintiffs were entitled at Law to severance/redundancy payments on termination of their services;

Mr. Angeret submitted that although the 2nd defendant characterized the plaintiffs' termination as termination by notice, this was erroneous as all the 15 plaintiffs were at the time of their termination members of the Bank Master Seven Implementation Project team which was formed by the 2nd defendant to carry out IT integration as part of the merger and reorganization of UCBL and the 2nd defendant as provided in Clause 11:3 of the Sale Agreement. He further argued that the plaintiffs' termination amounted to redundancy. That DW1's reading from Exhibit P16 agreed that redundancy means termination of the appointment of a permanent member of staff when a reduction of staff is unavoidable and that the circumstances of the plaintiffs' termination appears to be redundancy. Learned counsel for the plaintiff further submitted that the claim that severance package was ex gratia by the defendant is erroneous as the plaintiffs maintain that they had a legal right to severance package which was based both on the terms of their contracts of employment as well as the statutory provisions of the Public Enterprise Reform and Divesture Act (PERD). That the position is supported by the very provision of Clause 10:4 which provides

that severance packages were to be paid in accordance with the provisions of the PERD statute and manual of personnel policy, rules and regulations dated 5th February 1998. That the Personnel Policies Manual (PMM) in S. 8:05 makes clear and elaborate provisions on redundancy which were mandatory. That it not only defines redundancy but it sets out the redundancy benefits in Clause 8:05 (iv) based on length of service.

Learned counsel further submitted that the PMM was not ex gratia and the amendments thereto which became part and parcel of the PMM were not ex gratia and thus the claim by the defendants that the severance payments were ex gratia are totally baseless and must be rejected. That the representations and statements made by Tshabalala in Exhibit 'P4' and by Maria Luke in Exhibit 'P5' and 'P8' as well as by Kitili Mbathi in Exhibit 'P7' were not the origin or basis of the severance package as the defendants have sought to characterize it. They were merely restatements of legal rights of the UCBL employees as contained in the PMM which the 2nd defendant was legally bound by. That the two year period was not intended to deny any employee his right to receive a severance package but was an estimate of how long it would take to carry out the consequent retrenchments upon the merger of the two Banks. That this period appears to have been based on the fact that the 2nd defendant's project team in charge of the merger had projected that this process would be accomplished in not more than two years as per exhibit 'P4'.

Mr. Angeret further submitted that in addition to the contractual provisions of the PMM, the right to severance package was a statutory right under the PERD Act. That this fact is acknowledged, recognized and evidenced by Clause 10:4 of the agreement of sale which the 1st defendant relied on for its defence in paragraph 8 (a) of the Written Statement of Defence. The clause clearly states that Government of Uganda was to finance the severance packages for UCBL staff to be paid in accordance with PERD Act and PMM meaning that severance packages were not only contractual under the PMM but were also statutory rights under the PERD Act.

Mr. Angeret further submitted that UCBL was divested by sale and merger to the 2nd defendant as per Clause 11:3 of the sale agreement and since the plaintiffs lost their jobs as a result of the sale and merger of UCBL, they were entitled to be paid their severance packages. That the defendants' objections that the plaintiffs are not entitled because the two years' period expired is not sufficient reason to deny the plaintiffs their statutory right not only because the plaintiffs had no control over the said period but also because under the PERD Act the only qualification is that the employee should have been terminated as a result of the divestiture of the enterprise.

In reply, Mr. Masembe learned counsel for the defendant submitted that as was agreed by the parties, it was a term of the plaintiffs' new employment contract that the periods served by the plaintiffs with UCBL would be deemed applicable to the duration of service with the 2nd defendant. He argued that the plaintiffs had each served between 14 and 19 years. On this basis and their contractual entitlement upon termination under Clause 16 of the Employment contract was 3 months' notice or payment in lieu thereof.

Learned defence counsel further submitted that none of the circulars that the plaintiffs rely on create a contractually enforceable right in the plaintiffs' to payment of severance pay as each one of these circulars predate the variation of terms and conditions of the plaintiffs' employment as comprised in the plaintiffs' employment contracts entered into between the plaintiffs and the 2nd defendant on 23rd December 2002. That the employment contracts set out the plaintiffs' enforceable employment entitlements including those accruing on termination of employment and supersedes and varies all prior contractual employment entitlements. That severance pay howsoever computed not having been set out in the new contract as an entitlement on termination cannot be validly claimed.

Mr. Masembe further submitted that the circulars created a schedule under which persons claiming would have to apply for voluntary retrenchment. That management of the 2nd defendant reserved the right to accept or decline such an application would the applicant become contractually entitled by reason or acceptance of that severance package over and above payment in lieu of notice. That all the above would have to be done before 19th January 2004 on which

date the voluntary retrenchment arrangement came to an end. Learned counsel contended that the plaintiffs did not apply for voluntary retrenchment either when the scheme began or at any time during its existence i.e. up to 19th January 2004. That the 2nd defendant did not accordingly have the opportunity to consider whether or not to accept the plaintiffs' application for retrenchment and the plaintiffs did not leave the 2nd defendant's employment under any such scheme and cannot therefore be said to be entitled to severance pay.

Learned counsel further argued that the Voluntary Retrenchment Scheme was not a term of the plaintiffs' employment contract but rather a time bound Scheme under which the interested employees would apply to the employer and the prerogative to accept or refuse the application and the Scheme was not intended to be permanent. He concluded that entitlement to participate in the Scheme and therefore to the severance package not being as of right and the Scheme in any event having lapsed, the plaintiffs cannot sustain a claim to severance pay as a contractual entitlement in law on termination of service.

I have considered all the respective arguments and the evidence adduced in support of this issue. I am persuaded to associate myself with the submissions of learned counsel for the plaintiffs that the circumstances of the plaintiffs' termination amounted to redundancy. DW1 in cross-examination when asked whether the position of the plaintiffs became redundant answered in the affirmative. Exhibit 'P9' was also written in clear terms that the Bank Master Seven Implementation Project had come to an end and that despite management efforts to absorb as many team members into the core bank functions, it was impossible to identify new positions for the plaintiffs.

The Bank Master Seven Project was part of the restructuring of the bank though the defence witness tried to dodge the question but from the areas of integration as confirmed by DW1 Julius Murayi integration was part of them. This position is later confirmed by DW1 when he read that Julius Murayi IT integrator presented a project plan for installing in the entire UCBL network and revealed that the completion date will be in about mid 2004.

It is also the defence's case that the plaintiffs were not entitled to severance pay at termination since the new contract they signed did not provide for the same. It is a fact that the plaintiffs signed new contracts with the 2nd defendant and learned counsel contended that this did vary the original contracts with UCBL. That Exhibit D1 changed the plaintiffs' rights and entitlements of employment.

With due respect I do not agree with the submissions. Exhibit 'D8' which is the merger agreement between Stanbic Bank Limited and Uganda Commercial Bank Limited in Clause 8.4.2 provided that the transfer of the sellers employees as referred to in 8.4.1 above will be on the same terms and conditions of employment as those on which such employee is employed by the seller as of the effective date. To my understanding, when the 2nd defendant took over the employees, it took them as they were, with the terms and conditions which governed them while working for UCBL thus any contract that was prejudicial to them and contrary to their original terms and conditions was void as it was only aimed at cheating the employees.

Learned defence counsel argued that the new contract was a variation of the old contract and labored to define what the variation meant concluding that Exhibit 'D1' changed the plaintiff's rights and entitlements of employment. It is my considered view that whereas it was written in clear terms in regard to the benefits that had been done away with, severance package was never varied/mentioned meaning that it still stood. Abolishing the same should have been provided and stated in clear terms.

It is also the defendants' contention that the plaintiffs were not entitled since they were terminated when the voluntary retirement package had come to an end and that they did not apply to benefit from the package. It is the defence case that the project came to an end on 19.01.2004.

DW1 testified that after the project, any employee who wanted to leave the Bank would have to resign according to the standard terms and conditions of service.

It is an agreed fact that the plaintiffs were terminated. The plaintiffs did not resign from their jobs neither did they leave willingly. They were made redundant after the 2nd defendant failed to absorb them. DW1 stated that the voluntary retirement was not automatic and the 2nd defendant had a right to accept or refuse an employee's application. Learned counsel for the 2nd defendant submitted that management of the 2nd defendant reserved the right to accept or decline such an application and therefore only if management exercised their discretion in allowing such an application would the applicant become contractually entitled by reason or acceptance of that severance package over and above the payment in lieu of notice. That severance pay was ex gratia.

I find this argument contrary to what the PMM did provide for. Under the PMM, severance pay was a right and the employer was under an obligation to pay whether one applied or not and thus the defendant had no discretion at all but was under obligation to pay the affected employees. It was not ex gratia payment as the defence wants this court to believe.

It is a fact that the 2nd defendant identified employees whose services were no longer required. Some were among those who had signed the variation contracts but were paid their terminal benefits. The defence argued that they were identified and retrenched within the two years' period.

Much as the plaintiffs terminated after the voluntary retirement project had come to an end, it was not their fault that the Bank could not accommodate them. Neither was it their fault that the Bank Master Seven Project took so long to be completed and was completed when the two year's project had elapsed.

I find that the 2nd defendant was well aware that the Bank Master Seven Project was an integration project and that was due to come to an end and was not a permanent one that is why they made the plaintiffs to sign new contracts in order to deny them their right to severance pay.

I therefore find that the plaintiffs were entitled to severance pay at the time when they were terminated/made redundant.

Issue 3: Whether the receipt by the plaintiffs of payment in full and final settlement estopes them from any further claim against the defendants;

Whereas the defence argues that the plaintiffs were fully settled and signed acknowledgement to that effect and thus were estopped and cannot come back again to claim any more benefits, learned counsel for the plaintiffs on the other hand insists that the acknowledgement was defined by the terminating event and the benefits that flow from it must be limited to what was being paid as expressed in the acknowledgement and nothing more. He contended that the plaintiffs by signing the same did not acknowledge receipt of severance pay nor did they make any representation in that behalf that they were waiving their right to it.

A look at Exhibit D3 which was the sampled pay slip for terminal benefits for Amandua Ronald did not in any way mention severance pay, therefore the defence cannot rely on the same to deny the plaintiffs their severance pay. If at all the plaintiffs waived their rights, it was only related to the matters that were mentioned or stipulated in the exhibit and nothing more or less. These matters included salary, payment in lieu of notice, leave allowance for 11.67 days, overtime payment.

I accordingly resolve issue three in the negative. The plaintiffs cannot claim more than what was paid to them under those heads.

Issue 4: What remedies are available.

The plaintiffs in paragraphs 17 of the amended plaint particularized severance pay. I accordingly award the same as follows:

Name	Years of service	Severance pay
1 st Plaintiff (Amandua)	18.4	Shs.10,241,420/= (14 months *Shs.731,530/= p.m.)
2 nd Plaintiff (Bageya)	15.3	Shs.22,557,307/= (14 months *Shs.1,611,236/= p.m.)
3 rd Plaintiff (Barasa)	17.1	Shs.10,180,072/= (14 months *Shs.727,148/= p.m.)
4 th Plaintiff (Bashir)	14.7	Shs.11,213,995/= (14 months *Shs.862,615/= p.m.)
5 th Plaintiff (Kalange)	16	Shs.9,896,984/= (14 months *Shs.706,904/= p.m.)
6 th Plaintiff (Katongole)	17.5	Shs.9,986,984/= (14 months *Shs.713,356/= p.m.)
7 th Plaintiff (Lubulwa)	16.7	Shs.9,796,752/= (14 months *Shs. 699,765/= p.m.)
8 th Plaintiff (Lyazi)	15.8	Shs.10,380,510/= (14 months *Shs.741,465/= p.m.)
9 th Plaintiff (Nsimbi)	18.7	Shs.10,682,504/= (14 months *Shs. 763,036/= p.m.)
10 th Plaintiff (Odoi)	19.7	Shs.12,903,758/= (14 months *Shs. .921,697/= p.m.)
11 th Plaintiff (Osabiti)	15.2	Shs.9,796,752/= (14 months *Shs. 699, 768/= p.m.)
12 th Plaintiff (Owori)	15.1	Shs.9,941,750/= (14 months *Shs. 710,125/= p.m.)
13 th Plaintiff (Owori)	16.2	Shs.9,796,752/= (14 months *Shs. 699, 768/= p.m.)
14 th Plaintiff (Emiru)	13.3	Shs.10,133,830/= (14 months *Shs.723,845/= p.m.)

15 th (Okurut)	Plaintiff	15	Shs.9,896,656/= (14 months *Shs.706,904/= p.m.)
Total			Shs.158,405,698/=

I will also award interest on the decretal amount at court rate per annum from the date of filing till payment in full. The plaintiffs will get the costs of the suit.

I so order.

Stephen Musota

J U D G E

31.08.2016