

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT No. 542 OF 2017

1. NDAGIRE JOYCE
2. NANSUBUGA NOELINE
3. KYARISIIMA PAULINE ::: PLAINTIFFS

VERSUS

1. MAKERERE UNIVERSITY
2. MAKERRERE UNIVERSITY COUNCIL ::::::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Plaintiffs are employees of the 1st Defendant working as secretaries in various Departments of the 1st Defendant. The Plaintiffs brought this suit against the Defendants jointly and severally in their own right and on behalf of 20 other members of the Association of Secretaries of Makerere University. The suit was thus brought in a representative capacity pursuant to an order issued by the court on 26th October 2017 vide MC No. 217 of 2017. The Plaintiffs seek the following declarations and orders:

- a) A declaration that the resolution of the 2nd Defendant approving the new structures for secretaries working in the various departments within Makerere University (1st Defendant) is binding on the 1st Defendant.
- b) A declaration that the policy of the 1st Defendant of running two parallel salary structures for secretaries with the same qualifications and yet with different salary structures is unfair and illegal.
- c) An order directing the Defendants to implement and comply with the 2nd Defendant's resolution approving the new salary structures for the Plaintiffs and other secretaries working in the various departments of the 1st Defendant.

- d) An order directing the Defendants to pay to the Plaintiffs and other secretaries all the monies that they would have been paid under the revised salary structure with effect from the 2011-2012 financial year.
- e) A declaration that the acts of the 2nd Defendant and its organs in advertising positions of secretaries and purporting to conduct fresh interviews, intended to constructively terminate the Plaintiffs, or any results of such interview and any action taken pursuant thereof are null and void.
- f) An order compelling the 2nd Defendant to implement its resolution in which it approved the new salary structures for secretaries with effect from the 2011-2012 financial year.
- g) An order of a permanent injunction restraining the 1st Defendant from continuing to run two parallel salary structures for secretaries with the same qualifications and yet with different salary structures which is unfair and illegal.
- h) An order that the Plaintiffs be paid all the monies that they should have got from the salary increments as per the new structure under which they have and continue to offer their services.
- i) General damages for illegal and unfair deprivation of increment in their salaries caused by the Defendants and for all the inconveniences and frustration suffered by the Plaintiffs.
- j) Costs of the suit.

[2] The brief facts according to the Plaintiffs are that the 2nd Defendant in their 119th Council meeting in 2010 approved a new structure for secretaries to be implemented from the 2011/2012 financial year. It was averred by the Plaintiffs that the management of the 1st Defendant failed and or refused to cause the implementation of the new structure despite the various reminders and requests concerning the same. The Plaintiffs further averred that the Defendants had, in defiance of the Council resolutions, opted to continue running two parallel salary structures for secretaries with the same qualifications despite the fact that the payment structure was meant

to be uniform. The Defendants also created unfairness by subjecting the affected category of staff to additional and new job specifications and interviews in the new structure with an intention of constructively eliminating them from the 1st Defendant's employment. The Plaintiffs stated that the actions of the Defendants were unfair and illegal, thus this suit.

[3] The Defendants filed a written Statement of Defence (WSD) in which they denied the Plaintiffs' claims and particularly stated that they never violated any of the Plaintiffs' rights or entitlements. The implementation of the approved structure was subject to availability of funds. The process of verifying the staff who meet the criteria set by the approved structure commenced and all those who met it were duly handled accordingly. The process of verification was still ongoing and, upon completion, each verified staff would be given their due entitlements. The Defendants denied the alleged discrimination with regard to payment of staff salaries of their secretaries and recruitment of new staff. The Defendants concluded that in handling the matter, they have been guided by the law, good faith, best practices, the best interest of the University and its staff, and availability of funds. They prayed that the Plaintiffs' suit be dismissed with costs.

Representation and Hearing

[4] At the hearing the Plaintiffs were represented variously by Mr. Bugembe Patrick, Ms. Nahwera Patra and Mr. Alex Kamukama while the Defendants were variously represented by Ms. Faith Atukunda and Mr. Hudson Musoke. The Plaintiffs led evidence of two witnesses. The Defendants did not lead any evidence. Counsel for both parties filed written submissions which have been adopted and considered by the Court.

Issues for Determination by the Court

[5] Four issues were agreed upon for determination by the Court, namely;

(i) Whether the resolutions approved by the 2nd Defendant in its 119th Council meeting in respect of the structures for secretaries employed by the 1st Defendant are binding upon the Defendants?

(ii) Whether the Plaintiffs are among the secretaries employed by the 1st Defendant supposed to be considered under the new structures for secretaries employed by the 1st Defendant as approved by the 119th Council meeting of the 2nd Defendant?

(iii) Whether the resolutions approved by the 2nd Defendant in its 119th Council meeting in respect of the structures for secretaries employed by the 1st Defendant were breached by the Defendants?

(iv) Whether the plaintiffs are entitled to the remedies sought?

Burden and Standard of Proof

[6] In civil proceedings, the burden of proof lies upon he who alleges. *Section 101 of the evidence Act, Cap 6* provides that;

(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

[7] *Section 103 of the evidence Act* provides that;

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[8] In line with the above provisions, the burden of proof in civil proceedings normally lies upon the plaintiff or claimant. The standard of proof is on a balance of probabilities. The law, however, goes on to classify between a legal burden and an evidential burden. When a plaintiff has led evidence establishing his or her claim, he/she is said to have executed the legal

burden. The evidential burden thus shifts to the defendant to rebut the plaintiff's claims.

Resolution of the Issues by the Court

Issue 1: Whether the resolutions approved by the 2nd Defendant in its 119th Council meeting in respect of the structures for secretaries employed by the 1st Defendant are binding upon the Defendants?

[9] It was an agreed fact expressed in the joint scheduling memorandum that the 2nd Defendant in its 119th Council meeting approved, among others, new structures for secretaries employed by the 1st Defendant. In their submissions, Counsel for the Defendant pointed out that in accordance with the governing law, The Universities and Other Tertiary Institutions Act, No. 7 of 2001 (as amended), the 2nd Defendant is the supreme organ of the 1st Defendant University, responsible for passing policies under which the 1st Defendant is managed. As such, Counsel conceded that the resolutions of the 2nd Defendant, including the one in issue herein on restructure of staff salaries, are binding upon the Defendants. That being the case, the 1st issue is answered in the affirmative.

Issue 2: Whether the Plaintiffs are among the secretaries employed by the 1st Defendant supposed to be considered under the new structures for secretaries employed by the 1st Defendant as approved by the 119th Council meeting of the 2nd Defendant?

[10] It was an agreed fact, as well, in the joint scheduling memorandum that the Plaintiffs are employees of the 1st Defendant working as secretaries in various departments of the 1st Defendant. What remains to be answered is whether the Plaintiffs are among the secretaries that were supposed to be considered under the new structures that were approved by the resolution of the 119th Council meeting of the 2nd Defendant. It was shown in evidence of

both PW1 (Ndagire Joyce Irene) and PW2 (Nansubuga Noeline Ndagire) that the group of 23 secretaries (the 3 Plaintiffs and 20 Others) were all affected by the said resolution passed by the 2nd Defendant. Pursuant to the passing of the resolution, the 23 secretaries, among others, were asked to submit their academic qualification documents for verification by the 1st Defendant's Directorate of Human Resources. All the 23 persons complied and their documents were duly verified. Consequently, the Directorate of Human Resources compiled a list of all secretarial staff based on the adjusted structure which disclosed the new salary structure in line with the resolution of the 2nd Defendant. The said list was admitted in evidence as NJ10 under Exhibit P1.

[11] The above evidence was not controverted by the defence. Since it is consistent and credible, it has been accepted by the Court. It was submitted by Counsel for the Plaintiffs that the mere fact that the names of the 23 secretaries in issue appeared on the list of secretarial staff compiled by the Directorate of Human Resources meant that the said secretaries were among the staff that were affected by the resolution in issue. In their submissions, Counsel for the Defendant actually conceded that the Plaintiffs and the other secretaries subject of the suit were employed by the 1st Defendant as secretaries at the time the resolution was passed and were therefore affected by the 2nd Defendant's resolution. Counsel, however, put a rider which raised a contention that was not supposed to be part of this issue. Counsel for the Defendants contended that the application of the resolution to the secretaries named herein was not automatic and, as such, the Plaintiffs and their colleagues had to fulfil particular criteria before they could be captured under the resolution.

[12] In my view, this contention by the Defendants' Counsel is not correct. The conditions stated by the defence Counsel, including responding to job applications and sitting interviews, were not conditions precedent. It is wrong to impute that before the subject secretaries were recognised as

beneficiaries of the Council resolution, they had to first be subjected to interview and assessment by the 1st Defendant. The opposite is actually what is true. The existing secretaries were beneficiaries of the resolution and they could be subjected to assessment as part of the process of implementing the resolution. A reading of the minute extract of the said Council resolution (on record as NJ 7 under Exhibit P1) clearly shows this as the position. Certain steps were to be taken to ensure that the restructure is implemented. Such cannot be construed as a condition precedent to the Plaintiffs' right to benefit from the Council resolution. That being the case, the Plaintiffs have sufficiently established that they are among the secretaries that were supposed to be considered under the new structures for secretaries employed by the 1st Defendant as approved by the 119th Council meeting of the 2nd Defendant. The second issue is therefore in the affirmative.

Issue 3: Whether the resolutions approved by the 2nd Defendant in its 119th Council meeting in respect of the structures for secretaries employed by the 1st Defendant were breached by the Defendants?

[13] In order to answer this issue, one needs to look at the relevant part of the resolution in issue. The minute extract of the meetings of the 2nd Defendant held on 30th November, 3rd and 17th December 2010 under the 119th Council Meeting shows the resolution that was passed by the 2nd Defendant. At page 14 of 56 of document NJ 7 under Exhibit P1, the following were approved by Council:

- 1. The structure as amended with effect from the next financial year 2011-2012.*
- 2. That there should not be any new recruitment of secretaries.*
- 3. That the number of Administrative Secretaries would have to be reviewed as colleges come on board.*
- 4. That the transitional period should be in the next 2 (two) years, subject to availability of funds.*

5. That the funds for retrenchment should be budgeted for in the financial year 2011/2012.

[14] The minute extract, at pages 13 – 14 of 56, also sets out a proposed arrangement for managing the transition as follows:

- (i) That the transitional arrangement should be phased.*
- (ii) That there would be no new recruitment during the transitional period.*
- (iii) That before filling the positions in line with the proposed structure for administrative secretaries, current staff should be subjected to elaborate interviews vis a vis the competencies laid out.*
- (iv) That the retained employees should be re-oriented in line with the duties and responsibilities they were expected to execute.*
- (v) That those who would not qualify would be re-designated and transferred to other job descriptions where possible.*
- (vi) That those who would not be absorbed would be retired.*

[15] In order to determine whether the resolution by the 2nd Defendant was breached by the Defendants, meaning and effect have to be assigned to the above stated elements of the resolution. The first key aspect was that the restructure was to be effected in a phased manner and subject to availability of funds. There is evidence that the 1st Defendant through the Directorate of Human Resources commenced the implementation by asking for academic qualifications of existing staff and making a list of secretaries including particulars of their names, title, current placement, salary scale and amount, and possible promotional scale and amount. It can be agreed that this was for planning purposes. There is also evidence that as part of the implementation phase, the 1st Defendant issued internal and external adverts to which the Plaintiffs (the entire group) were supposed to respond and go through the vetting process to be appointed to the stated positions. There is evidence by the Plaintiffs that they responded to the adverts and indeed sat for interviews on a number of occasions but they did not get any

responses over the matter. This evidence was not controverted by the Defendants and there is no evidence to the contrary.

[16] That being the evidence, I believe that the 1st Defendant mismanaged the implementation of the process. This having been a special category of recruitment or re-organisation of the work force, the process ought to have been more specific and more transparent than the way it was conducted. There ought to have been clear communication regarding which of the affected secretaries sat interviews, who were successful and who were not. In case of those who were unsuccessful, reasons ought to have been indicated and alternative courses of action advised. It should be recalled that the resolution in issue had in contemplation the possibility of some staff not going through the process out rightly. Upon such occurrence, it was recommended that those who would not qualify would be re-designated and transferred to other job descriptions where possible; and those who would not be absorbed would be retired. Such a set objective had to be tracked and not handled haphazardly and ambiguously as happened on the facts before the Court.

[17] In the instant case, there is no record as to which of the affected staff sat interviews, who of them were successful, who were not and why? There is no evidence of any communication to those who were unsuccessful. There is no evidence of any alternative taken in the case of those who were unsuccessful. According to the uncontested evidence of the Plaintiffs, they were just left guessing. Clearly therefore, the resolution of the 2nd Defendant was not appropriately implemented by the 1st Defendant. There was total lack of transparency and commitment on the part of the 1st Defendant in the implementation of the subject resolution. This amounted to a breach of the said resolution.

[18] The other area of breach was that while the resolution clearly stated that there would be no recruitment of new staff before the existing affected

staff had been considered, evidence clearly indicates that the 1st Defendant went ahead to issue external adverts, interviewed and recruited new staff from outside the institution to the detriment of the existing staff that were potential beneficiaries of the resolution. This evidence is not contested by the Defendants. It is agreed that the external recruitment took place. Surprisingly, there is no evidence showing that by the time, the 1st Defendant resorted to the external recruitment, the resolution had been amended or modified. Neither is there any evidence that the 1st Defendant had exhausted consideration of the existing staff and there was need to fill existing gaps. Available evidence actually indicate that the existing staff were still in waiting, were stranded and unadvised as to their next course of action; but they were still working. Indeed, according to the Plaintiffs' evidence, they were now working according to the adjusted working schedules but without any adjustment in their terms and conditions of service. I find this a fundamental breach of the subject resolution committed by the 1st Defendant.

[19] The third allegation of breach was that when PW1 and PW2 appeared before the interview panels, they were harassed on account of having filed the present case. This evidence too is uncontroverted. It raises a possibility that the other members subject of the suit faced similar circumstances. Indeed, it was averred by the Plaintiffs and submitted by their Counsel that the Plaintiffs were treated with bias and that was the reason they never passed the interviews and never received any response. In absence of any contrary evidence or circumstances, I am inclined to believe this evidence and the conclusion made by the Plaintiffs on this aspect of bias or partiality on the part of the 1st Defendant. I agree with the Plaintiffs that such conduct amounted to a breach of the subject resolution.

[20] Contrary to the submission of Counsel for the Defendants, the above cited breaches cannot be explained away by the alleged need to implement the resolution in a phased manner and the limitation in availability of funds.

I do not agree that the above cited conduct by the Defendants was occasioned by lack of time or funds. The Defendants had time from 2011 up to 2017 when the present suit was filed to do the correct thing and they did not. The 1st Defendant had the funds to do external recruitment contrary to the resolution. They cannot claim to have lacked funds to do that which was required to be done under the resolution. These claims or excuses put up by defence Counsel are indeed devoid of merit.

[21] In light of the above findings, the Plaintiffs have proved on a balance of probabilities that the subject resolution was breached by the Defendants. The third issue is also answered in the affirmative.

Issue 4: Whether the plaintiffs are entitled to the remedies sought?

[22] Flowing from the findings on the above issues, the Plaintiffs have proved their case on a balance of probabilities. I will proceed to consider each relief set out in the plaint to determine its availability for award to the Plaintiffs. The Plaintiffs prayed for a declaration that the resolution of the 2nd Defendant approving the new structures for secretaries working in the various departments within Makerere University (1st Defendant) is binding on the 1st Defendant. This has been established by the Plaintiffs and the declaration accordingly issue as prayed.

[23] The Plaintiffs prayed for a declaration that the policy of the 1st Defendant of running two parallel salary structures for secretaries with the same qualifications and yet with different salary structures is unfair and illegal. I have not found evidence to establish this allegation as a fact. Secondly, this Court cannot determine on the internal workings of the 1st Defendant on matters such as salary structure or pay roll management unless the same is brought up in exercise of the court's power of judicial review. Since this is an ordinary suit brought in pursuit of the Plaintiffs' work place rights and in absence of concrete evidence over such an

allegation, this relief is not made out and is accordingly denied. The same applies to the claim for a declaration that the acts of the 2nd Defendant and its organs in advertising positions of secretaries and purporting to conduct fresh interviews, intended to constructively terminate the Plaintiffs, or any results of such interview and any action taken pursuant thereof are null and void. I also find this claim intrusive and unnecessary in light of my findings herein above. The Plaintiffs' claim for a permanent injunction over the same issue suffers the same fate.

[24] The Plaintiffs prayed for orders; directing the Defendants to implement and comply with the 2nd Defendant's resolution approving the new salary structures for the Plaintiffs and other secretaries working in the various departments of the 1st Defendant; and directing the Defendants to pay to the Plaintiffs and other secretaries all the monies that they would have been paid under the revised salary structure with effect from the 2011-2012 financial year. I have found that the Defendants were bound to implement the subject resolution. They did not do so, and no just cause has been shown. The 1st Defendant made a list of the existing secretaries indicating their qualifications and possible salaries upon promotion. The Defendants neither concluded the process nor offered any explanation to the affected parties. It was submitted by Counsel for the Plaintiffs that this conduct created a legitimate expectation upon which the Plaintiffs are entitled to rely.

[25] Under the law, a legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. It extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate expectation of an individual is defeated, it gives that person the *locus standi* to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial

remedy. In **Alex Agandru vs Etoma Francis**, HCCS No. 0007 of 2011; [2018] UGHCLD 32, the court stated as follows;

“A claim for violation of a legitimate expectation will arise where a public authority either (a) alters rights or obligations of a person which are enforceable by or against him in private law; or (b) deprives him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (see Council for Civil Service Unions v. Minister for the Civil Service [1985] 1 AC 374, [1984] 3 All ER 935, [1984] 3 WLR 1174).”

[26] On the case before me, it is apparent that the Defendants created a legitimate expectation on the part of the Plaintiffs' membership which entitles them to a judicial remedy. The unexplained inaction by the Defendants over a prolonged period of time ought not to be visited upon the Plaintiffs who had no control over the same. Since the academic qualifications of the 23 persons (subject of this suit) were verified by the 1st Defendant and found suited for particular positions under the new structure, the said persons are accordingly deemed to have been appointed in those respective positions and shall be paid the salary that other holders of such positions are paid or entitled to under the current salary structure of the Defendants. This order shall take effect from the 2nd November 2017 when the Plaintiffs instituted this suit. I find this as the latest date the Defendants would have ceased their inaction.

[27] The Plaintiffs further claimed for general damages for illegal and unfair deprivation of increment in their salaries caused by the Defendants and for all the inconveniences and frustration suffered by the Plaintiffs. It was averred in evidence by the Plaintiffs that owing to the Defendants' conduct, they have been subjected to gross inconvenience, mental anguish and frustration for which they seek general damages. Counsel for the Plaintiffs submitted that such damage would have been mitigated by the Defendants if at all the Defendants had bothered to respond to the Plaintiffs' demand notices. Counsel invited the Court to award to the Plaintiffs general damages to the tune of UGX 300,000,000/=.

[28] The law on general damages is that general damages are the direct natural or probable consequence of the act complained of. General damages are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: ***Hadley v. Baxendale (1894) 9 Exch 341;*** ***Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993*** and ***Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992***. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: ***Uganda Commercial bank v. Kigozi [2002] 1 EA 305***. Further, general damages are implied in every breach of contract and every infringement of a given right.

[29] In the instant case, the Plaintiffs have shown that they have been undergoing uncertainty for a considerable period of time starting way back in 2011. Given that work is the backbone for human survival, it is obvious that such suspense has caused the Plaintiffs' membership considerable mental anguish and frustration. The Plaintiffs ought to be compensated for such pain and suffering. Considering the facts and circumstances of the present case, I find as appropriate a sum of UGX 10,000,000/= (Uganda

Shillings Ten Million only) to each of the Plaintiffs and 20 others as general damages. I award the same to each as general damages accordingly.

[30] Regarding costs of the suit, under Section 27 of the Civil Procedure Act, costs follow the event unless the court, upon good cause, determines otherwise. Given the findings above, the Plaintiffs are entitled to costs of the suit and the same are awarded to them.

It is so ordered.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE

31/08/2022