

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL SUIT NO.59 OF 2009**

**1. EKEU COSMAS**

5 **2. BENEDICT OWOT & 3435 OTHERS ::::::::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA**

**NTAMBI**

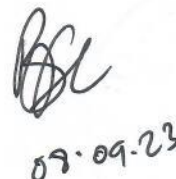
10 **JUDGMENT**

**Background**

15 The Plaintiffs, through a Representation Order, filed this suit on behalf of the former workers of Nyanza Textiles Limited (NYTIL) following its divesture in 1995. They claimed unpaid terminal benefits, general damages, compensation, interest and costs.

20 The Plaintiffs argued that they were at all material times employees of the former NYTIL until their employment was terminated by government on 30<sup>th</sup> June 1995 without paying them their full benefits hence this suit. When the matter came up for hearing, an order was issued to the effect that the Auditor General should verify the Plaintiffs' claim and file a report to that effect in Court. Subsequently, the Auditor General's report dated 24<sup>th</sup> February 2022 and an addendum thereto dated 8<sup>th</sup> November 2022 were filed in this Court.

The parties agreed with the contents of the said report and on 13<sup>th</sup> June 2023, judgment on admission was entered against the Defendant for the sum of UGX

  
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6,234,463,628/= (Uganda Shillings Six Billion Two Hundred Thirty-Four Million Four Hundred Sixty-Three Thousand Six Hundred Twenty-Eight), being the terminal benefits due to the verified former workers of NYTIL numbering 3426. One of the claimants, Mallon Dobayo sought and was granted permission by this Court to pursue his claim independently, hence reducing the number the total number of verified claimants from 3426 to 3425.

Having entered judgment on admission in favor of the Plaintiffs, what remained to be determined is the issue of general damages, compensation, interest and costs.

### Representation

The Plaintiffs were represented by Counsel Brian Othieno from M/s Alliance Advocates while the Defendant was represented by Counsel Ocol Ambrose from the Attorney General's Chambers.

### Issues

1. Whether the Plaintiffs are entitled to general damages.
2. Whether the Plaintiffs are entitled to interest.
3. Whether the Plaintiffs were entitled to compensation for being declared redundant.
4. Whether the Plaintiffs are entitled to costs of the suit.

### Submissions

#### Plaintiffs' Submissions

Counsel for the Plaintiffs jointly argued all the issues. On the issue of whether the Plaintiffs are entitled to interest on the outstanding terminal benefits, Counsel argued that due to inflation and other considerations such as the increase in the cost of living, the value of the money the Plaintiffs were entitled to in 1995 is less in value now than then. On those grounds, he contended that the Plaintiffs were entitled to interest

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at the rate of 25% per annum with effect from June 1995 until payment in full, in order for them to attain the real value of their money as verified by Attorney General.

On the issue of general damages, Counsel referred to paragraph 6 of the witness statement to argue that the Defendant had always intimated that he was going to settle this matter amicably but such settlement never materialized, which kept the Plaintiffs in anxiety and anguish for years. That instead of a settlement, the Defendant raised a preliminary objection which was only resolved on appeal after over three years. He stated that it's been 28 years since the Plaintiffs filed their claim until the admission of the claim by the Defendant. In this regard, Counsel argued that this non-payment has affected the Plaintiffs' livelihood in that they have been impoverished, could not plan for themselves and the welfare of their families being elderly people and senior citizens who could not be employed elsewhere. That as such they have lived as paupers and suffered mental anguish, psychological torture and emotional stress. Counsel contended that these facts were never rebutted nor did the Defendant cross-examine the Plaintiffs on the same. Counsel referred to Section 26 of the Public Enterprise Reform and Divestiture Act to argue that the Defendant failed in its statutory duty to pay the Plaintiffs as a priority yet these employees were supposed to be paid first upon divestiture as per Class III to the First Schedule of the Act at No. 30. According to Counsel, this happened despite the fact that \$10,000,000 was deposited on the Divestiture Account and was enough to pay off the terminal benefits. Citing the case of **Omunyokol Akol vs Attorney General (2012) CA 15**, Counsel stated that the grant of general damages is at Court's discretion, it must be a direct, natural or probable consequence of the Defendant's act or omission and is intended to compensate the Plaintiffs for the loss or injury suffered as a result of breach of an obligation. He, therefore, prayed that the unionized workers of NYTIL be awarded general damages of UGX 1,000,000/= for each year from June 1995 and the NYTIL management staff be awarded UGX 1,500,000 for each year from June 1995.



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Regarding the issue of compensation, Counsel for the Plaintiffs cited Section 21 of the Public Enterprise Reform and Divestiture Act, paragraph 5(2) of the amended  
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plaint and paragraphs 15 and 17 of the witness statement, to argue that the Plaintiffs are entitled to be paid compensation for being declared redundant. He prayed that the former unionized workers be paid UGX 10,000,000/= each and that the management staff be paid UGX 15,000,000/= each as compensation.

Finally, Counsel prayed for interest on the damages and compensation at 25% with effect from the date of judgement until payment in full. He also prayed for costs of the suit.

### 10 Defendant's Submissions

On 13<sup>th</sup> June 2023 when this matter came up for hearing, Counsel for the Defendant stated that he had no witness in respect of the issues under consideration since the Auditor General who would have been the witness is the one who verified the claim. He prayed for leave to file written submissions in respect of the outstanding issues.  
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Subsequently, Court directed that the Plaintiffs should file and serve their submissions by 27<sup>th</sup> June 2023, the Defendant should file and serve its submissions by 11<sup>th</sup> July 2023 and a rejoinder if any should be filed by 18<sup>th</sup> July 2023. However, the Defendant never filed her written submissions on the outstanding issues as directed by Court on time. This Court only received the Defendant's submissions on 16<sup>th</sup> August, 2023 and subsequently a rejoinder by the Plaintiffs was filed on 1<sup>st</sup> September 2023. In the interests of justice, I have taken the Defendant's submissions into consideration.

### Decision of Court

#### **Issue 1: Whether the Plaintiffs are entitled to general damages**


25 As rightly stated by Counsel for the Plaintiffs, the law on general damages is that the damages are awarded at the discretion of the Court and the purpose is to restore the

  
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aggrieved person to the position they would have been in initially had the breach or wrong not occurred. See **Kibimba Rice Ltd vs Umar Salim SCCA No. 17 of 1992** and **Uganda Revenue Authority v Wanume David Katamirike Civil Appeal No. 43 of 2010**. In the assessment of general damages, the Court is guided by the value of the subject matter, the economic inconvenience occasioned to the plaintiff and the nature and extent of the injury suffered. See **Uganda Commercial Bank vs Kigozi (2002) 1 EA 305**. The settled legal position is that general damages are at large and are assessed by the Court on the basis of the injury, suffering and inconvenience caused to the plaintiff. See **Omunyokol Akol Johnson vs Attorney General SCCA No. 06 of 2012**.

As I noted earlier, there is no direct witness evidence to contradict the evidence of the Plaintiffs in respect of the outstanding issues. That notwithstanding, it is the duty of this Court to analyze all the evidence adduced on each issue and reach a just conclusion. This Court takes cognizance of the fact that the Plaintiffs have waited for over 28 years for payment of their outstanding terminal benefits by the Defendant, the effect of inflation over time on the said terminal benefits and Court also takes into account the economic, mental and emotional inconvenience suffered by the Plaintiffs. All these are natural and direct consequences arising from the Defendant's failure to remit the Plaintiffs' terminal benefits when they became due. In addition, the amount of the individual claimants' entitlements is also taken into account. On the other hand, I am of the considered view that government is justified and indeed required to undertake all necessary legal precautions to verify and satisfy itself about any outstanding claims before it authorizes the expenditure of public funds on the same.

It is also not in dispute that this suit was filed in 2009, about 14 years after the retrenchment. I further find that the Defendant subsequently took necessary precautions to verify the claim of the Plaintiffs after this suit was instituted. I am of

  
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the considered view that by raising the preliminary objection, the Defendant was undertaking all possible legal options available to it and ought not to be punished for it. I further note that the verification by the Auditor General of the Plaintiff's claims was agreed upon by both parties. As held by the Court of Appeal in **Uganda Revenue Authority v Wanume David Katamirike** (*supra*), general damages focus on the conduct of the defendant in causing the injury to the plaintiff that is being compensated for. In my opinion, the Defendant's conduct in this regard has been bonafide. That notwithstanding, the Plaintiffs have been affected over a period of 28 years including the impact of inflation on their entitlements. Accordingly, considering all the above circumstances, I hereby award a sum of UGX 3,000,000 (three million shillings) for each claimant as general damages. The said general damages take into account the effect of inflation and the economic and psychological inconvenience suffered by the Plaintiffs.

#### **Issue 2: Whether the Plaintiffs are entitled to interest**

Payment of interest is provided for under Section 26 (2) of the Civil Procedure Act which gives Court discretion to award interest adjudged on the principal sum from any period prior to the institution of the suit or from the date of filing suit to date of decree, or on the aggregate sum adjudged from date of decree to date of payment in full. It is well settled law that the award of interest is at the discretion of court. See **Omunyokol Akol Johnson V Attorney General** (*supra*) However, the burden is on the party claiming interest to plead and adduce some evidence entitling that party to interest. At page 9 of the amended plaint, the Plaintiffs under paragraphs (c) and (d) prayed for interest of 25% on the special damages from 30<sup>th</sup> June 1995 till payment in full and further interest of 25% per annum on damages from the date of filing the suit till payment in full, respectively. However, in their submissions, the Plaintiffs only prayed for 25% interest on general damages and compensation from the date of judgment until payment in full. Considering all the circumstances of this

  
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case, I would grant interest of 10% on the general damages per annum from the date of judgment until payment in full. I hereby grant interest of 7% per annum on the terminal benefits claimed by the Plaintiffs from June 1995 until payment in full since the Plaintiffs' rights to these benefits accrued from June 1995


5 **Issue 3: Whether the Plaintiffs are entitled to compensation for being declared redundant.**

Section 21 of the Public Enterprise Reform and Divestiture Act provides that the Minister responsible for finance shall ensure that provision is made for payment of compensation to employees who are declared redundant as a result of the  
10 restructuring or liquidation of public enterprises through the establishment and operation of a redundancy account to be opened at a commercial bank approved by the Minister responsible for finance. NYTIL having been one such public enterprise, the Plaintiffs are entitled to compensation. According to paragraph (a) of the findings of the Auditor General at page 1 of his report dated 24<sup>th</sup> February 2022, the  
15 government of Uganda paid redundancy benefits amounting to UGX 2,441,538,955 to both unionized and staff workers of NYTIL following the divestiture of the factory in 1995. Based on these facts, I find that the redundancy benefits were duly paid to all the former unionized and staff workers of NYTIL.

**Issue 4: Whether the Plaintiffs are entitled to costs of the suit**

20 Under Section 27(1) of the Civil Procedure Act, costs of any suit are at the discretion of Court which should be exercised judiciously. See **Impressa Ing. Fortunato Federice vs Irene Nabwire (Suing by her next friend Dr. Julius Wambette) SCCA No. 3 of 2000**. It is also trite law that costs follow the event and the successful party is entitled to costs. The Plaintiffs being the successful parties, are entitled to the costs  
25 of the suit.

In the result, judgment is entered for the Plaintiffs in the following terms; -

  
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- a) General damages to a tune of UGX 3,000,000 (three million shillings) for each of the 3425 Plaintiffs.
- b) Interest on general damages of 10% per annum from the date of judgment until payment in full.
- 5 c) The Plaintiffs are entitled to payment of their terminal benefits amounting to UGX 6,234, 463,628/= (Six billion, two hundred and thirty-four million, four hundred and sixty-three thousand six hundred and twenty-eight shillings)
- d) Interest on the terminal benefits, at the rate of 8% from June 1995 until payment in full.
- 10 e) Costs of the suit.

I so order.

  
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**FARIDAH SHAMILAH BUKIRWA NTAMBI**

15 **JUDGE**

**Judgment delivered on 8<sup>th</sup> September ,2023.**