

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 0016 OF 2023

PHILOMENA MUSOKE ::: APPLICANT

VERSUS

ATTORNEY GENERAL :::RESPONDENT

**BEFORE: HON: JUSTICE EMMANUEL BAGUMA**

**RULING**

1. This Application was brought by way of Notice of Motion under Articles 50(1), 254, 45 of the Constitution of the Republic of Uganda, section 9(1), 10(1), 12 of the Pensions Act. Cap. 281, sections 2, 3(1), 4(1) (d) of the Human Rights (Enforcement) Act, 2019, Rule 7(1) and 11 of the Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019.) for orders that;
  1. A declaration that the Applicant is entitled to pension as a former public officer.
  2. A declaration that the conduct of the Respondent in denying the Applicant her pension is invalid and inconsistent with the Constitution of the Republic of Uganda
  3. An order for computation and payment of the Applicant’s outstanding pension arrears.
  4. Interest on the computed pension at a rate of 24% per annum from the time when the applicant’s pension was due.
  5. An order for compensation/ general damages
  6. Interest on compensation/ general damages at a rate of 24%
  7. Costs to be borne by the Respondent.

2. The Application is supported by the affidavit sworn by **PHILOMENA N. MUSOKE** whose details are on record but briefly states that;
  1. I am a retired Public Officer, who served in the capacity of a nurse, later a senior nurse since 1966-1989, both in the Ministry of Health and the Ministry of Defence, at different times within the said period of years, but until now, I have never received my pension.
  2. During my service in the Ministry of Health, I served in different sections/ departments of the public offices, and at different levels of service. That is to say at a nurse and a midwife among others, at different periods. For instance, in 1971, I worked in Jinja Hospital. In 1972 I was in Masaka Hospital. In the year 1973 I was in Bududa Hospital. Between 1974-1976 I was serving in Kawolo.
  3. In 1977, I was transferred in the Ministry of Defense in the Military General Hospital, to serve as a nurse and later promoted to a senior nurse officer.
  4. I was later transferred (redeployed) in the Ministry of Health in 1988.
  5. That upon my redeployment, Ms Walusimbi who was the in charge/Head of Nurse in the Ministry of Health at Entebbe Headquarters then, told me that they were waiting for my file from the ministry of defence- general military hospital in order to formalize my redeployment.
  6. The process of formalizing my employment with the Ministry of Health went on for two years, because the said M.O.H and Ministry of Defence claimed not to have the file
  7. In the process of waiting for the Ministry of Health to formalize my employment, I developed some illness, where I was taken to the United States of America for medical treatment.
  8. Upon my return from the medical treatment in United States of America, I tried to ascertain which specific ministry had my file, but the two ministries (Ministry of Health and Ministry of Defence) kept having the file for years.

9. All my effort to establish the specific ministry with my file were frustrated until recently, when the physical file was found at Public Service Registry.
  10. Due to the above challenges that were beyond my control involving both the Ministry of Health and the Ministry of Defence, I was unable to work again upon my redeployment at the Ministry of Health in 1988.
  11. Knowing that I am in retirement (83 years), having served as a nurse and later a senior nurse for over 23 years, I applied to the office of the Permanent Secretary to receive my pension as a retired public servant but the permanent secretary has denied me the grant of my pension
  12. The Permanent Secretary alleges that I have no documentary evidence to support my claim that I reported to the Ministry of Health for my redeployment, and that since there is no such documentary evidence of my deployment, that I left the public service under unpensionable circumstances
3. In reply the Respondent opposed the Application in an affidavit deposed by **AMBROSE OCOL** of the Attorney General's Chambers who briefly stated that;
1. The instant application is misconceived, incompetent and amounts to abuse of court process
  2. The Applicant is not entitled to any of the orders and or declarations sought in the instant application
  3. There has been no infringement of, or a threat to infringe any of the applicant's rights
  4. In reply to paragraphs 7, 8 and 9 of the affidavit in support, the applicant has not demonstrated that she had official authorization to be away from her duty station.
  5. In reply to paragraph 12 of the affidavit in support the applicant did not officially apply for retirement from the public service.

6. In reply to paragraph 12 of the affidavit in support the information availed by the applicant to the Ministry of Health shows that the terms under which the applicant left the public service are not pensionable.

#### **4. Legal Representation**

5. Counsel Bazira Anthony together with Counsel Kirume Martin Juuko represented the Applicant whereas Allan Mukama represented the Respondent.

6. The Application proceeded by way of written submissions and they are on the court record.

#### **7. Submissions by counsel for the Applicant.**

8. Counsel for the Applicant raised two issues in his submissions to wit;

1. Whether the Applicant qualifies for the award of Pension?
2. What remedies are available to the parties?

#### **9. Issue No.1:**

*Whether the Applicant qualifies for the award of Pension?*

10. Counsel for the applicant submitted that it is not in dispute that the applicant was confirmed as a registered nurse with effect from 1<sup>st</sup> of January, 1971 and worked till she was transferred from the Ministry of Defence to the Ministry of Health in 1988. He cited paragraph 1 of Annexure B7, B2 to the Application and Article 254 of the Constitution of the Republic of Uganda.

11. Counsel submitted that the applicant served in the Ministry of health and the ministry of defence of Uganda, as a nurse, later as a senior nurse for the most part of her life. Counsel further submitted that the applicant's confirmation or appointment dating back from the date of appointment referred in annexure B7 is proof that the applicant to her pension.
12. He submitted that courts of law have even gone further to hold in *Nsereko Joseph & Another Vs. Bank of Uganda, Civil Appeal No. 1 of 2002 at page 13 and Chase Vs. Barclays Bank of Kenya Ltd Civil Case No. 4549 of 1987, page 605*, despite of termination and dismissal a person is still entitled to their benefits or pension.
13. Counsel further submitted that the Applicant worked for the government as a nurse, and rose through the ranks over a period of 23 years, that is to say, from about 1970 up to 1988. That despite being 83 years, she has never received her pension yet it's her constitutional given mandate per Article 254(1) of the Constitution of Uganda. Counsel cited the case of *Chase Vs. Barclays Bank of Kenya Ltd KLR [1990] 595, page 608*.
14. Counsel added that the Applicant worked for a long time and as a matter of right the Respondent should have paid her pension. It was unconscionable and inequitable for the Respondent to deny her pension.
15. Counsel submitted that the applicant entitled to pension under Article 254 of the Constitution of Uganda and Section 9 of the Pensions Act makes it mandatory for a public officer to qualify for pension.

**16.Issue No. 2:**

*Whether the Applicant is entitled to any remedies?*

17.Counsel for the Applicant submitted that the act of the Respondent in denying the Applicant her pension which is provided for under Article 254 of the Constitution of Uganda and section 9 of the Pension Act was invalid. The Applicant has gone through pain of moving from one office to another without any tangible solution. He prayed that the applicant be paid her pension arrears, an order of compensation or general damages of 189,000,000/=, interest and costs of the suit.

**18.Submissions of counsel for the Respondent**

**19.Issue No. 1**

*Whether the Applicant qualifies for the award of pension?*

20.Counsel for the Respondent submitted that the Applicant does not qualify for an award of pension because the circumstances under which she left the Public Service are not pensionable. He contended that a person seeking payment of pension has the onus to prove that they qualify and are entitled to payment of pension.

21.Counsel submitted that the right to pension accrues to a public officer on retirement from Public Service. He cited Article 254(1) of the Constitution of Uganda and submitted that the Applicant has not adduced any evidence to prove that they duly retired her from public service.

22.Counsel submitted that there is no evidence whatsoever to show that the Applicant duly retired under any of the circumstances provided for under the

public service standing orders. He cited section (L-c) Public Service Standing Orders and section 10 of the Pensions Act.

23. Counsel further submitted that there is no evidence that the Applicant informed her Responsible officer or the Ministry of Health about her alleged illness and consequent travel to the United States of America. He cited section (c-a) (1) (5) of the Public Standing Orders which is to the effect that; “Any Public officer who cannot attend work because of illness should report the matter to his or her immediate supervisor. And that should obtain a sick leave.

24. Counsel added that there is no evidence to show that the applicant applied for and obtained sick leave in accordance with the above provisions.

25. Counsel submitted that it is the responsibility of a public officer who is absent from duty to inform the Responsible officer in writing about his or her absence from duty but no evidence of such has been adduced by the applicant to show that her absence from duty was communicated in writing to the Responsible Officer as per section (A-o) (18) of the Public Standing Orders.

26. Counsel contended that although the Constitution of Uganda establishes restriction on the grant of pension, it is quite evident that sections 9 and 10 of the Pensions Act together with the Public Service Standing Orders provide that a public officer must qualify. He argued that the fact the Applicant is now 83 years of age, is not itself a ground for an award of pension. He cited section (A-o)(22) of the Public Service Standing Orders and the case of Christopher Madrama Izama Vs. Attorney General, Constitutional Appeal No.1 of 2016

27. In conclusion counsel submitted that the Applicant did not retire from service but rather simply left her job to go abroad on her own private business and

never returned to work. Therefore, the circumstances under which the Applicant left public service amount to abandonment of duty.

**28. Issue No. 2:**

*What remedies are available to the parties?*

29. Counsel submitted that the Applicant is not entitled to pension because she did not duly retire from Public Service but rather abandoned her duties which disqualifies her from an award of pension and prayed that the same be dismissed with costs to the Respondent.

30. **In joinder** counsel for the Applicant submitted that the Public service standing orders 2021, cited by the Respondent do not apply to the Applicant since she worked as a public servant from 1<sup>st</sup> January, 1970 to 1988. He argued the Public Service Standing orders did not apply to the Applicant at the time of employment.

**31. Analysis of Court.**

**32. Issue No. 1**

*Whether the Applicant qualifies for the award of pension?*

33. **Article 254 (1) of the Constitution of the Republic of Uganda** provides that;  
*“A public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.”*

34. **Section 9(1) of the Pensions Act** provides that *“Every officer employed in the public service who has qualified for a pension shall be entitled to it”*.



35. **Section 10(1) of the Pensions Act** provides that; “(1), *Except as provided by such regulations as may be made under section 3, no pension, gratuity or other allowance shall be granted under this Act to any officer except on his or her retirement from the public service.*”

36. **Section 16 of the Pensions Act** provides that; “*Where an officer is dismissed from the public service, the pensions authority may, if he or she thinks fit, grant such pension, gratuity or other allowance as he or she thinks just and proper, not exceeding in amount that for which the officer would be eligible if he or she retired from the public service in the circumstances described in section 10(1) (e)*”

37. From the evidence on record, it is not in dispute that the Applicant was appointed in public service. This is confirmed by both parties.

38. According to the evidence from the applicant and respondent, the applicant has never received her pension.

39. What is in contention is that the applicant did not formalize her retirement.

40. In the instant case, the applicant under paragraph 6-11 of the affidavit in support gave detailed explanation on how her file could not be traced from the ministry of defence for redeployment in the ministry of health and indeed this process took a long time. This challenge cannot be attributed to the applicant. In any case, this evidence was not rebutted by the Respondent.

41. The applicant in her affidavit in support gave explanation on how her redeployment was frustrated and how she stopped working on medical grounds. This evidence was also not challenged by the respondent.

42. It is my view that the respondent should not have denied the applicant the pension benefits which she had worked for and qualified to get but for the respondent to deny the applicant her entitlement of pension, was too harsh yet it was not necessary to warrant the respondent to deprive the applicant her pension benefits.

43. The conduct of the Ministry of Defence and the Ministry of Health and failure to trace the file to redeploy the applicant until she went for medical attention, in my opinion does not affect the pension rights of the applicant.

44. All the facts in this application show that the applicant served in the ministry of health and the ministry of defence of Uganda as a nurse and later on as a senior nurse. The applicant was confirmed in the positions mentioned above respectively.

45. For the interest of justice and the circumstances under which the applicant left, I find that the applicant was entitled to pension as provided for under Article 254 of the Constitution of the Republic of Uganda and section 9 of the Pensions Act.

46. Issue No. 1 is answered in the affirmative.

**47. Issue No. 2:**

*What remedies are available to the parties?*

48. Considering the nature and circumstances of this application and having resolved issue No.1 in the affirmative, the applicant is entitled to some remedies as stated below;

49. In the final result, this application succeeds with the following orders;

1. The Applicant is entitled to pension as a former public servant for the years she worked in public service.
2. The Respondent should compute the payment of the Applicant's outstanding pension arrears for the years she worked in public service.
3. Costs of the Application are awarded to the Applicant.

GIVEN under my hand and delivered by email on **29<sup>th</sup>** day of **September**, 2023.

**Emmanuel Baguma**

**Judge**