

**THE REPUBLIC OF UGANDA**  
**THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA**  
**LABOUR DISPUTE CLAIM. NO. 184 OF 2014**  
**(Consolidating 180/2014, 185/2014, 182/2014, 38/2014)**  
**Arising from Hccs 144/2013, 140/2013, 145/2013, 142/2013, 159/2013**

**BETWEEN**

**JOSEPH KIBUUKA & OTHERS..... CLAIMANT**

**AND**

**BANK OF UGANDA..... RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon.Lady Justice Linda Lillian Tumusiime Mugisha

**PANELISTS**

1. Ms. Julian Nyachwo
- 2.Mr. Filbert Baguma Bates
- 3.Mr. Ebyau Fidel

The claimant together with 4 others filed the above labour claims with this court. Both counsel agreed that the issues and facts involved in the claims were similar and therefore the suits were consolidated into Civil Suit No. **184/2014**. It was agreed that evidence led in this court would be sufficient to dispose of all the suits and that the result in the hearing would equally apply to the rest of the suits.

All the claimants were employees of the respondent in various positions. Their services were terminated on 5/08/2010 under what their letters described as **“Early Retirement”**.

Upon termination each of the claimants was paid a one month's salary in lieu of notice and subsequently two months in lieu of notice.

The agreed issues at scheduling were:

- a) Whether the claimants employment contracts were lawfully brought to an end.

b) Whether the claimants are entitled to the remedies sought.

The case for the claimants as we see it, is that the termination of their employment was in breach of the terms of service as contained in the Administrative Manual of the respondent and therefore unlawful.

The case of the respondent on the other hand is that the termination of the employment of the claimants was in accordance with section 65(i)(a) of the Employment Act and therefore was lawful.

Through a memorandum of claim filed in this court, the claimants contended that the respondent involuntarily retired them thereby acting unjustly and depriving them of benefits they were entitled to, which benefits accrued to other employees retired in the same manner.

Evidence was led from one **TABU GEORGE** to the effect that he (and the rest of the claimants) had worked for the respondent but were involuntarily retired early in 2010 when they would have retired in a few years after.

Section 65(i)(a) of the Employment Act provides:

**i. “Termination shall be deemed to take place in the following instances.**

**a) Where the contract of service is ended by the employer with notice.”**

It was argued on behalf of the respondent that the employer need not give any reasons for termination of the employment although the said employer is required to provide a fair hearing of the employee before reaching **a decision** to “dismiss” him or her. Counsel relied on the decisions of **STANBIC BANK LTD. VS KIYEMBA MUTALE SCCA NO. 02/2010** and **BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU SCCA 1/1998**.

The respondent argued that the facts of this case did not require any hearing as stipulated in section 66 of the Employment Act since the matter concerned “**termination**” of employment as distinct from “**dismissal**”.

Section 66 of the Employment Act provides:

**(i) "Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering a dismissal and employee is entitled to have another person of his or her choice present during this explanation".**

Section 2 of the Employment Act defines dismissal from employment as **"the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct"**.

The same section defines termination of employment as **"the discharge of an employee from an employment at the initiative of the employer for justifiable reason other than misconduct, such as expiry of contract, attainment of retirement age, etc..."**

In the recent case of **Florence Mufumba Vs U.D.B (Labour claim 138/2014)**. This court on page 5 after distinguishing "termination" from "dismissal" said **"In our opinion, whether the employer chooses to "terminate" or "dismiss" an employee, such employee is entitled to reasons for dismissal or termination. In employing the employee, we strongly believe that the employer had reason to so employ him/her. In the same way, in terminating or dismissing the employee there ought to be reason for the decision"**.

The above opinion is grounded in the provision of section 66(4) of the Employment Act which states that:

**"Irrespective of whether any dismissal which is summary dismissal is justified or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks pay."**

It seems to us that this section of the law is a sanction to the employer who fails to give reasons for the termination or dismissal of the employee thus giving credence to the above opinion.

The evidence of the respondent is to the effect that the claimants employment contracts were terminable by notice or payment in lieu of notice and that on termination each of them was paid three months salary in lieu of notice.

It is the position of this court that in accordance with the authority of **MARY PAMELA SOZI vs THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS, H.C.C.S 63/2012** an employer cannot unreasonably and without justification terminate the contract of the employee just because there is a clause in the employment contract that allows for payment in lieu of notice.

The termination letters of the claimants expressly state that they were sent on early retirement. The letters state “

**"The management of the Bank has decided to retire you from the services of the Bank with immediate effect.**

**You will be entitled to the following:**

- 1. One month's salary in lieu of notice.**
- 2. Calculation of your 34 earned leave days.**
- 3. An actuarially reduced pension and cash sum calculated using your completed years of service."**

Exhibit No. P8, a retirement benefits scheme for Bank of Uganda, in rule 6 provides:

**“With the employers consent a member may retire from its service at any time after his/her fiftieth birthday or on an earlier date if such a retirement be on account of infirmity of body or mind when he shall be entitled to immediate actuarially - reduced pension of such an amount as he is entitled according to his completed year of service. Such pension will be increased as set out in the last paragraph of rule 5(a). This rule will also apply in the event of members being retired because or redundancy”.**

We agree with the submission of Counsel for the claimants that the early retirement contemplated in the above rule is a voluntary one excisable at the option of the employee subject to the consent of the Employer. We also agree that it is "a right available to the

employee and not a weapon for the employer to use to the disadvantage of the employee".

Nothing in the evidence or in the termination letters suggested that the claimants were retired as a result of redundancy. Neither was there any evidence to suggest that the claimants had committed any breach of the employment relationship before their termination.

It is our considered opinion that since the termination was based on the principle of early retirement and yet the claimants had not exercised their option of early retirement in accordance with rule 6 of the retirement benefits scheme, the termination was wrongful and illegal. The contracts of the claimants were therefore unlawfully brought to an end.

The second issue is whether the claimants are entitled to the remedies sought. The claimants claimed, among others, severance, general and aggravated damages.

The respondent argued that the claimants having been terminated lawfully, they were not entitled to any damages. But as we have already decided, the termination was unlawful and therefore we proceed to discuss damages.

## **SEVERANCE**

Severance allowance is payable under section 87 where, among other things, the employer unfairly dismisses an employee. Since this court has already ruled that the termination was unlawful; it follows that the claimants are entitled to severance pay.

However, under section 89, **"the calculation of severance pay shall be negotiable between the employer and the workers or the labour union that represents them"**.

In the case of **DONNA KAMULI VS DFCU BANK ( LABOUR DISPUTE CLAIM No. 002/2015)** this court held that in the event that there was no negotiation already done in accordance with section 89, above, severance pay of the equivalent of a monthly salary for every year the employee worked would be reasonable. We have no reason to depart from this proposition.

## **GENERAL/AGGRAVATED DAMAGES**

The claimants claimed that hardly a few months after they had been involuntarily retired, some other employees were voluntarily retired and paid packages of over 100,000,000/=. These assertions were not proved, although the respondent did not deny that after the termination of the claimants, subsequently employees were retired under a new and conducive arrangement for the said employees. Given that the claimants were involuntarily retired, and almost, if not actually, forced into retirement without any of them having breached any term of the employment relationship, the court considers 100,000,000/= as general damages sufficient for each of the claimants. As for aggravated damages we have not been convinced that the respondent had excessively embarrassed and aggrieved the claimants to deserve over and above general damages. We decline to award aggravated damages.

All in all, this court hereby grants an award in favour of the claimants in the following terms:

- 1) The claimants were wrongfully/illegally terminated.
- 2) The claimants are each entitled to severance allowance calculated under a negotiated system between the workers and the respondent or between the respondent and a union representing the workers of the respondent. In the absence of such a system, the claimants are each entitled to a month's salary for every year worked.
- 3) The claimants shall each be paid 100,000,000/= as general damages.
- 4) Both sums in (2) and (3) shall attract interest of 21% from the date of this award till payment in full.
- 5) No order as to costs is made.

## **SIGNED**

1. Hon. Chief Judge Ruhinda Asaph Ntengye.....
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha .

## **PANELISTS**

1. Ms. Julian Nyachwo.....
2. Mr. Filbert Baguma Bates.....
3. Mr Fidel Ebyau.....

**Delivered on 2nd February 2016**