

**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE No.209/2014**

**ARISING FROM HCCS. No.111/2014**

**STEVEN OCHWO ..... CLAIMANT**

**VERSUS**

**VETERINAIRES SANS FRONTIERES-BELGIUM ..... RESPONDENT**

**BEFORE**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSHIIME MUGISHA**

**PANELISTS**

- 1 MR. EBYAU FIDEL**
- 2. MR. EDSON MAVUNWA**
- 3. MS. JULIAN NYACHWO**

**RULING**

This ruling arises out of a preliminary point of law raised by the respondent to the effect that the claimants prayers for General Costs of Ugx 15,000,000/from August 2013 - May 2014 under “*particulars of loss and special damages*” under clause 8 of the claim and Ugx 50,854,370/- as special damages under clause 10(c) of the claim, were not particularized as was required under Order 6 rule 3 of the Civil procedure Rules SI 71-1.

**BACKGROUND**

The claimant brought this matter against the respondents for a declaration that his termination from employment was unlawful, that he was entitled to wages, payment of Ugx.50, 854,370 as special damages, aggravated damages for wrongful dismissal and costs of the suit. The parties entered a partial consent in favour of the claimant for the payment of salary arrears for the months of August to October

2012, issuance of a certificate of Service, payment of 1 month in lieu of notice amounting to Ugx. 13, 321,000/- and costs Ugx. 3,000,000/=. The payment of damages remained pending for resolution by Court. Before Court could consider this issue, Counsel for the Respondents raised the preliminary objection.

**SUBMISSIONS:**

Citing the cases of **UGANDA TELECOM LIMITED VS TANZANITE CORPORATION, SCCA No 17/2004 and ROSEMARY NALWADDA VS UGANDA AIDS COMMISSION HCCS No. 67/2011**, Counsel for the Respondent stated that in addition to writing down their particulars, it was mandatory that special damages had to be specifically plead and proved. She contended that in the instant case they were neither particularized nor proved against the respondent thus making the claim defective. She asserted that it was trite law that all facts necessary to prove the cause of action had to be pleaded and what was not pleaded cannot be proved. She also relied on **SUN AIR LIMITED VS NANAM TRANSPORT Co. LIMITED, HCCS No. 229/2009**.

She therefore prayed that the claim should be struck out under Order 6 rule 3.

The claimants who represented himself, in reply stated that he deserved all the damages arising out of his unlawful termination. He asserted that **UGANDA TELECOM LIMITED VS TANZANITE CORPORATION, SCCA No 17/2004 and ROSEMARY NALWADDA VS UGANDA AIDS COMMISSION HCCS No. 67/2011**, were not applicable to his case which was purely looking at settlement of damages. He insisted that in **BANK OF UGANDA VS BETTY TINKAMANYIRE CA NO 12 OF 2007 AND MILLY JUUKO VS OPPORTUNITY UGANDA LIMITED**, it had been settled that courts in awarding damages had to reflect their disapproval of wrongful dismissals. He adduced evidence to prove that he was wrongfully dismissed and therefore he deserved damages. He adduced evidence to prove his claim for damages although he did not specifically address his mind to the Respondents objection that he had not particularized the special damages he was claiming.

After carefully perusing the record and counsels submissions we agree with counsel for the respondents that it is trite law that a claimant had to specifically plead and prove special damages.

The record shows that the claimant prayed for General Costs of Ugx 15,000,000/from August 2013 - May 2014 under "**particulars of loss and special damages**" under clause 8 of the claim and Ugx

50,854,370/- as special damages under clause 10(c). The said claims were however stated in general terms but they were not particularized. Order 6 rule 3 states:

***“...3. Particulars to be given where necessary.***

***In all cases in which the party pleading, relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings...”***

The claimant made an attempt in his reply to this Preliminary Objection by adducing evidence particularizing the two claims which he had not done in his pleadings. We agree with the decision in the case **ROSEMARY NALWADDA VS UGANDA AIDS COMMISSION HCCS No. 67/2011**, cited by Counsel and which is in line with Order 6 rule 3 of the Civil Procedure Rules (Supra), where Hon. Justice Steven Musota held that:

***“... A claim for special damages must specifically be pleaded and strictly proved. A plaintiff had the duty to prove their damage. It is not enough to write down particulars, throw them to the Court and say “this is what I have lost I ask you to give me these damages”. They have to be proved. This does not mean that proof of special damages have to be proved by documentary evidence in all cases....”***

The claimant having failed to plead his claim for these special damages we find no basis for his claim for Ugx. 15,000,000/= from August 2013 - May 2014 under “***particulars of loss and special damages***” under clause 8 of the claim and Ugx 50,854,370/- as special damages under clause 10(c) of his pleadings.

The Preliminary Objection is allowed. No order as to costs is made.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE
  2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
- PANELISTS
1. MR. EBYAU FIDEL
  2. MR. EDSON MAVUNWA

3. MS. JULIAN NYACHWO

**DATED: 15<sup>TH</sup> MARCH, 2017**