THE REPUBLIC OF UGANDA

IN THE INDSUTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM No. 013 OF 2014

(ARISING FROM HCT-CS No. 265 of 2011

KISAMBIRA MASABA…….CLAIMANT

VERSUS

MAKERERE UNIVERSITY …….RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet NganziMugambwa

AWARD

BRIEF FACTS

The claimant was an employee of the respondent from 1974 to November 2004 when he retired. At the time of his retirement he was earning a basic salary of 498,850/=.

The respondent operated an In-House Retirement Benefits Scheme which was to be computed on an annual basic salary earned as on the date of retirement. According to the respondent on 21/9/2004, the University council approved a recommendation from

management that the In-House Retirement Benefits Scheme be based on basic salary as per march 2003/2004 before increase of the package of staff.

In calculating the benefits of the claimant, the respondent took advantage of council's approval of the above recommendation and did not therefore apply the formula in calculating the claimant's benefits as at the date of retirement but instead calculated the same considering his salary as it was by March 2003. According to the claimant, this was a wrong formula as it altered his terms and conditions of service and he was not aware of the change in the scheme. Having not been satisfied with the formula applied, the claimant filed this suit in the High Court from where it was referred to this court.

There is no doubt that following the University Council's 79th meeting held on 24/ and 25th August 1998, general circular No. 835 stipulating a formula for an In-House Retirement Benefits Scheme came out clearly to state that the calculation of benefits would be based on the number of months of pensionable service and the annual basic salary at the time of retirement.

It is not disputed also that in September 2004, the University council approved a recommendation that the calculation be based on the salary as per March 2004 before the package of staff was increased.

The question is:

- Was the respondent justified in abandoning the formula earlier circulated?

In simple terms, retirement benefits constitute a payment by an employer to an employee in appreciation of the work relationship both had during the employment. It is an expression of gratitude by the employer and we believe that is why it is sometimes referred to as gratuity. Some employers make it contributory in which case employees over the period of employment contribute to their own retirement. Others pay it all without asking employees for a contribution. It is therefore discretionary upon the employer to determine the form, procedure and quantum of the gratuity.

In the case of the respondent over the years, retirement benefits have taken different forms. The evidence reveals that originally the retirement benefits of senior staff were contributory with 20% payable by the respondent and 5% payable by the employee until 1998 when the respondent rolled out a retirement scheme that was non-contributory calculated as already pointed out basing on the salary as at the time of retirement.

The decision to fully take charge of the retirement contribution was in our view in good faith and worked to the advantage of the employees of the respondent. It seems to us that in the same way that the retirement benefits scheme had changed overtime, in 2004, the respondent sought out another method of calculating the retirement benefits.

The case for the claimant if we understand it, is that the respondent having declared a formula for calculating the retirement benefits had no authority to alter it to the disadvantage of the employee. In the alternative, the claimant asserts that even in changing the formula, the claimant had a right to be involved.

As already noted, a retirement benefit is an appreciation. This being the case, unless it is part and parcel of the contract of service, such benefit is usually at the discretion of the employer.

By issuing circular 835 and circular 848, the respondent was changing the formula of retirement benefits. In the same way, by implementing a resolution of council, the respondent was changing the formula that had been circulated via **circular 835 and 848**. There is no doubt in our minds (or the minds of both counsel) that the University council is the top most policy making body of the respondent. Therefore in approving the recommendation to alter the contents of circular 835, it was doing what was within its powers.

. It was disclosed in the evidence that one G. Okello attended the meeting as a representative of the staff in whose category the claimant fell.

We have no doubt therefore that the council that passed the approval of the recommendation that affected the formula of the retirement benefits was attended by members representing various interests including the interests of the claimant. The fact that the information was not disclosed via a circular like the information earlier communicated through circular 835 in our view did not affect the validity of the resolution passed by council.

It was not argued, nor was it established by evidence that the contents of circular 385 constituted the terms and conditions of service of the claimant. In the absence of the testimony of G. Okello to the effect that he did not communicate the information relating to the change of the formula, and the said Okello having been a representative of the administrative staff to whom the claimant belonged, we form the opinion that in fact the said Okello communicated the same to his constituency. Therefore the claimant was aware of the resolution of council.

According to the respondent, the resolution of the University council was precipitated by the fact that the salary package of the staff had greatly increased after March 2003 and it was not possible to sustain the retirement benefits scheme as stipulated in circular 385. Nothing to the contrary was adduced before this court.

Given the circumstances under which the resolution was passed, given that the claimant was aware or ought to have been aware of the resolution ,given that the university council had legal mandate to pass the resolution and given that the contents of circular 385 were not shown to have been part and parcel of the contract of service of the claimant, we find that the respondents properly calculated the claimant's pension benefits under the IHRBS and the first issue is answered in the affirmative.

The second issue is whether the respondent's minutes of the meeting held on 4/6/2007 are binding on the claimant.

In reply to the claim the respondent stated:

> **"Makerere at its 110th meeting held on the 4th June 2007 resolved that the benefits shall be calculated based on the individual salaries or salary scales of the position held by March 2004."**

There is no doubt that the claimant retired in November 2004 long before the issuance of the above resolution. This being the case the resolution could not reasonably affect the claimant. The respondent however further relied on another resolution of the same council that sat on 21/9/2004. It seems to us that council first approved the revised formula in the meeting of 21/9/2004 and only noted the continued computation of the pension benefits in the meeting of 4/6/2007. Although the claimant had not initially pleaded the meeting of 21/09/2004 , the said minutes and resolution were later on included on the court record at scheduling and both counsel addressed court on the implication of the same. Therefore it is clear that the respondent relied on both the minutes of 21/09/2004 and 4/6/2007. Although the minutes of 4/6/2007 would be inconsequential to the computation of pension of the claimant for being retrospective, the minutes of 21/09/2004 having been the originator of the revised formula applied to the claimant, it is not possible for this court to ignore these minutes as if they did not exist. The resolution in the minutes of September 2004 having been the one that approved the revised formula is not inconsequential as counsel for the claimant submitted.

Consequently although the respondent's council minutes of the meeting of 4/6/2007 were not binding on the claimant, the earlier minutes of 21/09/2004 were applicable to the claimant.

The last issue relates to the remedies.

This court having held that the claimant's benefits were properly calculated under the IHRBS, no remedies arise from such proper calculation. In conclusion, the claim fails and it is hereby dismissed. No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye

…….

2. Hon. Lady Justice Linda Tumusiime Mugisha …….

PANELISTS

1. Mr. Ebyau Fidel …….
2. Mr. F. X. Mubuuke …….
3. Ms. Harriet Nganzi Mugambwa …….

Dated: 12TH JAN 2018