

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 225 OF 2014
(ARISING FROM HCT-CS-297 OF 2013)**

TWAHA SEMPEBWA & 20 OTHERS:.....CLAIMANT

VS.

ATTORNEY GENERAL:..... RESPONDENT

BEFORE:

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

PANELISTS

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

AWARD

The gist of this claim is that the claimants having been employees of the Uganda government Printer, and the Uganda government Printer having become a private corporation effective July 1993, the claimants' jobs were abolished as a result of privatization and therefore they were entitled to retirement/terminal benefits on abolition of their jobs. According to the claim, failure by the respondent to pay terminal benefits constituted breach of contract of the respective contracts of service.

This claim was originally filed in the High Court as Civil Suit No. 297/2013 on 26/09/2013 in the civil division of the High Court. The respondent filed a defence in the High court on 11/10/2013.

Subsequently in accordance with the rules of this court the claimants filed a memorandum of claim in this court on 13/05/2015 to which the respondent did not file a reply. Various hearing notices were issued by the court but for one reason or another the respondent could not be available either to file a memorandum in reply or to attend the court proceedings until 29/11/2019 when this court was fully satisfied that indeed the attorney General's office had been served and on the application of counsel for the claimants the court agreed to proceed exparte.

On perusal of **Section 7 of the Government Proceedings Act** and **rule 6 of the Government Proceedings (Civil Procedure Rules)** a question is raised as to whether exparte proceedings could be against the Attorney General without formal leave of court by a formal application.

Section 7 of the Government Proceedings Act provides

"Civil Proceedings in the high court

(1) Subject to this Act, all Civil Proceedings by or against the Government in the High court shall be instituted and proceeded with in accordance with rules of court and not otherwise.

Rule 6 of the Government Proceedings (Civil Procedure) Rules provides;

"6 Judgment in default.

Judgment shall not be entered, and no order shall be, against the Government in default of appearance or pleading under any provision of the principal rules without leave of the court, and any application for such leave shall be made by summons served days before the return day.

In dealing with the above dichotomy Hon. Lady Justice H, Wolayo in the case of **ATTORNEY GENERAL VS EJULU JOHN, Civil Application 64/2012** (from civil suit 13/2009, Soroti circuit) held “with regard to counsel for the applicant’s submission that there was non-compliance with rule 6 of the Government Proceedings rules, rule 3 of the same rules extends the application of the CPR to proceedings involving government. The same rules do not exempt such proceedings from the operation of order 9”.

Rule 3 of the Government proceedings (Civil Procedure) Rules provides

“3 Application of Civil Procedure Rules subject to the government proceedings Act and these rules-

- (a) The principal rules shall, so far as may be, apply to all civil proceedings by or against government; and**
- (b) Civil Proceedings by or against the government shall, so far as may be, take the same form as civil proceedings between private persons, and shall, if no special form is applicable, take the form of a suit instituted by a plaintiff”.**

From the above section of the law and the decision of **Attorney General Vs Ejulu John** above mentioned, we take the position that although a party to a suit against the Attorney General may under rule 6 of the **Government Proceedings (Civil Procedure) rules** apply by Chamber summons for leave to proceed exparte against Attorney General, failure to so apply may not invalidate exparte proceedings as long as the court is satisfied that the Attorney General was served but neglected or refused to appear in court to defend the same.

Since in the instant case this court was satisfied that the Attorney General was served before allowing exparte proceedings, we will go ahead to evaluate the evidence adduced in the absence of the Attorney General.

Evidence was adduced from one Twaha Sempebwa on behalf of all the others by virtue of a power of Attorney duly registered with the Uganda Registration

services Bureau. By a written witness statement the said Twaha informed court that he and the other claimants were initially employees of the Uganda Government Printer and due to privatization in July 1993 they were offered new contracts with the new privatized organization without paying them their benefits under the previous service contracts.

On perusal of the various contracts of service while being employed by the Uganda Government printer, we find that the appointments were **“subject to the appropriate Articles of constitution of the Republic of Uganda, and the public service Act, and regulations made thereunder, the service standing orders and administrative instructions made from time to time and the Pensions Act, Chapter 281.”**

There is communication from office of the President under which the claimants were originally employed in the service of the Uganda Government Printer that they were employed under permanent and pensionable terms before they transferred their services to the Uganda Printing and Publishing Corporation (UPPC). This communication details each of the claimant’s job tittle, confirmation date and transfer date to the UPPC. The communication is dated 23/11/2017 and addressed to the Permanent Secretary Ministry of public service for purposes of formal retirement and accessibility to pension of the claimants. Earlier on, communication dated 30/6/2017 was from the Managing Director addressed to the Secretary, office of the president detailing the same subject matter.

We are in agreement with the submissions of counsel for the claimants that by virtue of the coming into force of the UPPC Act, Cap. 330 the claimants employment with the Government Printer was terminated. This is especially so when they were required to enter into new contracts with the UPPC.

Section 10 of the Pensions Act, Chapter 286 provides for circumstances under which pension may be granted. On careful perusal of the whole section, it is our opinion that one of the circumstances mentioned thereunder is when the office is abolished. On perusal of some of the contracts between some of the claimants and UPPC we find that there were new contracts indicating that the claimants had to serve probationary periods before being confirmed which in our view indicated

that their jobs earlier occupied as testified by the first claimant in his written witness statement were abolished.

Consequently we are in agreement with counsel for the claimant that under **section 10(1)(c) of the Pensions Act**, the jobs of the claimants having been abolished, they were entitled to pension.

The claimants having been employed subject to the Pension Act and therefore having been entitled to pension, the failure of the respondent to process their pension was in breach of their respective contracts and therefore they were entitled to damages. We consider the proposal of 50,000,000/= proposed by counsel very high given that the respondent has already been condemned to paying pension. Instead we consider 15,000,000/= for each of the claimants sufficient atonement in damages.

Given the inflationary nature of the currency and the time it may take for the claimants to realize the benefits under this Award, the respondent shall pay 12% interest per year from the date of the Award till payment in full. Given that the respondent, though the Ministry of Public Service was aware of the need to process pension as per the letters from president's office and from UPPC, the claim is allowed with costs to the claimants.

BEFORE:

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

.....
.....

PANELISTS

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

.....
.....
.....

Dated: 29/04/2020