

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 019 OF 2014
(ARISING FROM HCT-CS-0219/ 2012)

LYDIA HATEGA CLAIMANT
VERSUS

- 1. Attorney General**
- 2. Administrator General.....RESPONDENT**

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Mugambwa N. Harriet
3. Ms. Rose Gidongo

AWARD

The claimant is a widow and administrator of the Estate of the Late Francis Xavier Hatega who worked as a Foreign Service Officer from April 1968 to April 1991 when he passed on. The claimant thereafter applied for death gratuity which was calculated at 206,064/= but which according to her was never paid.

On 6/7/2012 she filed Civil Suit 219/2012 claiming accumulated annual pension from the date of death at the current Ambassador's basic monthly pay as well as gratuity at the current salary. Eventually the Civil Suit was referred to this court by the High court and registered as LDC No. 019/2014 whereupon the claimant filed a memorandum of claim for:

- (a) Unpaid accumulated Annual pension for 23 years from the date of service to the date of death to the tune of 829,000,000/=.

- (b) Unpaid death gratuity for 15 years from date of death to the tune of 540,000,000/=.
- (c) Interest at 10% per year.

REPRESENTATIONS

At the hearing the claimant was represented by Mr. Edgar Tabaro while the Attorney General and the Administrator General were respectively represented by Mr. Atwine Geoffrey, Principal State Attorney and Mr. Mathias Mwanje.

ISSUES

Although counsel for the claimant filed a draft joint scheduling memorandum detailing three issues, none of the respondents signed it or proposed an alternative scheduling memorandum. On 11/4/2017 Mr. Lugayizi holding a brief for Mr. Tabaro is on record saying that efforts to engage the respondents in scheduling had been in vain. The subsequent appearances and presentations were all devoid of anything to do with joint scheduling.

Consequently, at the submission level, whereas counsel for the claimant argued the three issues stipulated in the draft scheduling memorandum, the respondents in addition included one other issue: whether the claim against the respondents is barred by law.

We take exception to this approach by the respondents. Having ignored the draft joint scheduling memorandum which contained only 3 legal issues, we are of the strong opinion that the respondents were not entitled to frame a forth issue at the very late stage of submission when the claimant would have no opportunity to present arguments in respect to the said legal issue. We are of the strong suspicion that counsel for the claimant was not even aware of the said issue since we have not seen a reply on the record relating to the same issue.

Accordingly, it is only fair that this court considers only the three issues that were within the knowledge of both counsel:

- (1) Whether the claimant is entitled to the accumulated pension and death gratuity together with survivor's benefit?**
- (2) Whether the claimant received payment of the pension (or death gratuity?) for the late Francis Xavier Hatega?**

(3) Whether the claimant is entitled to the remedies prayed for?

EVIDENCE ADDUCED

It was the evidence of the claimant that whereas the calculation of death gratuity of the late Hatega was initially put at 206,064/= by the Ministry of Public Service, subsequently the Permanent Secretary of Public Service asked the 2nd respondent to verify whether 1,527,952,522/= had been paid as death gratuity for the deceased Hatega which was cross checked by her lawyers only to find no evidence of such payment. She denied having been paid any money related to gratuity or pension of her deceased husband.

In cross-examination the claimant agreed that the deceased could not qualify for pension after death although according to her, he should have been paid up to when he died.

It was the evidence of the respondents by a one Victor Bua, Commissioner of Pensions, that subsequent to a request by the Permanent Secretary of Foreign Affairs, a death gratuity of 206,064/= was computed and paid in 1993 to the Administrator General in accordance with the succession Act. According to him, the claimant as widow of the late Hatega was informed of the payments on 21/1/1993 and she wrote on 21/2/2001 to claim the terminal benefits. The witness informed court that the late Hatega having died before the law was amended to entitle beneficiaries of the Estate to “**a survivor’s benefit**”, the claimant could not be entitled to the same under the new **statutory instrument No. 4/1994**. According to him pension is only payable to a living retired

Civil servant unlike a survivor’s benefit which since 1994 is payable to the Estate of the deceased civil servant. In cross examination the witness confirmed that payment was made to the Administrator General. He also informed court that the claimant was verbally informed about the payment.

Mr. Charles Kasibayo, Administrator General, was the second and last witness for the respondents. He testified that to the best of his knowledge death gratuity of 203,254/= having been remitted by Ministry of Public Service to the Administrator General for M/s. Lydia Hatega and Callister

Habomugisha who were legal representatives of the Estate of the deceased Hatega, it was paid to them.

In cross examination the witness insisted that there was a record to show that the claimant claimed the money.

SUBMISSIONS

Relying on **Article 254 of the Constitution and Section 21 of the Pensions Act**, counsel for the claimant submitted that having obtained letters of administration for the Estate of the late Hatega, the claimant was entitled to the deceased's accumulated pension for 23 years from the date of service on 20/4/1968 till date of death on 22/4/1991, calculated at the current basic annual pay of an ambassador. Counsel strongly argued that in accordance with **Section 19(1) (b)(i) of the Pensions Act**, the claimant as legal representative of the deceased Hatega was entitled to death gratuity for 15 years from date of death in 1991. However, counsel at the same time submitted that the claimant was entitled to **“death gratuity for 15 years from the date of service on 20th April 1968 calculated at a present Ambassador's annual salary of 36,000,000/= giving a total of 540,000,000/=.”**

It was his strong submission that the claimant under **Article 21 of the Constitution** was not expected to be discriminated against while applying the **Pensions (Amendment) Statute No. 4/1994** which gave rights of Pension to the deceased family up to a period of 15 years. Counsel also relied on **Article 274(1) of the Constitution** for the legal proposition that although the operation of any existing law after the constitution could not be affected by the coming into force of the constitution, such existing law could only be construed with adaptations necessary to bring it into conformity with the constitution. To this extent, it was his view that the claimant was entitled to the survivor's benefit under the **Pensions (amendment/statute No. 4/1994)**. Counsel argued that his client never received any pension money for her late husband and that there was no evidence of such receipt.

Counsel for the respondents could not agree with the above submission. Both counsel argued strongly that pension could only be payable to a living retired civil Servant since under **Section 18 of the Pensions Act** such payment ceases upon the death of the person to whom it is granted. They argued that the death gratuity of the late Hatega was calculated and computed in accordance with

Section 16 of the Pensions Act as amended by **Decree No. 6/1978** and that the computation was based on rank, salary and length of service covering the period 20-th April 1968 – 22nd April 1991. According to counsel the claimant's computation of death gratuity based on present ambassador's annual salary of 36,000,000/= has no legal basis.

Counsel for the respondent argued that there was no legal basis for the claimant's entitlement to survivor's benefits which was introduced on 25/3/1994 vide the **Pensions (Amendment) Statue No. 4/1994**. According to counsel, the monthly benefit paid to an Administrator of a deceased's estate is not pension but is referred to as a survivor's benefit. In counsel's view, the Pensions (Amendment) Statue No. 4/1994 did not have a retrospective application and therefore the Estate of the late Hatega who died before the amendment could not benefit from the amendment.

Counsel strongly contended that the late Hatega having died in 1991, 4 years before the coming into force of the 1995 constitution, **Article 21 of the same Constitution** could not confer a benefit retrospectively. In the alternative, counsel argued, the remedy could only lie in a move by the claimant to seek an interpretation of the said Article of the constitution by the Constitutional Court as provided for in **Article 137(1) of the same Constitution**.

The respondents contended that the Administrator General's office paid Lydia Hatega Ugx. 203,254/= since she was a holder of URA ID card No. 01442-93 indicated to have received a cheque from the Administrator General's office and since in her evidence in cross-examination she admitted having visited the Administrator General's office once or twice in 1993.

DECISION OF COURT

We have no doubt in our minds (and it is not contested) that the claimant was a legal representative of her late husband, Francis Xavier Hatega who died after being in the service of the Government of Uganda as a foreign service officer. Consequently, as administrator of the Estate of her deceased husband she was entitled to any benefits accruing from her late husband. This brings us to the first issue:

Whether the claimant was entitled to the accumulated pension and or death gratuity together with the survivor's benefit?

Article 254 of the Constitution provides for pension of a public officer, it states:

“254 Pension

- (1) A public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.**
- (2) ...**
- (3) The payment of pension shall be prompt and regular and easily accessible to pensioners.**

The above article of the Constitution applies to Public Servants who have retired from the service. Pension is therefore payable to a public servant who, having served the public service and having been entitled to pension as per his/her contract of service, is retired in accordance with the terms of employment or otherwise by operation of the prevailing legal regime.

Given that pension is payable on retirement, it means that it is not retrospective to the date the concerned public servant started work. In the course of employment, the employee is entitled to salary and any other allowable benefits up to the time of retirement. Consequently, there is no legal basis for the argument and contention of counsel for the claimant that having obtained letters of administration to the Estate of the late Hatega, she was entitled to **“accumulated pension for 23 years from the date of service in public service on 20/4/1968 till the date of death on 22/04/1991”**.

Under **section 18 of the Pensions Act** every pension or other allowance under the Act ceases upon death of the person to whom it is granted unless as provided under **sub-section 2** which states:

“2. Notwithstanding sub-section I, where a person who is in receipt of a pension or other allowance under this Act dies before the expiry of fifteen years after the date of his or her retirement, the pensions Authority may continue paying the pension or other allowance –

- (a) If the deceased is survived by a spouse, to the spouse, for the unexpired period of the 15 years referred to in this subsection;**

The facts in the instant case suggest that the deceased husband of the claimant died before his retirement and therefore before entitlement to pension as prescribed in the above section of the law. Consequently, her entitlement could only lie in the death gratuity for the benefit of the beneficiaries of his estate.

In the same wave length, we do not see the legal basis of the claim of death gratuity “**for fifteen years from the date of service on 20th April 1968 calculated at a present ambassador’s annual salary of Ugx. 36,000,000/= giving a total of 540,000,000/=**”.

This is because the deceased Hatega having been employed from April 1968 up to 1991, the death gratuity could only be calculated in accordance with **Section 19 of the Pension Act**, which in our considered view does not put the said calculation to a formula commensurate with current or present annual salary structures but salary structures prevailing at the time of death of the husband of the claimant.

In the absence of any other legal formula commensurate with that expressed by the claimant as the proper formula that ought to have been used in calculation of the death gratuity of the late Hatega, we give credence to the evidence of Victor Bua a Commissioner of pensions, that the computation of the death gratuity was based on rank, salary and length of service covering the period 20th April 1968 to 22nd April 1991 and in accordance with **Section 19 of the Pensions Act**.

It was argued by counsel for the claimant that she was entitled to survivors benefit by virtue of Article 21 of the constitution. Although counsel did not directly say so, we understood him to say that the **Pensions (Amendment) statute 4/ 1994** was ultra vires Article 21 of the Constitution that provides for equality before the law. He argued that in accordance with Article 274(i) of the Constitution while interpreting any law court was bound to construe such law with such modifications, adaptations, qualifications and exceptions as may be necessary to bring such law into conformity with the Constitution. He therefore contended that it would be discriminative of the public servants who died or retired before the coming into force of the Pensions (Amendment) Statute 4/ 1994, to deny them the survivors benefit granted to those who died or retired after the 1994 Amendment.

We do not agree with this assertion. The pensions (Amendment) statute 4/ 1994 did not provide for a retrospective operation and for that matter this court cannot apply it retrospectively.

We agree with the submission of counsel for the respondent that the commencement date of the 1994 statute having been 25/03/1994, the claimant could not claim benefits (survivor’s benefits) that were not legally provided for before the demise of her husband; she could only claim for death gratuity.

We entirely agree with the respondent that if the claimant was offended by the discriminative nature of the Pensions (Amendment) Statute 4/ 1994 and if she believed it was ultra vires Articles 21 of the constitution, her remedy lay in Article **137(1) of the Constitution** which allows her to raise a red flag in the constitutional court. Before this is done we are of the firm view that the Estate of a deceased person before March 1994 could only be able to access “**survivor’s benefits**” if only the deceased died at or during his retirement as provided for under **Section 18 (2)(a) of the Pensions Act** above mentioned.

We have perused carefully the Pensions (Amendment) Statue 4/1994 provided to this court by the respondent. Although the Statue states that it is an amendment to the Pensions Act, on perusal of the **Pensions Act, Chapter 286 of the laws of Uganda**, we find a discrepancy.

Whereas the amendment refers to the “**Principal Act**” as cap 281 this is actually the **Health Act**. It is more disturbing to find that the **Sections of the Principal Act, Cap 286 do not** rhyme with the amendment Sections provided in the Pensions (Amendment) statue 4/1994. For example, the amendment provides in No. 6 that

“6. Section 4A of the Principal Act is amended –

(a) By re-numbering Section “4A (1) as Section “4A”;

(b) By deleting subsection (2)

Yet our reading of the Principal Act, Cap 286 shows it does not contain “Section 4a!! Nor does it contain subsection (2)! The discrepancies go on un abated as one reads further into both the Amendment and the Principal Act.

The question we have failed to answer is whether the **Pensions (Amendment) Statute 4/1994** was amending a **Pensions Act, Chapter 281** which has eluded us

The discrepancies notwithstanding, amendment No. 15 of statute 4/1994 provides

“15. Section 16 of the principal Act is amended –

By substituting for subsection (1) the following –

“16. (1) Where an officer dies while holding a pensionable office and is not on probation or agreement, or while holding a non- pensionable office in which he has

been confirmed, it shall be lawful for the pensions authority to grant to his legal personal representatives-

- a. If the officer had served in the public service for a period of ten years or less-
 - (i) A gratuity of an amount not exceeding three times annual pensionable emoluments; and
 - (ii) A gratuity of an amount not exceeding five times the annual amount of pension the deceased officer would have been eligible for if his period of service had been qualifying service for the purpose of this Act.
- b. If the officer had served in the public service for a period exceeding in the aggregate ten years-
 - i. Either a gratuity of an amount not exceeding triple his annual pensionable emoluments or his commuted pension gratuity, if any, whichever is the greater and
 - ii. A reduced pension as provided in regulation 25 of the Regulations contained in the First Schedule to the Act whether commuted pension gratuity, under sub-paragraph (i) of paragraph (b) of this sub-section is payable or not; and for the purpose of granting a pension under sub-paragraph (ii) of paragraph (b) of this sub-section –
 - (a) If the deceased officer is survived by a spouse, pension shall be payable to the surviving spouse for a period not exceeding fifteen years from the date of death of the officer;
 - (b) If the deceased officer leaves a child or children but does not leave a spouse or leaves a spouse to whom pension is not granted, pension shall be payable to the child or children for a period not exceeding fifteen years while the child or children are under the age of eighteen years;

- (c) **If the deceased officer leaves any child and a spouse to whom a pension is granted under paragraph (a) of this subsection, and the spouse subsequently dies within fifteen years from the date of death of the officer, the provision of paragraph (b) of this subsection shall apply for the unexpired period of the fifteen years.**
- (d) **If the deceased pensioner is survived by more than one wife or child, the amount of any pension, gratuity or other allowance shall be divided equally among the wives or children.**
- (e) **A pension granted under the provision of sub-paragraph (ii) of paragraph (b) of sub-section (1) of this section shall not be payable for a period exceeding in aggregate fifteen years.**

Once again Section 16 of the Principal Act, Cap 286 does not contain subsection (1) which Amendment Statute 4/1994 intended to amend so as to grant pension to a surviving spouse or child of a deceased public servant. Even then, this amendment in our considered opinion contradicts the constitutional provision in Article 254 which provides, as earlier pointed out in this Award, for pension on or after retirement. We do not accept the contention of the respondents that Amendment Statute 4/1994 provides for **survivors' benefits** as opposed to **pension** since the words used in the statute refer to the payment as pension and the deceased as pensioner.

Nonetheless, Amendment statute No. 4 of 1994 came into effect on 25/3/1994 before the death of the husband of the claimant and it provides no retrospective application and cannot therefore be applied to the instant case with the result that no survivor's benefits accrued to her and no accumulated pension or accumulated death gratuity accrued to her as discussed earlier in this Award. The first issue is resolved in the negative.

The second issue is: **Whether the claimant received payment of death gratuity for her late husband.**

The respondents endeavored to convince this court that the legal representatives of the late Hatega who included the claimant received a death gratuity in respect to the deceased. The basis of this assertion was that pension forms were filled and the pension entitlement was calculated and passed. The assertion was also based on the fact that Ministry of Public Service issued a cheque for the purpose to the Administrator General and a voucher of payment was prepared in addition to the fact that the claimant visited the offices of the Administrator General. We have perused the voucher attached to the memorandum in reply but in our view it does not certify us that the amount mentioned therein was actually received by the claimant or any other legal representative of the late Hatega. This is because the voucher is not signed by any recipient. We find evidence adduced by the respondents totally insufficient to prove that the claimant received her late husband's death gratuity and consequently the second issue is in the negative. It is hereby ordered that death gratuity of 206,064/= as computed and shown in the voucher attached to the respondent's memorandum in reply be paid to the claimant

The third and last issue is **whether the claimant is entitled to remedies prayed for.**

Apart from remedies not granted in the above discussion the claimant prayed for interest, general damages, aggravated damages and costs.

GENERAL DAMAGES

These are damages arising from the wrongs committed against a successful litigant by an unsuccessful litigant. They constitute compensation for loss or injury occasioned to the successful litigant and they are never a means of profiteering from litigation but a way of putting the successful litigant as near as possible in the position he or she would have been had the loss or injury not been caused.

The Claimant lost her husband who had served the country and she was entitled as of right to death gratuity which should have sorted out certain issues. We agree with her submission through her lawyer that she suffered great financial and emotional embarrassment as she moved from office to office for her late husband's death gratuity. Given her status and the status of her late husband we grant her general damages of 30,000,000/=

INTEREST

Given the inflationary nature of our currency the claimant shall be paid interest on the death gratuity at 10% as prayed for, from the date of filing the claim in the High Court, and 15% on the damages from the date of this Award until payment in full.

AGGRAVATED DAMAGES

We have not found any special or aggravating circumstances to warrant these damages. The prayer is denied.

COSTS

Given the inconvenience and expense suffered by the claimant in the course of prosecuting this case which should have been avoided by the state, the claimant shall be entitled to full costs of the claim,

Delivered & signed by:

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Mugambwa N. Harriet
3. Ms. Rose Gidongo

Dated: 22/01/2021.