THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM TSEKOOKO, J.S.C., KANYEIHAMBA, J.S.C., AND KIKONYOGO J.S.C.)

CIVIL APPEAL NO. 1 OF 1998

BETWEEN

BARCLAYS BANK OF UGANDA..... APPELLANT

AND

GODFREY MUBIRU..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Uganda at Kampala (Okalebo, J. and reviewed by Tinyinondi, J.) dated 5th May, 1992 in High Court Civil Suit No. 1004 of 1990)

JUDGEMENT OF KANYEIHAMBA, J.S.C.

This is an appeal from the judgment and decree of the High Court of Uganda delivered by Okalebo J. on 5th May, 1992 and reviewed by Tinyinondi, J, on 25th May, 1993.

The background to this appeal is as follows:

The Respondent entered into the employment of Barclays Bank, International Ltd. on 12/6/69. Barclays Bank International Ltd. was later restructured and named Barclays Bank of Uganda Ltd.

Between his appointment in July 1969 and the day his services were terminated summarily on the 31st May, 1990, the Respondent served the appellant in various capacities including those of branch manager and deputy staff manager. The Respondent instituted High Court Suit No. 1004/1990 against the appellant claiming damages for wrongful dismissal. Judgment was given in his favour with eight heads of unquantified damages awarded to him. The hearing and Judgment in the High were presided over by Okalebo J. The appellant filed a Notice of Appeal against the judgment and orders of the High Court. In he meantime, plaintiff who is now the Respondent found it difficult to have a decree extracted because of the unquantified damages awarded by Okalebo J. The matter was referred to Tinyinondi, J. who settled the terms of the decree under which the appellant was to pay various amounts representing salary for the unexpired period of his contract, rent subsidies, medical subsidies, leave allowance, entertainment allowance and retirement benefits totalling the sum of Uganda. Shs. 53,884,416, with interest at 45% from the date of judgment. The trial judge further ordered that the transport and luncheon subsidies were to be paid from the time the Respondent was dismissed up to the date where he would have retired from the employment of the appellant. On 6/1/97, the terms of the decree were finally settled. This appeal is against the decisions of the High Court including the decree.

Four grounds of appeal are listed in the Memorandum of Appeal and they are:

1- The learned trial judge erred in law and on the facts in holding that dismissal by the Appellant of the Respondent was wrongful.

2- The learned trial judge erred in law and on the facts in holding that the Appellant's employment contract with the Respondent could not be terminated until the Respondent attained the age of 55 years of/or until the expiration of 30 years of service with the Respondent, whichever was the earlier.

3- Further or Alternatively, if the respondent's dismissal by the appellant was wrongful which is denied, the learned trail judge erred in law and on the facts in not awarding the respondent what he would received in lieu of notice but instead awarding the Respondent as special damages his salary and other allowance up to the time when he would attain the age of 55 being a period of nine years and further, in awarding interest thereof at 45% per annum from judgment till payment.

4- The learned trial judge erred in awarding the Respondent his pension dues when in fact they had not yet accrued.

Counsel for the appellant, Mr. Masembe Kanyerezi, submitted that while the Respondent was employed as branch manager, his acts and conduct in relation to his duties became the subject of criticism and warnings by the appellant. The criticism was well-founded and based on the persistent breaches of duty committed by the Respondent as a manager of a lending bank branch. Counsel referred to at least three letters written at different times to the Respondent by the appellant pointing out the breaches by the respondent and warning him not to repeat the same. These breaches consisted of the respondent's habit of lending more money to creditors in excess of his discretionary powers to the detriments of the appellant's interests. These excesses were indulged in by the respondent contrary to the standing orders which bound him and inspite of the warnings he had received from time to time from his employer. The last straw was when the appellant received the Inspection Report, 1989, (exhibit D 9), which gave details of the respondent's shortcomings. Counsel for the appellant submitted that it is then that the appellant decided to exercise its powers of summary dismissal. On 31st May, 1990, the Managing Director, Mr. E. N. Bowman, on behalf of the appellant, wrote a letter, (exhibit D10) to the respondent as follows:

> "The Board have carefully considered the lending portfolio at Embassy House Branch whilst you were manager there last year. The position of over 40 accounts totalling to a sum of Uganda. Shs. 22 million is of considerable concern and it is the view of the Board, that there is a strong doubt as to recovery. The Board considers these lending's to be negligent and shows gross incompetence on your part. The Board therefore approves your dismissal from the Bank with immediate effect".

Mr. Masembe Kanyerezi referred this court to documentary evidence which was presented in the court below showing all the acts of breaches of duty and negligence. He further showed evidence given in the same Court by the Respondent himself admitting to some of these breaches and acts of negligence. Counsel concluded therefore that the appellant was amply justified in effecting summary dismissal of the respondent. Mr.

Masembe Kanyerezi referred to the terms of the employment contract and in particular to clause 13, (exhibit D1) which reads:

"provided that should you at any time either during your probationary period or afterwards, commit any breach of the conditions herein contained or be guilty of unsatisfactory conduct inside or outside the Bank, the Bank reserves the right to dismiss you without notice."

Counsel therefore argued that the trail judge made an error in failing to take into account this state of affairs in the performance of the respondent or in regarding these serious breaches of duty as unimportant or trivial. Counsel referred to portions of the judgment of Okalebo J. Thus, at page 8 the learned judge observes,

> "It is evident that the plaintiff's conduct was not perfect throughout his employment. However, he offered explanations where there were problems. I consider the shortcomings as the normal shortcomings ... which would not call for dismissal. I therefore hold that the plaintiffs dismissal was wrongful for which he ought to be compensated.

Later on in his judgment, Okalebo J. states,

> "In the hearing of the case, the plaintiff maintained that he discharged his duties diligently. That where he lent in excess he was authorised and the where there were queries, he offered satisfactory explanations. The defence offered no evidence in rebuttal.. I therefore hold (that) there was no evidence enough on which one could hold (that) the plaintiff was negligent in his duties".

Counsel for the appellant further submitted that in his view the trial judge misconceived what is meant by summary dismissal. Counsel referred to page 7 of the judgment where the learned trial judge said,

> "He further testified that the plaintiff case was not referred to the disciplinary committee. This I hold was against the principle of natural justice, when the defendant could summarily dismiss any of its employees. For such dismissal should be where there is a breach of duty which is so serious as to amount to the servant's repudiation of his obligation under the contract of employment. Suits (sic) would include disobedience of lawful orders, wilful damage to employer's business, etc. Such grounds cannot be deduced, from fact sand by our facts the defence has no adduced evidence enough to justify summary dismissal."

Mr. Masembe Kanyerezi maintained that the breaches committed by the respondent justified the action of the appellant in dismissing him summarily. Counsel cited Chitty on Contracts 26th~Ed, Vol. II pp. 823 - 827, where the learned editors define and explain summary dismissals and give illustrations of misconduct and breaches which justify the same.

On this ground, Counsel concluded that an employee must show a reasonable degree of competence and due regard must be shown for the terms and conditions of employment, especially if their disregard is likely to cause loss as in the case of banking. The appellant had given adequate evidence to show that its summary dismissal of he respondent was justified. On the other hand, learned counsel criticised he casual manner in which the trial judge dealt with the evidence against the respondent. Further counsel submitted that

the judge was wrong and on this ground, the High Court judgment should be reversed.

For the respondent, Mr. Bitangaro opposed the appeal in its entirety. He made submissions on the first ground of appeal separately, grounds 2 and 3 together, and concluded with ground 4 of appeal. He supported the findings and judgment of the trial judge.

On ground one of appeal, Mr. Bitangaro contended that the facts of the case show quite clearly that the respondent was wrongfully dismissed by the appellant. It was counsel's contention that between September, 1972 and July 1989, the respondent was repeatedly and progressively promoted to higher levels of management by the appellant on the basis of merit. He climbed the ladder of promotion up to the post of Deputy Staff Manager. He continued to manage the affairs of the appellant until he was wrongfully and arbitrarily dismissed. As to whether or not he committed breaches of the terms and conditions of employment deserving summary dismissal is a matter of fact. Counsel referred court to the terms of he contract of service (exhibit D1) between the appellant and the respondent. He cited the contents of clauses 2-13 and submitted that between them the provisions of these clauses governed the agreed duties and level of performance by the respondent. Counsel argued that the findings of the trial court were that the respondent had not breached any of the major terms contained in the service contract or committed negligence and therefore his summary dismissal was wrongful. He asked court to uphold the findings and judgment of the High Court.

I intend to deal with and dispose of the issues raised as they appear in the Memorandum of Appeal and as argued by learned counsel for both parties.

On the first ground, appellant contends that the learned judge erred in law and on the fats in holding that the summary dismissal of the respondent by the appellant was wrongful. To resolve this matter it is necessary, in my opinion, to first discover what is meant by summary dismissal and then relate that meaning to the facts and circumstances of this appeal.

Where a service contract is governed by written agreement between the employer and employee as in this case, termination of employment or services to be rendered will depend both on the terms of the agreement and on the law applicable.

Under the terms of employment contained in the service contract (exhibit D1) dated 5th June, 1969, clause 13, it was agreed between the parties that after the respondent has served his probationary period, and his appointment is confirmed, he would be a monthly servant of the appellant with a proviso that.

> "should you at any time either during your probationary period or afterwards, commit any breach of the conditions herein contained or be guilty of unsatisfactory conduct inside or outside the Bank, the Bank reserves the right to dismiss you without notice."

Clause 16 of the agreement entitled the appellant to vary the conditions of service at any time if it desired to do so and, in a series of letters buttressed by the appellant's rules and conditions of employment of branch managers, the respondent was informed about and cautioned against lending to customers beyond the permitted limits. One of the documents containing the information about lending limits imposed on the respondent was the letter written to him by Mr. Bowman, the managing Director (exhibit D2), in

which the Managing Director stated.

> "I write to advise you that the Branch Discretionary limits have again been reviewed and the following increases are to be effective from receipt of this letter. Any advances previously under report to this office need no longer be reported unless they are operating as unsatisfactory that you consider clarification as necessary in which case and AD 16 should be deputise for you ..... "

The letter went on to describe in kind and figures the kind of lending limits which were imposed upon the respondent and contained the following detail:

> "With regard to excesses, a short-term margin of 15% will be allowed but if the excess remains for a period of seven days it should be reported to this office".

Lastly, the letter emphasised the importance of the limits by ending with the following ominous words,

> "But it must be stressed that in no way should advances judgment and control be compromised or reduced"

The Managing Director of the appellant was further constrained to write on this matter again on 19th January, 1989 (exhibit D5) referring to new revised limits of lending which were to be read together with the then current handbook instructions and earlier letters on the subject, dated 30/12/87 and 14/1/88 (Exhibits D2 and D3).

The above documentary information and instructions show clearly the great importance the appellant attached to the powers and lending limits of the respondent as a Bank branch manager. In my opinion, ignoring them or repeatedly exceeding them coupled with failure to report the same to the appellant within the stipulated periods, would amount to a fundamental breach of his contract by the respondent.

Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses. This is because banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a special fiduciary relationship with their customers whether actual or potential. Thus, in Harmer v Cornelius C. 1858) 5C B (N. S) 236, it was held that where an employee holds himself out as being skilled to do a certain type of work and is employed on that basis impliedly undertakes that he possesses and will exercise reasonable skill or competence in that work. Moreover, it is my opinion that in the banking business any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers. Loose talk, irregular or unconditional banking acts or behaviour could lead to speculation about and the undermining of the reputation of the appellant and therefore loss of customers and investors upon which the existence and business of a bank depend. The duties and liabilities of banking are well spelt out in the case of Rowledson v National Westminster Bank Ltd (1978) IWLR, 798 and in National Bank Plc v Morgan (1985 A.C. 656.

When an employee is in breach of a fundamental term of his employment or guilty of sufficient misconduct, he or she may be dismissed summarily without notice, and, before the expiration of a fixed period of employment as was held in the cases of Atkin Acton, (1830) 4 C & p. 208, Bason Deep Sea Fishing Co. v. Ansell, (1888) 39 C.H.D. 339, and

Clouston & Co. v. Corry, 81906) A.C. 122.

An employee may be summarily dismissed if he or she wilfully disobeys any lawful and reasonable order of the employer. Chitty On Contracts 26th edition, vol. II p. 827, gives a number of instances and precedents where employers are entitled to summarily dismiss employees who flout or repudiate essential conditions of the contract of employment. In Pepper v. Webb (1969), 1 WLR 514, and Gorse v. Durham C.C. (1971), 1 WLR, 775, courts gave examples of where even one act of disobedience will justify summary dismissal.

It follows of course, that summary dismissal is without notice and dismissal without notice also implies dismissal without a right to be heard first.

In my opinion, the trial judge did not consider the seriousness of the acts of the respondent who, on occasions, ignored or flouted his terms of employment as far as the lending limits were concerned. Thus, at page 3 of his judgment, the learned trial judge, Okalebo J. reviewed the evidence as presented in court showing that the appellant had for sometime been dissatisfied with the services of the respondent because the respondent had failed to comply with the warnings of the appellant regarding his lending-excesses. One of those warnings is referred to by the trial judge at page 3 in his judgment as follows.

> "As you are fully aware, there have been numerous occasions of your breach of discretionary limits and failure to report excesses to the head office, the actions by you have caused considerable extra work and possibility of loss"

Further on in his judgment, the learned judge refers to other instances of breaches. When testifying, the respondent admitted these breaches of excess lending but tried to explain them away by showing that he had made improvements and profits in other areas of his duties.

Thus, on page 24 of the record of proceedings, the Respondent admits.

> "There were some lending (sic.) In excess which I did not report and the head office used to write to me asking why I had not reported. I used to explain and the head office used to get satisfied."

However, no evidence was produced to show that the head office was always satisfied with respondent's explanations. On the contrary, what evidence there is only shows appellant's dissatisfaction with respondent's acts. This is the substance of the letters dated 11th January, 1989, 17th April, 1989 (exhibit D6) 28th April, 1989 (exhibit D9), the Bank's Inspection Report of 1989 (exhibit D8) and respondent's response to the letter dated 11th January, 1989, and respondent's letter dated 16th May, 1989 in which respondent explained by stating that:

> "As regards advance control, I feel that the management concentrated more efforts on operations and safeguards against frauds and forgeries as evidence. . II

Yet, the appellant produced ample evidence of unsatisfactory conduct and of negligence on the part of the respondent to which the letter had no reasonable answers.

With all due respect to the learned trial judge, I agree with counsel for the appellant that the judge did not take all this evidence seriously and misconceived the principles of summary dismissal already described in this judgment.

Thus, on page 7 of his judgment, the learned trial judge observed,

> I agree with plaintiff's counsel in his submission that being found guilty of unsatisfactory conduct presupposes that there is a trial where the concerned party is afforded an opportunity to defend himself. And this is a cardinal principle of natural justice . . . . Where the defendant could summarily dismiss any of its employees. . . . Should be where there is a breach of duty which is so serious (as) to amount to the servant's repudiation of his obligation under the contract of employment. (Such) suits would include disobedience of lawful orders, wilful damages to the employer's business, etc. Such grounds cannot be deducted for facts and by our facts; the defence has not adduced evidence enough to justify summary dismissal. Thus, here the plaintiff's dismissal offended the spirit of natural justice and here I will quote my brother Karokora J. (as he then was), in Mumira v National Insurance Corporation (1985) HCB 110.

'The principle of natural justice alteram partem must be observed by both financial and administrative tribunals where a decision of this fundamental principle of natural justice, that decision is justiciable by the courts.'

He further considered a fair hearing as follows:

'By fair hearing it is meant and evidenced the person charged must be given notice of charge and must be present and defend himself or may be legally represented.'

With respect, it is my opinion, that the learned trial judge misdirected himself on the principle of summary dismissal whose purpose is to effect an immediate termination of employment without notice or hearing. Further, the trial judge completely misconceived and misinterpreted the words of Karokora J. as he then was, in Mumira's case (supra) who was then applying the law of fair hearing to different facts and circumstances in an entirely different legal criterion. In regard to MUMIRA's case, (supra) I agree with counsel for the appellant that that case belongs to category and species of cases where employment is in some way, public employment or involves the tenure of an office the holder of which is entitled to the benefit of the application of the principles of natural justice before they can be dismissed as specified in the English cases of Stevenson v. U. R. T. U. (1977) I. C. R. 893 at p. 962 G-H, per Buckley. L. J, and Malloch v. Aberden Corporation (1971) 1WLR 1578 at. p. 1. 596, per Lord Wilberforce.

In Kayondo v. The Cooperative Bank Ltd. Civ. Appl. No. 19 of 1993, and Kiffundu v. The Attorney General Civil App. No. 27 of 1993, this court dealt with cases where employees had been similarly affected in one way or another and considered rules of interdiction and terminal benefits, but in both cases, the courts were specifically dealing with interpretation and application of statutory or constitutional provisions governing the matters in issue.

In my judgement, the trial judge in this case erred both in law and in fact by holding that the summary dismissal of the respondent by the appellant was wrongful and therefore respondent was entitled to damages. For the reasons I have given, the first ground of appeal succeeds.

Ordinarily, my decision on the first ground of appeal should dispose of the second and third grounds as set out in the Memorandum of Appeal save for the respondents' entitlements which I consider as having been due and payable by the time he became the subject of summary dismissal. I will deal with those entitlements in ground four of appeal. However, before that I will also briefly dispose of each of the other grounds of appeal.

With regard to ground two of appeal counsel for the appellant referred to several documentary exhibits which governed the contract of employment between the parties and to leading authorities on the subject which are reviewed later in this judgment. One of the documents referred to was the contract of employment (exhibit D1) dated 5th June, 1969, in which the respondent is referred to as a monthly servant and under whose terms the appellant had the right to terminate the employment of the Respondent legally by giving a month's notice. Counsel submitted that where the employer fails to give notice in accordance with the terms and conditions of service, the plaintiff is only entitled to payment in lieu of notice. Counsel further contended that where the contract of employment does not contain a specific provision for giving notice, the law requires that any party to that contract need only give reasonable notice.

Turning to ground three of appeal, Counsel for the appellant conceded that in the present case, had the respondent continued uninterrupted in the employment of the appellant, he would have been entitled to work until he was 55 years of age or until he had served a period of not less that thirty years in employment. These periods are deducible from reading the contract of employment together with the appellant's Staff Pension Fund Rules (Exhibit D.12). However, it was Counsel's submission that where the parties are each entitled to give one month's notice of termination as in the present case and, the employee claims that no such notice was given or whatever notice which was given was unlawful, the only remedy is payment in lieu of such notice. Counsel cited Chitty on Contracts (supra), and British Guiana Credit Corporation v. Clement High Da Silva, (1965) 1 WLR 248 at pages 259-260, in support of this proposition. Counsel submitted that the trial judge erred in law when he held that since the respondent had been wrongly dismissed, he was entitled to full payment for the remainder of his term of employment, which in this case was stated by the respondent and accepted by the learned judge as 9 years from the age of 55 years or 30 years of employment.

Counsel for the appellant criticised the judge's awards as unprincipled, unjustified and incomprehensible. He contended that in the first place, they were all unqualified and yet the respondent had prayed for specific damages in his plaint. It was Counsel's view that specific damages must be specially pleaded. He further argued that some of the damages awarded are irrational. He gave as examples, transport, luncheon and leave allowances. It was counsel's contention with which I agree that once an employee's services are terminated whether rightly or wrongly, transport, luncheon or leave allowances, no longer apply nor are they payable to such an employee.

On ground 2 and 3 Counsel for the respondent dealt with the contention by the appellant that the respondent had persistently exceeded his lending limits and argued that the excess as revealed did not amount to unsatisfactory conduct on the part of the respondent. Counsel further submitted that the matters complained of in the letters of warning by the appellant as shown in Annexes (exhibit D3) and (Exhibit D6) were satisfactorily explained by him. Counsel further submitted that with regard to the excesses at the Embassy House branch, it was clear from the evidence that at the time they were

incurred, respondent had already left that branch to take up his new appointment as Deputy Staff Manager.

Counsel argued that the two excesses incurred at the same branch while he was still there can hardly amount to gross negligence as claimed by the appellant. Counsel argued that the allegations of excesses were not proved before the trial judge. In fact no officials or auditors were called to testify and verify the same. Counsel therefore prayed court to uphold the finding of the trial judge that the appellant had failed to prove unsatisfactorily conduct on the part of the respondent as stipulated in Clause 13 of the service contract and in the result that the dismissal by the appellant was wrongful. Counsel for the respondent also supported the finding of the trial judge that by failing to give notice and an opportunity to the respondent to be heard, the appellant denied him the right to natural justice.

As to what respondent was entitled to as compensation for wrongful dismissal, Mr. Bitangaro supported the awards granted by the trial court. Counsel referred the court to the contents of the service contract and the Pension Rules which together provided, that, once confirmed as a monthly servant, the respondent would work for the appellant on a permanent basis until he attained the age of 55 years old or completed 30 years of employment with the appellant. From this, counsel argued that these terms can only mean that in the event of the respondent being wrongly dismissed, the appellant would be legally bound to honour all the terms for the remainder of the period and the pension entitlement for the same period as if he had remained in the employment the whole of the service contract term. Counsel cited Southern Highlands Tobacco Union Ltd. v. David McQueen, (1960) E. A. 490, in support of his arguments. On this ground, Counsel for the respondent concluded by saying that in this case there was wrongful dismissal and clause 13 of the service contract did not make any provision for notice to employees who had already served their probation period. In consequence, an employee who is wrongfully dismissed is entitled to all the benefits of the contract for the remaining years of service which, amounted to nine years. Mr. Bitangaro prayed court to confirm the findings and judgment of the trial court on these grounds.

On ground two of appeal, I agree with the submission of counsel for the appellant that the learned judge erred in law in holding that the contract between the parties could not be terminated until the respondent attained the age of 55 years old or until the expiration of 30 years of service by him whichever was achieved earlier.

In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment. Thus, in the case of Lees v. Arthur (Greaves Ltd, (1974) I. C. R. 501, it was held that payment in lieu of notice can be viewed as ordinary giving of notice accompanied by a waiver of service by the employer to terminate by notice. Indeed, in the English case of Rex Stewart Jeffries Parker Ginsberg Ltd v. Parker (1988) I. R. L. R. 483, at p. 486, it was held that notwithstanding statutory or employment contract provisions, if the parties agreed upon a payment in lieu of notice for a period shorter that stipulated, the employer is entitled to terminate the contract of employment by offering the payment in lieu of notice. The right of the employer to terminate the contract of service whether by giving notice or

incurring the penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the courts. The employee is only entitled to compensation only in those cases were the period of service is fixed without provision for giving notice.

Counsel for the respondent cited the English case of Ridge v. Baldwin and Others, (1964). 40 (H.C.), in support of his contention that where the employer terminated employee's contract unjustly, the latter was entitled to compensation. That case is of course distinguishable from the present one where the termination was, as already observed, lawful. Nevertheless, even in the Ridge's case, their Lordships observed,

> "As to relief, if the respondent acted without jurisdiction or in defiance of the rules of natural justice, then their decision is a nullity and the appellant is entitled as of right to the declaration he seeks. In such circumstances the court can neither impose terms upon the appellant nor require undertakings from him as a condition of granting relief. In fact, he will not seek reinstatement as Chief Constable and his main concern is the financial consequences of his having been dismissed instead of being allowed to resign ..... Such resignation should be treated as effective as from March 7. 1958 (the date of his unlawful dismissal) and to limit his claim against the respondent merely to his being heard as to his entitlement for a pension."

This case should also be distinguished from B. Surinder Singh Kanda v. Government of the Federation of Malaya (1962) A.C., 322, where the respondent was engaged for a fixed contractual term and not on permanent and pensionable terms. In my opinion, the measure of damages in a case where notice should have been given and was not is limited to the amount of money the employee would have earned under the contract for the period until the employer could lawfully have terminated it."

If it had been necessary to decide, I would not agree with the argument advanced by counsel for the appellant that the respondent should have taken reasonable steps to minimise his loss. At his age and by the nature of his employment in banking, it would not have been possible to be so easily reemployed, especially with summary dismissal hanging on his head.

However, in the present case, the contract of employment referred to the respondent as monthly servant and under those terms, the respondent would have been entitled to a one month's notice or payment in lieu of notice, if I had held that the respondent was entitled to notice before dismissal.

Counsel submitted that the learned trial judge erred both in law and fact when he held that the retirement and pension rights had now natured as a result of the courts' judgment and were therefore due for payment. Mr. Masembe Kanyerezi cited Chitty on Contracts, volume 2, 26th edition, at page 807, where the learned editor state:

> "The mere fact that the employee becomes a member of the end owner and pension scheme for the permanent staff of the employer raises no implied term that the employment cannot be determined on reasonable notice."

Counsel also cited Barclays Bank of Uganda Limited Staff Pension Fund Rules as contained in Exhibit D. 12. He submitted that Rule (3) of the Rules applies to the present case. That Rule provides that:

"No pension (other than a deferred pension) shall be granted to any official or messenger dismissed from the service of the Bank"

In response, Mr. Bitangaro contended that if this court finds that the trial judge was correct in holding that the dismissal of the respondent was wrongful and confirms the judgment in the court below, it will follow that respondent was entitled to his pension dues in full. Counsel further submitted that in that event, the court would find that these dues accrued immediately judgment was given. In Mr. Bitangaro's submission, Rule (3) of the Pension Rules did not apply to the respondent. Only the Rules which were contained in Part 13 of the same Rules applied.

I do not agree with the submission by counsel for the respondent that if this court had found that the trial judge was correct in holding that the dismissal of the respondent was wrongful and confirmed the judgment of the learned trial judge that it would follow that the respondent was entitled to his pension dues in full and that such dues would accrue immediately after judgment was given. The Barclays Bank of Uganda Limited Staff Pension Fund Rules provide in Rule (3) that:

"No pension (other than deferred pension) shall be granted to any official or messenger dismissed from the service of the Bank".

The trial judge erred in law and fact in failing to appreciate these provisions.

In my view, only deferred pension rights can be realised and moneys due under them become payable. From the evidence of the respondent which contradicted neither by the evidence non or the submissions on behalf of the appellant, both employer and the respondent contributed to the pension scheme. In my opinion, such contributions together constituted the deferred pension of the respondent at the time of his summary dismissal and, in my judgment, such deferred pension which had already and fully vested in the respondent at the time of his dismissal should be paid to him as of right.

Ground four succeeds in part. For the reasons I have given, and subject to my views on ground four, I would allow this appeal in part. I would set aside the judgment and decree by the High Court save as regards deferred pension. As the appellant has succeeded on three grounds and part of ground four, I would award the appellant 3/4 of the costs both here and in the High Court.

DATED AT MENGO.....24th ..... DAY OF ..... February, .1999.

HON. JUSTICE. G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT