

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

CORAM: ODOKI,CJ, TSEKOOKO, KAROKORA, MULENGA AND
KANYEIHAMBA, JJ.S.C

CIVIL APPEAL NO. 1 OF 2002

BETWEEN

NSEREKO JOSEPH }
KISUKYE SARAH } ::::::::::::::: APPELLANTS
HAJI MUNJI & OTHERS }

AND

BANK OF UGANDA ::::::::::::::: RESPONDENT

*(Appeal from the judgment of the Court of
Appeal (Okello, Mpagi-Bahigeine,
Twinomujuni JJA) dated 22nd October 2002 in
Civil Appeal No 1 of 2002)*

RULING OF THE COURT

The Appellants appealed to this Court against the decision of the Court of Appeal which reversed the decision of the High Court awarding the Appellants nominal general damages and costs of the suit. The appeal to this Court was dismissed with costs, on 21 March 2003.

However, the Court observed that the appeal arose from a representation suit. But it was not apparent from the record whether all the Appellants and all those represented in the suit were aged below 50 years at the time they accepted the terms of their respective compensatory packages. It was further observed that the dismissal of the appeal should not affect the pension rights of any Appellant who was aged 50 years or more at the time of accepting to terminate their employment under the voluntary scheme. Those pensionable employees who had not reached early retirement age but opted to voluntarily terminate their services were not entitled to pension.

On 1st July 2003, the Registrar of this Court signed an order drawn by M/s Mugerwa & Masembe Advocates, Counsel for the respondent and approved by M/s Matovu & Kimanje Nsibambi Advocates, Counsel for the Appellants. The order stated *inter alia*, as follows.

IT IS ORDERED THAT

1. ***The appeal BE AND IS HEREBY DISMISSED.***
2. ***The Appellants who were 50 years or older as at the 30th November 1994 are entitled to their pension notwithstanding the dismissal of the appeal.***

IT IS ORDERED that the costs of this appeal and of the Court below be borne by the Appellants."

On 24 September 2003, the Registrar of this Court wrote the following letter to Hon. Justice Oder JSC seeking directions on how to proceed with execution:

"On the 1st day of August 2003, M/S Matovu & Kimanje Nsibambi Advocates applied for execution by way of warrant of attachment and sale of immovable property (A copy of warrant is herewith enclosed.)

M/s Matovu & Kimanje Advocates maintain that the Appellants who were 50 years and above are entitled to Shs.3,718,000,000/=(Three Billion Seven Hundred and Eighteen Million Shillings only). On the other hand M/s Mugerwa & Masembe Advocates for Bank of Uganda state that of the 283 Appellants, only 33 were aged over 50 years as at 30th November 1994. And that the 33 Appellants are entitled to Shs.115,631,289/=(One Hundred and Fifteen Million, Six Hundred Thirty One Thousand Two Hundred and Eighty Nine Shillings only).

My Lord, I am now in a dilemma as to the exact amount the Appellants who were above 50 years are entitled to as per the decree attached. I therefore do hereby seek your Lordship's guidance before I proceed with the execution process."

We decided to summon both Counsel to appear before us to clarify the order of the Court. We heard both Counsel on 18 November 2003.

In his submissions Mr Kimanje Nsibambi, learned Counsel for the Appellants stated that the order of the Court was not clear as it did not mention the number of people who were 50 years and above who were entitled to pension. He pointed out that Appellants claim the number to be 184 as of 30 November 1994. But the respondent claims that the total number should be 73, and those represented by Counsel to be 33. He contended that the Appellants filed a representative action for 184 Appellants whose names were listed in the application, although only 33 of those were listed in the plaint. He informed Court that he represented all those employees who were affected. He pointed out that many of the employees had qualified to benefit under the new scheme of 1995.

Secondly Mr Kimanje Nsibambi argued that the order of the Court did not include the amount of money to be paid to the Appellants. Thirdly, he contended that since the Appellants were successful in their appeal, they should not have been ordered to pay costs.

In reply Mr Kanyerezi, learned Counsel for the respondent, submitted that the issue of those Appellants who were 50 years of age or above getting pension was conceded in the Court of Appeal and therefore the Appellants should not get costs because the respondent had conceded to pension for 33 Appellants. He conceded that Appellants did not have to pay the costs, but he argued that the respondent should not be penalised in costs either.

Mr Kanyerezi informed Court that the respondent had computed the pension due to each of the 33 Appellants. He sought direction on how the money should be paid to the Appellants. He proposed that his learned friend compiles a list of 184 claimants and promised to give him their bio data. He stated that the respondent Bank would pay directly those claimants not listed in the plaint. He raised the question of which pension scheme was applicable.

Taking into consideration the decision and orders of this Court, as well as the submissions of both Counsel, we wish to clarify our judgment and orders as follows:

1. Since the suit was a representative action on behalf of the Bank of Uganda Veterans Association, all Appellants who qualified for pension as at 30th November 1994 should be paid their pension.
2. Bank of Uganda staff records shall form the basis for identification of Appellants who qualified for pension.
3. The Pension scheme operating at the time of retirement, which was 30th November 1994, shall govern the calculation of the amount of pension payable to each Appellant.
4. Although the appeal to this Court was dismissed, the Appellants whose rights to pension were not affected by the dismissal, shall not be required to pay costs in this Court and Courts below.
5. The Bank of Uganda shall pay pension directly to all Appellants who are entitled.

Dated at Mengo this 16th day of January 2004

B J Odoki
CHIEF JUSTICE

JW N Tsekooko
JUSTICE OF THE SUPREME COURT

A N Karokora
JUSTICE OF THE SUPREME COURT

J N Mulenga
JUSTICE OF THE SUPREME COURT

G.W. Kanyeihamba
JUSTICE OF THE SUPREME COURT