

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENG0

**(CORAM: ODOKI, C.J., TSEKOOKO, KANYEIHAMBA,
KATUREEBE, OKELLO, JJ.SC)**

CIVIL APPEAL NO. 12 OF 2007

BETWEEN

BANK OF UGANDA:..... APPELLANT

AND

BETTY TINKAMANYIRE :..... RESPONDENT

*(Appeal arising from the judgment, decisions and orders of the
Court of Appeal (Mukasa- Kikonyogo, D.C., Twinomujuni ,
Kitumba, JJ.A) in Civil Appeal No. 49. of 2005, dated 25th of April,
2007)*

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second appeal from the judgment and orders of the Court of Appeal in Civil Appeal No. 49 of 2005, in which the appellant's appeal was dismissed with costs.

The facts of this case are not in dispute. The respondent was an employee of the appellant at the time she was wrongly dismissed from her employment. The dismissal followed a

circular prepared and published to all employees of the appellant and prominently displayed on its notice boards reading as follows:

“Staff who are incompetent, poor time managers (particularly late coming), alcoholic, thieves, fraudsters and those who are insubordinate, will no longer be tolerated in the Bank.”

On the same day that that communication was pinned on the appellant’s notice boards and read by all and sundry, the respondent received a letter signed by a senior member of the appellant’s management namely, the Deputy Governor, informing the respondent that at a meeting held on the 16th August 2002, the Board of Directors of the appellant had resolved to retire her from its services with immediate effect. No reasons were given in the termination letter by the Deputy Governor but he offered the respondent three months salary in lieu of notice, commutation of annual leave and pension cash commutation. She was also advised to sort out and clear her outstanding obligations to the appellant. Indeed, when the appellant’s officials disclosed the nature, extent and value of those obligations, her stated terminal benefits were virtually wiped out by the appellant’s claims of the alleged respondent’s obligations to it.

Subsequently, the respondent filed a suit in the High Court claiming reinstatement and damages or in the alternative, compensation for involuntary or forced retirement which she considered to be unfair, unjust, arbitrary, harsh, wrongful and illegal and which resulted in her loss of reputation, employment,

all leading her to suffer mental anguish. The appellant denied liability asserting that it was within its rights to terminate the respondent's employment and claimed that the action was done lawfully.

After considering counsel's submissions and arguments on the facts agreed between the parties, the learned trial judge (Okumu Wengi) allowed her claims and awarded compensatory damages which became the subject of the appeal in the Court of Appeal by the appellant. The learned Justices of Appeal dismissed the appeal and confirmed or varied the orders of the High Court. This appeal is mainly about that confirmation and orders. The Memorandum of Appeal contains five grounds framed as follows:

- 1. The learned Judges of the Court of Appeal erred in law in upholding the award to the Respondent of damages for wrongful dismissal which exceeded the three (3) months salary which would have been payable to her in lieu of notice.**
- 2. The Learned Judges of the Court of Appeal erred in law and in fact in upholding the awarded to the Respondent, as damages for wrongful dismissal, of her salary for the forty four (44) months period between the date of her termination being the 21st August 2002 till the date she would attain retirement age being April 2006 (and) the sum awarded being Ug. Shs. 179,740,000/=.**

- 3. The Learned Judges of the Court of Appeal erred in law and in fact in upholding the award to the Respondent as damages for wrongful dismissal, her annual bonuses, health club entitlement and annual leave for the forty four (44) months period from the date of termination, being the 21st August 2002 till the date she would attain retirement age, being April 2006, (and) the sum awarded being Ug. Shs. 60,685,300/=.**
- 4. The Learned Judges of the Court of Appeal erred in law and fact in upholding the award to the Respondent of general damages of Shs. 30,000,000/= and punitive damages of Shs. 20,000,000/= there having been no basis in fact or in law for either of the award and/or for awards in that quantum.**
- 5. The Learned Judges of the Court of Appeal erred in law and in fact in upholding the award to the Respondent of payment of three (3) months salary in lieu of notice in the sum of Ug. Shs. 12, 44,000/= inspite of it having been an agreed fact that these monies had indeed been paid to her by a debt offset.**

It is clear from the pleadings and submissions of the parties in the Courts below and Counsel's arguments in this court that the

dispute revolves around the nature and quantum of the damages awarded to the respondent as shown in each ground of appeal.

Mr. Masembe - Kanyerezi represented the appellant while Mr. Richard -Okallany represented the respondent in this court Mr. Masembe - Kanyerezi argued grounds 1 and 2 of the appeal together and ground 3, 4 and 5 separately.

On the first two grounds, counsel for the appellant contended that while conceding that the dismissal was unlawful that the appellant is only liable to pay such sums of money as the respondent would have received in lieu of notice together with any such other sums including commuted pension as she would have received had the termination of her employment been lawful. Counsel criticized the Court of Appeal for confirming the decision of the learned trial Judge who based the respondent's compensation on the number of months she would have worked and paid for up to the time of her retirement had she not been unlawfully dismissed. Counsel for the appellant cited the cases of **John Eletu v Uganda Airlines Corporation (1984) H.C.B. 39 and Godfrey Mubiru v Barclays Bank of Uganda Limited**, Civil Appeal No 1 of 1998, (S.C) (Unreported) for his submissions on these grounds.

Mr. Okallany for the respondent opposed the Appeal and supported the findings and awards of both the Court of Appeal and the High Court. On ground 1, counsel for the respondent contended that at the time the respondent was unlawfully dismissed she was in advancing years with little prospects of

finding alternative employment elsewhere but still young enough to work for the appellant for a long period of time. Counsel cited **Nartey Tokoli and Others v Voltar Aluminum Ltd.** 1990, L.R.C. (Comm) P5 79 -604 and **Coussens v Attorney General** (1999) I.E.A.41 in support of his submissions on damages and compensation for unlawful dismissal.

I will first consider ground 1. it is trite that, a court of law should not use its powers to force an employer to retake an employee it no longer wishes to continue to engage. However, depending on the circumstances, an employee who is unfairly or unlawfully dismissed, as in this case, should be compensated adequately in accordance with the law. Be that as is it may, on dismissal, whether unfair or unlawful, this Court has had opportunity to pronounce itself on the matter.

In **Barclays Bank of Uganda v Godfrey Mubiru**, C.A No.1 of 1998 (S.C) (Unreported), I had opportunity to say.

“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.... The right of the employer to terminate the contract of service, whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the courts. An employee is entitled to full compensation only in those cases where the period of service is fixed without provision for giving notice.”

The contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

I would confine the compensation for the unlawful dismissal of the appellant to the monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice. The principles established by this court in **Barclays Bank of Uganda v Godfrey Mubiru** (supra) remain good law that governs the

relationship between an employer and employees with regard to termination of the latter's employment.

I would therefore allow ground 1 of the appeal and limit the appellant's liability to compensation in lieu of notice of three months. In that respect, counsel for the parties disclosed that compensation in lieu of notice had been offered to, accepted and received by the respondent. Therefore nothing more needs to be said on this matter again. I would therefore hold that ground 1 of the appeal partially succeeds.

My findings and decision on ground 1 effectively nullifies the awards given in ground 2, 3 and 5 which also ought to succeed in this appeal.

I will now determine ground 4 of the appeal. For the appellant, Mr. Masembe - Kanyerezi criticized the Justices of Appeal for confirming the award of general damages in the sum of Sh.30,000,000 and of punitive damages in the sum of Shs. 20,000,000. Counsel contended that a court is only limited to award aggravated damages. In his opinion, the award of the combined sums of 30,000,000 and 20,000,000 to make 50,000,000 is too excessive and has no basis in law and moreover, no reasons were given to justify it. Mr. Masembe - Kanyerezi contended that for a case of this nature general damages should be in the region of 10,000,000 shillings.

For the respondent, Mr. Okallany supported the awards of both aggravated and punitive damages as justified and reasonable. In his view, damages awarded on the facts and

evidence heard by a trial judge and confirmed by the first appellate Court ought not to be interfered with by a second appellate court. Counsel contended further that in assessing the general and punitive damages, the courts below carefully analyzed and were guided by the pleadings and evidence in this case. Thus, in her lead judgment, Kitumba, J.A, reviewed the evidence and observed:-

“Regarding general damages, the respondent was rightly awarded these damages. She was a senior member of staff and her services were terminated wrongly. She was greatly embarrassed and inconvenienced. She was classified among people who were alcoholics, late comers and fraudsters who were mentioned in Exhibit P.S. In *Kiyingi v National Insurance Corporation*, (1985) H.CB 4, where a senior member of staff’s services were wrongly terminated, the court awarded him general damages for embarrassment and inconvenience”.

In a support judgment, the learned Deputy Chief Justice, Mukasa- Kikonyogo observed.

“The humiliation suffered by the respondent on her return from abroad on official duty only to find her successor seated in her chair, was unacceptable and, hence justified the award of punitive damages.”

The illegalities and wrongs of the appellant were compounded further by its lack of compassion, callousness and indifference to the good and devoted services the appellant had rendered to the bank. After her unlawful dismissal, the appellant's officers carried out an inquiry into the respondent's history of employment and performance. They found that not only had she a clean record but her zeal and performance as an employee of the appellant were exemplary. In the inquiry, her fellow workers expressed praises and commendations of her. The report of the inquiry showed quite clearly that this should have been an excellent case where the respondent should have been reinstated with apologies. Instead, the senior managers of the appellant chose to stand on their high horse of pride and confirmed the illegal termination of her employment.

In my opinion, the acts of the appellant were not only unlawful, but were degrading and callous. In my view, a good case has been shown for the respondent to be eligible for the award of aggravated damages.

From the facts and evidence as well as submissions of counsel in this case, the respondent was only four years from the date of retiring with full pension rights. The evidence shows that she would have continued to serve the appellant faithfully, diligently and in an exemplary manner. In my opinion therefore, it would be iniquitous for her to lose any of her pension rights. Consequently, in conformity with the principles laid down by this Court in **Barclays Bank of Uganda v. Godfrey Mubiru**, (supra),

while the court may not order her reinstatement, it is my view that it can save all her pension rights that she had already earned.

In my opinion therefore, this appeal partially fails. I would confirm the findings, decisions and orders of the Court of Appeal and High Court and modify them as follows:

- (a) I would hold that this appeal substantially fails.
- (b) I would award the respondent aggravated damages in the sum of Uganda Shillings 100,000,000 (one hundred million)
- (c) I would order that the respondent be paid her accrued pension and other terminal benefits, if any.
- (d) I would order that the appellant pay $\frac{1}{2}$ the costs of this appeal and of the two courts below.

Dated at Mengo this 16th day of December 2008

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

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA**

AT MENGO

**(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND
OKELLO, JJ.SC)**

CIVIL APPEAL NO. 12 OF 2007

BETWEEN

BANK OF UGANDA.....APPELLANT

AND

BETTY TINKAMANYIRE.....RESPONDENT

*[An appeal from the decision of the Court of Appeal at Kampala
(Mukasa-Kikonyogo DCJ, Twinomunjuni and Kitumba .JJA) in civil
Appeal No. 49 of 2005 dated 25th April 2007]*

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother Kanyeihamba JSC, and I agree with it and the orders he has proposed.

As the other members of the court also agree, this appeal is allowed in part with orders in the terms proposed by Kanyeihamba JSC.

Dated at Mengo this 16th day of December 2008

B J Odoki
CHIEF JUSTICE

**THE REPUBLIC OF UGANDA
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AT MENG0**

(CORAM: ODOKI, CJ; TSEKOOKO, KANYEIHAMBA, KATUREEBE
AND OKELLO, JJSC.)

CIVIL APPEAL No. 12 OF 2007

BETWEEN

BANK OF UGANDA :::::::::::::::::::::::::::::: **APPELLANT**

VERSUS

BETTY TINKAMANYIRE :::::::::::::::::::::::::::::: **RESPONDENT**

[APPEAL from a decision of the Court of Appeal at Kampala (Mukasa Kikonyogo, DCJ; Twinomujuni and Kitumba, JJ.A) dated 25th April, 2007 in Civil Appeal No. 49 of 2005]

JUDGMENT OF TSEKOOKO, JSC

I have had the advantage of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC., which he has just delivered and I agree with his conclusions and orders.

As Mr. Masembe Kanyerezi, counsel for the appellant correctly conceded during the hearing of the appeal, this appeal is essentially on the quantum of damages.

The five grounds of the appeal complain about the various awards given by the two courts below.

The facts of the case are well summarised in the judgment of my learned brother. Just to emphasise. The respondent who had served the appellant bank for ten years in various positions and apparently without blemish on her record had only four years left before her normal retirement. Indeed on 25th August 2002, the appellant sent the respondent to Germany to understudy the Human Resource Department of the Germany Bank which would imply she was still needed. Surprisingly, upon her return she was handed a letter dated 21/8/2002 retiring her. No reason was assigned for this premature retirement nor was she given opportunity to be heard before that retirement. The two courts below correctly found that this amounted to summary unlawful dismissal.

Apparently the Governor of the appellant had earlier circulated a circular warning that drunkards, lazy, insubordinates, fraudsters and incompetent employees would have their services terminated. In the absence of any reasons to explain her dismissal, it is not unreasonable to infer that she was included among that category of undesirable employees. Her case is therefore a special one and consequently calls for an appropriate award of damages and this is what the two courts below emphasised.

The principle governing such an award is well known. Among the cases cited to us, I find the decision of the Supreme Court of Ghana in **Nortey - Tokoli & Others Vs. Volta Aluminium Co. Ltd.** (1990) LRC (Comm) pages 579, at P.599 apposite. It concerns assessment of damages in cases of wrongful termination of employment. It is unnecessary to go into the facts of that case except to say that because of the draught in 1982, the respondent company stopped some production, sent the 463 appellants and some other workers on leave under certain conditions which included an understanding that if electricity supply to the company were restored, they might be given back their jobs.

There was an agreement which provided that, if they were not recalled by 1 January 1984, they were to be considered redundant and the sum due under the loans would be converted to redundancy payments calculated in accordance with the collective agreement which provided for 2 months' notice to be given of any dismissal or two months' salary in lieu of notice. Eventually the appellants were not recalled and filed a suit and claimed in the High Court (i) damages for wrongful dismissal, (ii) a declaration that the purported termination was null and void and of no effect and (iii) arrears of all salary, allowances and benefits due from their respective dates of wrongful termination

to the date of judgment. Except for (ii) the High Court allowed, inter alia, the claim for damages for wrongful dismissal and awarded the equivalent of 28 months' salary comprising, in each case two months' salary in lieu of notice, 14 months' salary for the period 31 October 1982 to 1 January 1984, and 12 months' salary in respect of a reasonable period during which the appellants were to look for other employment. On appeal the Court of Appeal upheld the decision of the High Court, except for substituting four months' salary for the 12 months awarded by the High Court as compensation. The appellants and the company appealed to the Supreme Court of Ghana.

The majority on the court allowed the appeal and dismissed the cross appeal by the respondent company. The majority held that:

The common law in respect of the relationship of master and servant could be applied in the present case to resolve the question of whether the declaration sought should be granted (see p 598, post). the purported termination of the appellants' employment were null and void and of no effect and the appellants were entitled to a declaration accordingly and their appeal was allowed in that respect.

Two principles regarding the assessment of damages in a case of wrongful termination of employment, both

derived from the United Kingdom, competed in Ghana for acceptance. The first was that set out in ***Hadley v Baxendale*** (1854) 9 Exch 341, [1843-60] All ER Rep 461, and the second was that which did not confine the award of damages to wages of the dismissed worker. However, in Ghana, the reasoning of the Court of Appeal in ***Agbettah v Ghana Cocoa Marketing board*** (1984-86) GLRD 16 should be followed so that the courts were able to award damages which reflected the courts' disapproval of a wrongful dismissal and the sum was not confined to an amount equivalent to the worker's wages. In the present case the trial judge had awarded, in the exercise of his discretion, a sum equivalent to 12 months' salary, and that order should be restored (see p 604, post).

Taylor, JSC., who wrote the lead judgement expressed his opinion at page 603 as follows:

And so we arrive at a situation where two principles for measuring damages compete for acceptance in our jurisdiction. I think in the selection we must be guided by certain considerations. A Ghanaian who has suffered a wrong expects redress and our law of wrongful dismissal should reflect it.

It seems to me that the Court of Appeal judges have already set the pace in a landmark decision and it will

be a retrograde step to discourage and interfere with the progressive precedent they have set. I refer to ***Agbettoh v Ghana Cocoa Marketing Board*** (1984-86) GLRD 16. In that case Apaloo CJ, with whom Francois and Abban, JJA, as they then were, concurred, held in a case in which the **plaintiffs had been wrongly retired, that it would be just and proper for the court to mark its disapproval of the plaintiffs' unconstitutional retirement by ordering** that the defendant board pay to each plaintiff an amount equal to two years' salary in addition to receiving their entitlements under their contract of employment.

I respectfully find the above reasoning sound.

I think that the respondent was entitled to fair and decent treatment by the appellant. She should not have been retired in the manner she was.

In the result I agree that the appeal succeeds in part but the appellant will pay to the respondent one half of the costs of this appeal and of the two courts below.

Delivered at Mengo this 16th day of December 2008.

J. W. N. TSEKOOKO
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

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AT MENGO

(CORAM: ODOKI, CJ., TSEKOOKO, KANYEIHAMBA, KATUREEBE
AND OKELLO JJ.SC).

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[An appeal from the decision of the Court of Appeal at Kampala (Mukasa-kikonyogo, DCJ., Twinomujuni, and Kitumba JJ.A) in Civil Appeal No 49 of 2005 dated 25th April 2007].

JUDGMENT OF KATUREEBE, JSC.

I have the benefit of reading in draft the judgment prepared by learned brother, Kanyeihamba, JSC and I concur with his judgment and the orders he has proposed therein.

Dated at Mengo this 16th day of December 2008.

Bart M. Katureebe
Justice of The Supreme Court

THE REPUBLIC OF UGANDA
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**(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA,
KATUREEBE AND OKELLO, JJSC.)**

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*[An appeal from the Judgment and orders of the Court of Appeal
(Mukasa-Kikonyogo, DCJ, Twinomujuuni and Kitumba, JJA)
dated 25th April 2007, at Kampala in Civil suit No. 49 of 2005].*

JUDGMENT OF G. M. OKELLO, JSC:

I have had the opportunity to read in draft, the judgment of my learned brother, Kanyeihamba, JSC, and I agree with his reasoning and conclusion.

I should add, for emphasis, that it is trite law that an appellate court will not interfere with an award of damages made by the trial court unless it has acted upon a wrong principle of law or that the amount awarded is so high or so low as to make it an entirely erroneous estimate of damages to which the plaintiff is entitled to. This principle was stated by the Court of Appeal for Eastern Africa in *Rambhai Mahjibhai Patel - vs - The Patidor Samaj and Anor (1944) 11 EACA 1.*

In the instant case, I accept Mr. Masembe-Kanyerezi's contention that for a case of this nature, a court is only limited to award of aggravated and not punitive damages. This view is supported by *Esso Standard (U) Ltd. - vs - Semu Amanu Opio, Civil Appeal No. 3 of 1993*, where this Court (Platt, JSC, as he then was) stated that the principles of exemplary or punitive damages cannot be extended to breach of contract and that there is no precedent for that extension.

The Court of Appeal, therefore, erred to confirm the award of Shs. 20,000,000= made by the trial judge as punitive damages. This was based on a wrong principle of the law. Even if the heading of the award were described as aggravated, the amount awarded, was so low as to be an erroneous estimate of the damages to which the respondent is entitled to given the circumstances of this case.

I, therefore, concur with the award of Shs. 100,000,000= (one hundred million shillings) as aggravated damages proposed by my learned brother, Kanyeihamba, JSC. I also concur with the proposal that the appellant pays one half of the costs of this appeal here and in the two courts below since the appeal succeeded only partially.

Dated at Mengo this 16th day of December 2008.

G. M. OKELLO

JUSTICE OF THE SUPREME COURT