

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-C V-CS-1 044 OF 2001**

**VINCENT BAGAMUHUNDA::: PLAINTIFFS**

**JOHN KATONGOLE**

**EDWARD ROGDERS KIWANUKA**

**VERSUS**

**UGANDA ELECTRICITY BOARD :::DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**JUDGEMENT**

1. The plaintiffs bring this action on their own behalf and on behalf of one thousand, one hundred eighteen former employees of the defendant that were retrenched between 1998 and 2001 seeking to recover payment of pension and general damages arising from none payment of their pension from the defendant. The plaintiffs allege in their pleadings that while in the defendant's employment, the plaintiffs, being permanent and pensionable staff, were beneficiaries to the Uganda Electricity Board Non- contributory Retirement Benefits/Pensions Scheme under the Standing Instructions, Uganda Electricity Board, 1992, On termination of their employment the defendant has not, contrary to its obligations paid the monthly pension due to each of the former employee.

2. The defendant denies that the plaintiffs were beneficiaries of the non-contributory pension scheme or that they had a right to a pension. In the alternative the defendant contends that Uganda Electricity and Allied Workers Union, acting on behalf of the plaintiffs, reached an agreement with the defendant under which it was agreed all claims, including pension, against the defendant would be discharged upon payment of a retrenchment package. In the further alternative, the defendant asserts that in the event the retrenchment package did not include the pensions claim, the plaintiff had no right to the pension scheme unless the defendant granted the same. The defendant denied that it had breached any of the terms and conditions of employment under which the plaintiffs served.

3. During the trial the plaintiff called one witness and the defendant called no witness. Counsel agreed to the admission of four documents as exhibits by consent. Counsel further agreed to the

following facts.

“1. The plaintiffs were employees of the defendant company. The Plaintiffs were retrenched in order to re-structure the defendant to make it more efficient, effective and commercially viable.

2. The plaintiffs were given a package calculated in the following manner: An agreed monthly package times 2.25 times the years of service plus Shs.600,000/— in lieu of repatriation.”

4. Plaintiff’s witness was Samuel Sekiti. He was formerly employed by the defendant as the Head of Heavy Traffic in the Transport Department of the defendant. As a head of a section he was a member of management. Mr. Sekiti was also a member of the Union. He testified that his employment with the defendant was governed by the Standing Instructions. These instructions provided that pension under the Pension scheme would only be granted a certain number of categories, which included, on compulsory retirement to facilitate re-organisation of the Board’s administration. He testified that he was retrenched for this purpose, and was therefore entitled to pension, to be calculated as the scheme provided. He had asked for his pension but the defendant had not paid it.

5. A letter addressed to the witness, by the Managing Director of the defendant, notifying him of his retrenchment was tendered as an exhibit, and I will set it out its contents.

“SUBJECT: RESTRUCTURING OF UEB: UNIONISED STAFF

The Board of Directors has decided to restructure UEB in order to make it more efficient, effective and commercially viable.

As a result of the above mentioned restructuring exercise therefore, it has been decided that your services will not be required in the restructured Board. You will therefore cease duty on 15th February 1998 and will be paid a retrenchment package arrived at as follows; agreed monthly package x 2.25 x years served plus 600,000/= in lieu of repatriation, which package will be paid to you within four weeks of your termination of service.

Before receipt of your retrenchment package you will be required to hand over all Board property in your possession including identity card, to your immediate supervisor who will certify so accordingly proof of which will be required for your payment.

On behalf of Management and the entire Board I wish to thank you for the tireless efforts you have put in to keep the UEB afloat for the 28 years and 5 months. Please acknowledge receipt by signing the duplicate copy of this letter attached herewith.”

6. PW1 further testified that he was paid a retrenchment package of Shs.18,000,000/= but this

package did not include the pension. He stopped working on the 15th February 1998. The witness was not aware of any negotiations between the Union and the defendant. He stated that he had been suffering due to the non-payment of his pension. He did not have money to attend to the necessities of life. He prayed that this court orders the defendant to pay not only his pension and that of the other plaintiffs including arrears but also damages, interest at 40 % p.a. and costs of this suit.

7. Two issues were framed at the hearing of the suit. The first issue was whether the plaintiff had any right to pension. And the second issue was if the plaintiffs were entitled to a pension whether the pensions were included in the severance packages paid by the defendants to the plaintiffs. Learned counsel for the defendant, Mr. John Fisher Kanyemibwa, submitted that the plaintiffs were not entitled to pension according to Rule 4 of the Standing Instruction No. 22. Secondly he submitted that many of the plaintiffs had served for a period of less than ten years and could not become entitled to a pension in accordance with Rule 6 of the Standing Instruction No. 22. He further submitted that where an employee has received retirement benefits in a separate payment, such employee is not entitled to receive pension, in accordance with Rule 6 (1) of the Standing instruction aforesaid.

8. Mr. John Matovu, learned counsel for the plaintiff, submitted that the plaintiffs have a right to pension as it is merely a deferred payment for services rendered by an employee to an employer. It was not discretionary. Rule 4 of the scheme read as a whole does not dis-entitle the plaintiffs to pension. There has been no suggestion that any of the plaintiffs were at fault that could deny them pension under Rule 4 (2). The plaintiffs' case falls under Rule 5(3) of the scheme. He submitted that issue no.1 must be answered in the affirmative.

9. Pension is basically deferred compensation for services rendered by an employee to an employer. It has its roots in the contract of the employment. In the instant case this is Standing Instruction No. 22 issued by the defendant. Standing Instruction No. 22 is a deed issued by the defendant and it includes a schedule containing Rules for administering the scheme. Under Rule 2 (a) pensions and gratuities may be granted by the Board in accordance with the provisions of the Scheme. Under Rule 4 (1), it is provided that no employee shall have an absolute right to pension or gratuity nor shall anything in the Scheme effect the right of the Board to dismiss any employee at any time. Under Rule 4 (2), where it is established to the satisfaction of the Board an employee has been guilty of negligence, irregularity or misconduct pension or gratuity may be

reduced or altogether withheld.

10. Circumstances under which pensions may be granted are set out in Rule 5 and these include on compulsory retirement to facilitate re-organisation of the Board's administration. In Rule 6 formulae is provided for calculating the pensions due to all staff who have spent not less than 10 years service or more with the Board. Rule 6 (1) states, "Service for which the employee has received or is entitled to receive retirement benefit under any other scheme or arrangement shall be excluded in reckoning pensionable service under Rule 5 hereof."

11. From the foregoing provisions it is clear to me that pensions under the scheme are not absolute rights. Negligence, irregularity or misconduct of an employee puts the pension at risk. The defendant is in those circumstances entitled to vary the sum due including totally withholding the same. However, where an employee is not guilty of the nature of conduct set out Rule 4(2), such employee would, in my view have to be considered to be paid his or her pension, subject to the qualification of 10 years or more service. It can not be expected that the Board can withhold the pension without assigning any reason that is in conformity with its own Rules. Nor is it expected that the defendant is entitled to act arbitrarily after setting out the Rules that govern the scheme. From the evidence on record there is no suggestion that the defendant applied any of the Rules in the scheme to deny the plaintiffs or any one of them the whole or part of the pension that would be due to them on qualifying for the same. In my view, the defendant cannot choose inaction on its part, as a way forward under the Rules. If the defendant does so, it invites action by its former employees to enforce their rights.

12. It has been argued for the defendants that the plaintiffs' rights for a pension were waived by the Union representing them in the discussions leading to their retrenchment. And that pensions were included in the retrenchment packages. I have seen no evidence to support waiver of pension rights. Nor is there any evidence to suggest that pension rights were subsumed into retrenchment packages. No allusion is made to it in the letter that retrenched the plaintiffs.

13. Retrenchment is no magical formulation. Used in the context of this case it means that the defendant was reducing its staff strength or numbers to cut down on costs. Otherwise it does not mean anything more than termination of service of its staff. The retrenchment package is no more than a termination package. It is a package paid in consideration of an abrupt end to what may have been regarded as permanent service with an organisation. Unless by agreement of the parties' pension rights are specifically imported into this termination package, it can not be

assumed that the package annihilates such pension rights as are existing at the time.

14. I find that the plaintiffs, such as of them qualify by the Rules, that is those who had served the defendant for ten or more years are entitled to be paid a pension in accordance with the Rules. And that pensions due under the scheme were not included in the severance or retrenchment packages paid to the plaintiffs by the defendants. I allow the declaration sought by the plaintiffs' that the plaintiffs are entitled to be paid pension as provided under the Standing Instruction No. 22.

15. The plaintiffs have also claimed general damages for breach of their terms and conditions of service. No doubt the plaintiffs' have definitely suffered some measure of inconvenience due to the failure of the board to pay their monthly pensions. I will award each plaintiff, who is entitled to a pension, under the scheme, shs.500, 000/= as general damages with costs of this suit.

Dated, Signed, and Delivered at Kampala this 24<sup>th</sup> day of October 2002.

**F.M.S Egonda- Ntende**

**Judge**