

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA, AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 259 OF 2014**

- 1. BASIIMA KABONESA**
- 2. ADUMO SOLOME**
- 3. MUSOKE JAMES**

} ..... **PLAINTIFFS**

**VERSUS**

- 1. THE ATTORNEY GENERAL**
- 2. COFFEE MARKETING BOARD (In Liquidation) ::::::::::: DEFENDANTS**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

Through their lawyers M/s Ayena Odong & Co. Advocates, the plaintiffs brought this suit in a representative capacity and as paupers on behalf of about 1568 non-unionised former employees of Coffee Marketing Board Limited (in liquidation) for the following reliefs:

- 1. Special damages of UGX 10,330,013,506=
- 2. Aggravated Damages estimated t UGX 100,000,000= for each person represented in the suit.
- 3. General damages of UGX 10,000,000= for each person represented in the suit.
- 4. Interest on special damages at 25% per annum from the date of retrenchment until payment in full.
- 5. Interest at court rate from the date of filing the suit until payment in full.
- 6. Costs of the suit.

The facts constituting the cause of action are as follows:

- (i) The plaintiffs were at all material times employees of the 1<sup>st</sup> defendant a limited liability company which was fully owned by the Government of Uganda.

- (ii) Under the Public Enterprises Reform and Divestiture Act 1993 (PERD) the 1<sup>st</sup> respondent was divested and put in class 11 under the Privatisation Unit (PU) of the Divestiture and Reform Implementation Committee under the Ministry of Finance and Economic Planning of the 2<sup>nd</sup> defendant.
- (iii) The costs and expenses associated with termination of contracts of employment between the 1<sup>st</sup> defendant and its employees were meant to be paid from the proceeds of divestiture of that 1<sup>st</sup> defendant company in priority to all other liabilities costs and expenses.
- (iv) After divestiture of the 1<sup>st</sup> defendant company, most of its assets were sold off and proceeds banked on the Divestiture account of the PU.
- (v) Between the years 1991 and 1998, 1568 the non-unionised former employees of the 1<sup>st</sup> respondent were retrenched /terminated without being paid their terminal benefits as required by the law.
- (vi) Upon several demands and incessant reminders by the plaintiffs to the Government through the PU for payment of their terminal benefits and several directions from HE the President of Uganda, the claims of the plaintiffs were verified by the Auditor General and UGX 10,330,013,506= as per CMB<sup>1</sup> & CMB<sup>2</sup>.
- (vii) When the verified amount was presented to the defendant through the PU for payment in 2009, PU declined/neglected/refused to pay even after the legal opinion of the Attorney General to HE the President advising that the plaintiffs be paid the total amount verified by the Auditor General per CMB<sup>3</sup>.

According to the plaintiffs, they are entitled to be paid their costs and expenses associated with the termination of contracts of employment between them and the 1<sup>st</sup> defendant from the proceeds of the divestiture account with PU in priority to all its other liabilities, costs and expenses.

They also contend that refusal to pay them by the defendant was high handed and motivated by ill-will on the part of the defendant in violation of their constitutional rights, wherefor they are entitled to compensation on the footing of aggravated damages.

The plaintiffs further contend that they suffered mental anguish and the inconveniences by being denied their constitutional proprietary rights and being exposed to live like destitute for more than 23 years and they are therefore entitled to General damages on a high scale.

That the acts and omissions of the defendant in refusing to pay them what was due to them were high handed as a breach of their constitutional right to the protection of their property as such they are entitled to damages on the footing of aggravation.

Finally that the plaintiffs have been pauperized by more than 23 years out of employment because of failure of the respondent to pay them their terminal benefits and as such they were unable to pay the requisite fees for the suit.

In a brief Written Statement of Defence the Attorney General denied that:

- (a) The plaintiffs were former employees of CMBL. That the claim is baseless.
- (b) The plaintiffs cannot originate and represent non-existing people in a suit. That the claim by the plaintiffs that parliament and HE the President recommended for their payment are baseless allegations.

That the destitute and pauper styles of the plaintiffs cannot be attributed to the Government and none of the plaintiffs' constitutional rights were infringed by the Government.

The defendant further denied that the plaintiffs are entitled to any compensation, damages as alleged.

Despite the posturing by the defendant in its Written Statement of Defence and before this suit was set down for hearing. The plaintiff and defendant entered a consent judgment in the following terms:-

***“By consent of both parties, judgment is entered as follows:***

- 1. The plaintiffs shall be paid a total sum of UGX 10,330,013,506= (Uganda Shillings Ten Billion, three hundred and thirty million, thirteen thousand five hundred and six) as the total terminal benefits for the non-unionised***

*former employees of Coffee Marketing Board who were retrenched between the period 1992-1998 in accordance with the verification report of the Auditor General dated 13<sup>th</sup> November 2009.*

- 2. Each plaintiff shall be paid UGX 10,000,000= (UGX ten million only) as General damages.*
- 3. Interest shall be paid on general damages at court rate.*
- 4. The issue of costs of the suit, Aggravated damages and interest on the terminal benefits are hereby referred to court for determination . Dated at Kampala this 22<sup>nd</sup> day of July 2015”*

It is for the 4<sup>th</sup> item in the consent that this matter is before me for determining the issues therein. It was agreed that the matter be handled through submissions by both parties.

Both Mr. Ayena Odongo learned counsel for the plaintiff and Mr. Ojambo Bichachi for the defendants filed their respective submission in support of their cases.

I will not reproduce the submissions but suffice to mention that I have meticulously considered the same and the law applicable as well as the authorities cited for my assistance.

I will start with resolving the issue of whether the plaintiff are entitled to costs.

In his submissions, Mr. Ayena Odongo stated that it is trite law that costs follow the event unless court for good cause orders otherwise. That the only reason why a party may be denied costs of the suit is the conduct of the party.

In reply, Mr. Ojambo the learned State Attorney argued that the plaintiffs filed this suit as paupers who lacked sufficient funds to be presented in court in person. That the claim for instruction fees and engaging lawyers cannot stand. Further that the defendants agreed to settle the suit amicably resulting into a consent judgment. That there was no wastage of court's time. That the only time put in was when the plaintiffs applied to sue as paupers.

That under O 33 r 1(2) a 'pauper' is defined as a person not possessed of sufficient means to enable him/her to pay the fees prescribed by law for the plaint in the suit.

Learned counsel for the defendant submitted that it is mandatory that the pauper applicant shall be presented in court in person thus the claim for instruction fees and engaging lawyers for presenting the plaintiff's case as a basis for costs cannot stand.

My reading of O 33 r 3 of the Civil Procedure Rules seems to suggest that this mandatory requirement applies when the pauper litigant is presenting the application to sue as a pauper. However even if this be the case if the applicant is exempted from appearing in court under S.84 of the Civil Procedure Act the application may be presented by an authorized agent.

In the instant case, I will equate the appearance of Mr. Ayena Odongo in defence of the plaintiff as a Pro Bono service which is allowed in practice. The debate has been on as to whether attorneys are permitted to recover costs in successful pro bono litigation. The general rule is that in ordinary matters, fees and disbursements are awarded to a litigant and not the advocate. In a pro bono matter the litigant would have incurred disbursements only and it is the advocate who spends out of pocket for the fees. It is therefore only the disbursements by the client that are generally recoverable. It is not acceptable in such a case for the advocate rendering service/assistance to a pauper to attempt to recover instruction fees from the costs. They can only recover disbursements actually incurred by clients. There is however urgent need for clarification on this issue by the rules committee given that law is a business where profits must be made in order to survive and thrive. Lawyers have to maintain offices and their staff have to be paid. Resources cost money. Restricting payment of costs discourages practitioners from litigating pro bono. On the other hand unnecessary litigation is avoided if costs are involved.

I will consequently allow the applicants recovery of costs in terms of disbursements actually incurred by the plaintiffs and advocates and not instruction fees.

### **Aggravated Damages**

Learned counsel for the plaintiffs justified the claim of aggravated damages because the defendant's conduct in this case was extremely callous. That the defendants deliberately refused to pay the plaintiffs their dues on flimsy grounds. Learned counsel referred to the cases of:

1. **Uganda Revenue Authority Vs Kitamirike David CA No. 043 of 2010.**
2. **Bank of Uganda Vs Betty Tinkamanyire SCCA 12 of 2007.**
3. **Fredrick J.K Zaabwe Vs Orient Bank & others SCCA 4 of 2006.** to fortify his argument.

In reply Mr. Ojambo submitted that it is not true that 20 years have passed since the Auditor General verified monies payable to the plaintiffs. That the verification report is dated 13<sup>th</sup> November 2009. That the defendants did not act unlawfully, insidiously nor was there malice, arrogance, ill will to delay the payment of the plaintiffs' terminal benefits. That the delay was further occasioned by numerous civil proceedings in court by former workers of CMB so the Ministry of Finance could not pay and therefore the claim for aggravated damages cannot stand. That general damages awarded are substantial enough to cover for the inconvenience and mental anguish the plaintiffs went through for all that period of time when they were not paid.

In **Fredrick J.K Zaabwe Vs Orient Bank and others** (supra) it was held *inter alia* that aggravated damages are extra compensation to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted.

In **Rookes Vs Bernard [1964] 1 All ER 367** it was stated that the plaintiff's injury aggravated by malice or by the manner of doing the injury i.e the insolence, or arrogance by which it is accompanied is a recipe for justification for an award of aggravated damages.

An award of aggravated damages presents a solatium to the plaintiff for the distress, anxiety and further injury to feelings, reputation, dignity caused by the manner in which the defendant acted causing exceptional harm to the plaintiff.

After considering the nature of this case, the law applicable and the submissions by learned counsel, I am convinced to agree with learned counsel for the plaintiffs that the conduct by the defendants was extremely callous. The defendant knew that they had an obligation to pay the

claimants but despite repeated demands by the plaintiffs the defendant refused to pay giving flimsy excuses. In this case, there was oppressive, arbitrary and unconstitutional action by the servants of government for which a penal sanction is called for. This is a case where the plaintiffs should be awarded a collective enhanced compensatory damages not only for the unwarranted and unlawful deprivation of the plaintiff entitlements but also for the arrogance of defendants.

Since the judgment is against Government and the Government has already made concessions involving colossal sums of money the payment of which will involve spending public money, I will award aggravated damages totaling a block figure of UGX 1,000,000,000= (One Billion shillings) only to be shared equally by the plaintiffs.

**Interest:**

As correctly submitted by both learned counsel, the award of interest is governed by S. 26(2) of the Civil Procedure Act. It was held in the ***Supreme Court Constitutional Appeal No. 5 of 2010 Attorney General Vs Goodman Agencies Ltd*** that by virtue of S.18 of the Government Proceedings Act in normal suits where government is a defendant and is found liable and is condemned to pay damages the Government would also be liable to pay interest on the damages awarded.

Section provides as follows:

***“Section 26(2) and (3) and 27(3) of the Civil Procedure Act (which relate to the payment of interest on costs) shall apply in the case of the Government as they do in the case of a private person”.***

According to S 26(2) of the Civil Procedure Act:

***“(2) Where and in so far as a decree is for the payment of money the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the date of the decree, in addition to any interest adjudged on such principal sum for any prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the***

***aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit”.***

Clearly interest is awarded at the discretion of court which has to be exercised judicially taking into account the circumstances of a given case. The argument against award of interest bases on the amount the defendant is to pay is untenable because the defendant took a deliberate risk when it did not carry out its constitutional duty to pay the claimants their dues in time without reasonable cause. Secondly by retaining the plaintiff's money, the only inference is that the defendant has had to use it itself.

Learned counsel for the plaintiff implored this court to follow the decision not to award interest in the case of **Pastor Clement Othieno & others Vs Attorney General and Another HCCS 152 of 2003.**

However the facts of this case are distinguishable from those in Clement Othieno case. In that case, court declined to award interest on benefits of the beneficiaries who had already received their payments. However court awarded interest on the benefits that were yet to be paid by the defendant to the beneficiaries.

In the instant case, none of the plaintiffs has been paid to date.

I will consequently award interest on the principle sum from the date of the consent judgment till payment in full but not at the rate of 25% which is on the higher side but at the rate of 10% p.a. I will also award interest of 6% p.a on the aggravated damages from the date of judgment till payment in full. I so order.

**Stephen Musota**

**J U D G E**

**03.09.2015**