

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

AT MENGO

**(CORAM: ODER, TSEKOOKO, KAROKORA,
KANYEIHAMBA
AND KATUREEBE, JJS.C**

CIVIL APPEAL NO 5 OF 2003

BETWEEN

**UGANDA COMMERCAL BANK LTD :::::::::::::::
APPELLANT**

AND

**1. YERUSA NABUDERE
2. A.P. NABUDERE :::::::::::::::::::::
RESPONDENTS**

(Appeal from the decision of the Court of Appeal in Uganda (Engwau, and Twinomujuni JJ.A, with Mpagi-Baheigeine, J.A, dissenting) in Civil Appeal No. 31 of 2001, dated 31 of 2001, 1st August, 2002).

REASONS FOR JUDGMENT OF THE COURT

Wilson Nabudere, hereinafter called “the deceased”), while still alive, successfully sued the Uganda Commercial Bank Ltd in the High Court for recovery of a liquidated sum of money, being accumulated leave allowances which had accrued to him before he retired from the appellant’s employment. After his death the respondents

were joined as parties to the case as the administrators of his estate. The appellant was dissatisfied with the decision of the trial court and appealed to the Court of Appeal. By a majority decision, the appeal was unsuccessful. Hence this appeal. We heard the appeal and found that it had no merit and we dismissed it with costs. We reserved our reasons for doing so, which we now proceed to give.

The brief background to the appeal is as follows: The deceased was an employee of the appellant bank from 19.12.1961 to 30.9.1993, a period of over 30 years. On April 26th 1993, the appellant issued a circular entitled **“CIRCULAR NO.3-UCB. RESTRUCTURING PROGRAMME,”** Exhibit D.4. In the circular, the appellant set out a scheme in which its employees could either retire voluntarily or be vetted out. The purpose of the scheme was to structure internal weaknesses and the financial sector reform initiative to improve efficiency and effectiveness of the banking system. Any member of staff interested was free to apply for a retirement at the discretion of the appellant. The deceased applied and his application was accepted. At that time, he had reached the rank of Chief Personnel Manager.

The Restructuring Programme contained various retirement packages. For purposes of this case,

members of staff who had served for 10 years and above were entitled to the following:

- a) 12 months' salary plus allowances for 12 months;
- b) 3 months salary plus allowances in lieu of notice
- c) Accumulated leave (in cash).

The deceased was one such employee. He was paid 42 months' salary with allowances for 12 months; 3 months' salary with allowances in lieu of notice; accumulated leave (in cash); and a portion of his long service award. The deceased filed a suit in the High Court claiming that on top of all this, he should have been paid his basic salary and the other allowances for the period of 208 days, which allowances and salary he should have been paid had he remained in the service of the appellant.

These allowances were:-

- (i) Housing allowance;
- (ii) Cost of living allowance;
- (iii) Medical allowance;
- (iv) Servants allowance;
- (v) Traveling allowance;
- (vi) Lunch allowance;
- (vii) Leave allowance; and
- (viii) Basic salary

The above allowances amounted to Shs. 14,372,667, but the learned trial judge awarded 13,476,266/= with interest as leave emolument due to the deceased.

The appellant denied that accumulated leave (in cash) included all the allowances we have listed above. The learned trial judge, however, agreed that the deceased was entitled to all the allowances and basic monthly salary for 10 months as claimed except medical allowances and he ordered the appellants to pay the deceased Shs. 13,467,266/=. The appellant was dissatisfied with the trial court's decision and appealed to the Court of Appeal. That appeal failed by a majority decision. Hence this appeal. The grounds of appeal were as follows:

1. *The majority learned Justices of Appeal erred in law and in fact when they failed to distinguish between accumulated leave payment scheme under the voluntary retirement scheme and leave payments whilst the beneficiary was still on the payroll.*
2. *The majority of the learned Justices of Appeal erred in law and in fact when they held that in addition to accumulated leave allowance under the voluntary retirement scheme, the deceased ((plaintiff) was entitled to 20% of his basic salary, housing allowance, cost of living allowance, representation allowance, servants allowance, traveling allowance, lunch allowance for 10 months.*

It appears that after the appeal was filed, Stanbic Uganda Ltd, who is now the proper

appellant, succeeded the appellant. Both parties filed written submissions. M/s Masembe, Makubuya Adriko, Karugabe and Sekatawa, Advocates, filed written submissions for the appellants; while M/s Magirigiri and Co, Advocates filed written submissions for respondents. The appellant's learned counsel argued ground 2 first. They referred to various provisions of exhibit D.4 relating to the allowances we have listed in this judgment and contended that the deceased was not entitled to receive such allowances for the period of his accumulated leave. It was only leave allowances, which the deceased was entitled to for 208 days as his accumulated leave. If the deceased had remained in the service of the appellant, the position would have been different. Learned counsel contended that the allowances claimed by the deceased in the suit were only applicable when the employee was still in the service. There was a difference between being on the payroll and voluntarily retiring under the Restructuring Programme

Under ground 1 of the appeal, the appellant's learned counsel submitted that the deceased was entitled to allowances only when he was still working. He received all allowances for 208 days while still in service, except the leave allowance of 20% of the annual basic salary because he never took leave as the specimen salary slip indicates (Ex. D1). Learned counsel submitted that when an employee merely goes on leave, he is still on the payroll. He is therefore entitled to all the benefits of being employed even when on leave. The purpose of taking leave is to

be refreshed and invigorated so that performance is improved on resumption of duty. Allowances are by their very nature and definition, for special purposes to enable the employee carry out his duties more efficiently without having to draw on his basic salary, which would not stretch far enough. Learned Counsel then referred to the evidence of D.W.I, Victoria Byoma, the appellant's Senior Manager of Human Resources, who said:

“In clause 7.02 circular No. 3 provides that one proceeding on leave shall receive 20 % of annual salary. While on leave the staff member continues to receive his endowments as he is on leave, he continues to receive all his allowance. In the case of the plaintiff he was entitled to leave allowance at 20 % per annum of the basic salary and cash in lieu of leave at the rate of one month's salary per each month of leave”.

Learned Counsel contended that when one retires under the scheme one is no longer governed by the Staff Manual but the Restructuring Programme, whose terms were clearly spelt out as: -

- a) 12 months salary plus allowance for 12 months
- b) 3 months salary plus allowances in lieu of notice
- c) Accumulated leave (in cash)”

Learned Counsel further contended that

the deceased was not entitled to double payment of allowances that were duly paid to him while he was still on the payroll. The time he spent working instead of being away from the working environs was compensated for by the month's basic salary for each month's leave. Counsel concluded that the learned trial judge erroneously awarded the deceased what he claimed in the suit, and that the Court of Appeal erred to uphold the award.

The submissions of the respondent's learned counsel covered both grounds of appeal. Learned counsel submitted that since the deceased did not take leave, any salary and allowance, which were not paid to him, became accumulated. That is the reason the appellant paid the deceased his salary, which had accumulated. There was therefore no justification not to pay him his allowances, which had likewise become accumulated. Learned Counsel contended that the issue of being on the payroll is irrelevant because the beneficiaries under the Restructuring Programme must have been on the payroll at one time or another. Learned Counsel disagreed with the argument of the appellant's counsel that the Restructuring Programme did not expressly include allowances. According to Learned Counsel, the interpretation of the expression "accumulated dividend" by "Black's Law Dictionary", 6th Edition is dividend due to shareholder, which has not been paid. On the same page of the dictionary, "accumulated dividends" are dividends,

which accumulate from year to year when not paid. Learned Counsel contended that in the same way, accumulated leave, in the instant case, **refers to all the benefits but** which were not paid to the deceased but which would have been paid had he taken his leave from years to year. It is wrong for the appellant's learned counsel to argue that it would be double payment. Payment of one while on duty is for the work one is doing; payment when one is not on duty is an entitlement according to the appellant's Staff Manual. The deceased was being paid while working but the staff manual authorized him to be paid also the same benefits as he was working if he had gone on leave. The fact that he did not go on leave and was being paid salary and allowances monthly was for the work he was doing. All the benefits, for which the deceased would have been paid if he had gone on leave, became accumulated.

The trial court and the Court of Appeal concurrently found that under the Restructuring Programme set out in circular No. 3 (Exhibit P.4) the deceased was entitled to be paid for his accumulated leave (cash) for 208 days or 10 months plus the allowances claimed by the deceased in his plaint. We agree with both courts' concurrent findings, which were based on the provisions of the circular and evidence of the deceased and DW1 Victoria Byoma, the appellant's Senior Resources Manager. DW1's evidence inter, alia reads as follows:

“It applies to leave of staff in the bank and provides at page 9, in 7.03 (a) that every permanent employee is obliged to take his leave. Under (b) (c) (sic) that he was not exhausted leave during term of office shall be granted a sum of money proportionate to leave he has accumulated. In clause 7.02 (c) it provides one proceeding on leave shall receive 20% of annual salary. While on leave, the staff member continues to receive his emoluments as he is still on payroll. When the staff is on leave, he continues to receive all his allowances. The plaintiff was Executive General Manager with the bank. He had been in the bank from 19. 12. 1961. He had served for over 12 years, plus he was entitled to 12 months salary plus allowances, month’s salary, in lieu of notice and accumulated leave in cash”.

In cross-examination, DW1 said:

“If the plaintiff had taken leave in 1985, he would have got the leave allowance for the time he was on leave and his basic salary plus allowances from time he was on leave. The leave allowance was 20%”.

DW1's evidence quoted above supported the following evidence of the deceased:

“I was in charge of leave. Every member of staff was supposed to take leave every year except if Bank exigencies required. Some were paid money in lieu of leave. The lower rank gets their basic salary and leave allowance. This would be a percentage of the annual salary. The higher ranks would get basic salary leave expenses and allowances. The ranks of getting allowances were from sub-manager and above. Those allowances included:

- (1) Cost of living allowance,***
- (2) Housing allowance***
- (3) Representation allowances***
- (4) Medical allowance***
- (5) Servants allowances***
- (6) Food allowances.***

When an officer was going on leave all his leave expenses would be paid together with his allowances and basic salary.”

In his judgment, Engwau, JA said:

“ I am satisfied with findings of the learned

trial Judge as extracted above. The respondent had worked for the accumulated leave and had earned those allowances. It was the appellant bank, which denied him taking his leave due to pressure of work. He was entitled to his salary for the accumulated leave of 10 months, his basic salary for whole period of his leave and allowances accruing there from. In my view, there would be no double duplicity of payment because he had worked for and earned those emoluments due to him.”

In the circumstances, we are unable to fault those conclusions of the learned Justices of Appeal. Leave allowance for the period the deceased was not paid because he did not go on leave accumulated just as his allowances for leave he did take before he retired accumulated and was payable to him if he had retired. The new Restructuring Programme did not and could not prejudice entitlements that had already accrued. This would tantamount to the staff unfairly enriching the Bank. That could not have been the intended outcome of the Restructuring Programme.

What we said in this judgment disposed of both grounds of appeal.

For these reasons we dismissed the appeal

with costs to the respondents in this Court
and the courts below.

Dated at Mengo...28thday ofJULY.....2006

A.H.O Oder,
JUSTICE OF THE SUPREME COURT.

J.N.W Tsekooko,
JUSTICE OF THE SUPREME COURT.

J.N Karokora,
JUSTICE OF THE SUPREME COURT.

G.W.Kanyeihamba,
JUSTICE OF THE SUPREME COURT.

Bart M. Katureebe,
JUSTICE OF THE SUPREME COURT.