

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

10 **(CORAM: ODQKI CJ, TSEKOOKO, KATUREEBE, KITUMBA,
KISAAKYE, JJ.S.C)**

CIVIL APPEAL NO. 02 OF 2010

BETWEEN

STANBIC BANK LTD:.....APPELLANT

AND

KIYIMBA MUTALE:.....RESPONDENT

[Appeal from the decision of the Court of Appeal of Uganda. (Mpagi- Bahigeine, Engwau and Twinomujuni JJA) dated 9th September, 2009, in Civil Appeal No 47 of 25 2007]

This is a second appeal to this court from the judgment of the Court 30 of Appeal which virtually uphold the decision of the trial judge.

The facts leading to this appeal are quite straight forward. They were agreed upon by both counsel at the scheduling conference in the Court of Appeal and are as follows:

The respondent is a former staff of Uganda Commercial Bank (herein after referred to as "UCB"). He joined the service of UCB on 3rd March 1981. Sometime in 1993, UCB embarked on restructuring its operations. By circulars CMD/FIN/6.9 dated 26th April, 1993 and

40 CMD/FIN/6.7 dated 26th April 1994 (herein after referred to as "the

5 circulars)". DCB invited its staff who wished to voluntarily terminate their services or opt for early retirement to submit applications. The staff who successfully applied for voluntary termination of their services / early retirement were paid a compensation package as set out in the circulars. During the restructuring of the bank there was a
10 report on staff benefits dated 16th October, 1997. The terms of that report were very similar to the circular with regard to members of staff who would in future apply for early retirement.

On 22nd October 1997, the respondent's employment with DCB was terminated with immediate effect. The respondent claimed he was wrongfully dismissed and thus filed H.C.C.S No. 1225 of 1999 against DCB, inter alia, for recovery of terminal benefits and damages for wrongful dismissal. DCB denied the respondent's claims and counterclaimed for rent arrears in respect of the respondent's continued occupation of its house subsequent to the termination of his employment.

On 22nd June 2004, the appellant applied to be substituted for UCB as defendant in the suit. The application was allowed and an order was made accordingly on 31st August, 2004.

During the trial the following issues were framed for determination:

- 1) ***Whether the termination of the plaintiff was wrongful.***
- 30 2) ***whether the plaintiff is entitled to remedies.***
- 3) ***What remedies if any is the defendant entitled to.***

The trial judge answered all the issues in favour of the respondent and made the following findings and orders:

- 35 1. ***The purported dismissal of the plaintiff by the defendant was unlawful.***

2. The terminal benefits should be paid to the plaintiff and calculated in the manner and rate of benefit which accrued to the retrenched staff members of the defendant Bank excluding the 3 months pay in lieu of notice.

4. Awarded of Shs. 2,000,000/= exemplary damages and

The appellant was dissatisfied with the judgment of the trial court and appealed to the Court of Appeal on the six grounds

At the scheduling conference in the Court of Appeal counsel for both 20 parties agreed that the issues to be determined from the grounds of appeal were as follows:

- 1. Whether the respondent was entitled to terminal benefits.**
- 2. If so, what is the quantum?**
- 25 3. Whether the respondent was entitled to payment under circulars C1V!D/FIN/6.9 dated 26th April 1993 and CMD/FIN 6.7 dated 26th April, 1994.**
- 4. Whether the respondent's claim for payments between 1997 and October 1999 was legitimate.**

The Court of Appeal held that the respondent was wrongly dismissed and was entitled to terminal benefits amounting to Shillings One hundred fifteen million, fifty six thousand, nine hundred sixty only (115,056,960/=). Interest on the above at the rate of 15% from the

- 35** date of the filing the suit till payment in full. The Court of Appeal declined to award general or exemplary damages on the ground that it had been guided by the retrenchment payments in reaching the

5 award. The Court of Appeal held, however, that the respondent was not entitled to payment under
the retrenchment circulars CMD /FIN 6.9 dated 26th April 1993 and CMD/FIN 6.7 dated 26th
15 April, 1994. The respondent was awarded costs of the suit in both courts and interest at 150/0
from the date of judgment till payment in full.

The appellant appealed against the judgment of the Court of Appeal and filed its
appeal to this court on the following grounds:

1. *Having found that the respondent's terms of employment did not make
provision for payment of*

15 *terminal benefits to the Respondent, the learned 'Justices of
Appeal erred in law and failed to properly evaluate the evidence
on record thereby erroneously holding that the respondent was
entitled to terminal benefits.*

20 *2. The learned Justices of Appeal erred in law and
failed to properly evaluate the evidence on record thereby
erroneously awarding the Respondent the sum of Ug Shs.
115,056,960/= as terminal benefits.*

3. *The learned Justices of Appeal erred in law and in*
25 *fact in awarding interest of 15% from the date of filing the suit till
payment in full whereas there was no cross appeal against the
award of interest before the High Court.*

Counsel for both parties namely, M/ s Kateera and Kagumire & Co
30 Advocates, for the appellant and M/ s Nile Law Chambers, for the respondent filed written
submissions. In their submissions both counsel argued grounds 1 and 2 together, then ground 3
separately. In this judgment, I will consider the grounds in the same manner.

The complaint by the appellant's counsel in grounds 1 and 2 is that there was no evidence to warrant the finding by the Court of Appeal that the appellant was entitled to terminal benefits.

The appellant's counsel contended that the Court of appeal found
10 that the respondent's terms of service with DCB were those spelt out in his letter of appointment dated 30th March, 1981 and the Personnel Policies Manual (PPM). The same court found as a fact that the respondent's dismissal did not fall among the categories of terminations for which terminal benefits were payable. There was, therefore, no justification for the Court of Appeal to hold that the respondent was entitled to terminal benefits.

The appellant's counsel citing *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA No. 1/1998*, argued that the Supreme Court
20 pronounced itself on dismissals, where it is stated that where a contract is governed by written agreement between the employer and employee, termination of employment services to be rendered will depend both on the terms of the agreement and on the law applicable.

According to counsel, this clearly shows that the Court of Appeal was
25 bound to look at the letter of appointment, PPM and the law and not elsewhere, let alone have recourse to the terms of service of other employees in resolving the issue. I entirely agree with the submissions by counsel on his point.

30 Counsel argued further that the finding by the Court of Appeal that all "*employees employed on similar terms as the respondent are given terminal benefits when they leave the bank*" is not borne out by the evidence on record. No witness testified before the High Court to that effect. In counsel's view, the Court of Appeal found

5 difficulty in disposing of the issue as to the quantum of the terminal benefits the respondent was entitled to because it was not in the respondent's terms of service. The Court of Appeal thus considered the report on staff benefits and the circular dated 26th April 1993 as a guide on the quantum of terminal benefits to be awarded. The

10 learned Justices of Appeal speculated on what the respondent would have earned if he had not been terminated and subsequently applied for voluntary termination/ retrenchment.

Counsel vehemently argued that, there is no such remedy as terminal benefits on being unlawfully terminated under the respondent's terms

15 of service. Termination without notice is compensated by payment in lieu of notice and in some cases an award of damages where no such payment is made.

AJpellant's counsel criticized the Court of Appeal for holding that it 20 had been conceded by both parties that the respondent's termination of employment was unlawful.

In reply, counsel for the respondent fully supported the findings of the learned Justices of the Court of Appeal that the respondent was

25 dismissed outside the terms and conditions of his employment. The respondent's counsel contended that an employee, who is unlawfully dismissed, should, as in this case, be compensated adequately in accordance with the law. The Justices of Appeal were right in holding that the court must look at the PPM and elsewhere and see how other

30 employees leaving the bank without any misconduct on their part are treated. The appellate court did not look outside the scope of PPM, letter of appointment, the law and practice of the appellant. Furthermore, there is nothing in *Mubiru's case (supra)* that bars the

5 course of action that the learned Justices took. Counsel argued that reliance on *Mubiru's* case would be misconceived because the circumstances of both cases are different and the facts are, therefore, distinguishable. Counsel submitted that the appellant's erroneous brief that the respondent was terminated on disciplinary grounds has
10 influenced its conclusion that the respondent is not entitled to an award of terminal benefits.

In rejoinder, counsel reiterated his submission that the award of terminal benefits is contractual whereas the award of damages for
15 breach of contract is within the discretion of the court as compensation for wrongful dismissal.' He submitted that the respondent had already received money in lieu of notice, money for leave not taken and accrued pension. The trial judge had also

awarded him damages in compensation for wrongful termination.

20. Appellant's counsel contended that once a contract of service has been terminated, though wrongfully, the employee has no right to claim any payment under the contract. In support of that submission he relied on *Rugudu Vs International Law Institute [2007J 2 E.A 444.*

According to the record of appeal I am of the considered opinion that it was conceded by counsel for both parties at the hearing of the appeal that the respondent's dismissal was wrongful. Consequently, it was not framed as an issue during the hearing of the appeal. The
30 argument by the appellant's counsel in this court that the wrongfulness of the dismissal of the respondent was not conceded is an afterthought. The respondent's terms of the contract with the appellant were spelt out in the letter of appointment dated 3rd March

1981 and the Personnel Policies Manual (PPM). There is no dispute that the respondent was dismissed summarily. This was not in accordance with Clause 8.01 of the PPM because the letter of dismissal never alleged that he had committed a serious crime to attract summary dismissal. The appellant's counsel does not submit

10 that the respondent was dismissed under the clause. The respondent was, therefore, unlawfully dismissed outside the terms and conditions of his employment.

In his judgment Twinomujuni JA, examined the provisions of the

15 PPM. He stated that the PPM does not envisage terminal benefits for wrongful dismissal. Clause 8.02 provides benefits for those who are dismissed from the bank for misconduct which does not warrant summary dismissal. Clause 8.04 of the PPM provides benefits for those who have to leave the bank when a reduction of staff becomes

20 unavoidable and have to be declared redundant. Clause 8.05 provides terminal benefits for those whose services are terminated for health reasons. According to the learned Justice of Appeal, the appellant did not envisage that they would need to act so arbitrarily as to dismiss an employee without any hearing, notice or summarily

25 without any misconduct. He was of the view that, since all employees of the appellant are employed on similar terms as the respondent and are given terminal benefits the respondent is not an exception. He held that the respondent was entitled to terminal benefits. The other Justices of Appeal concurred with that holding.

The position of the law is that an employer may terminate the employee's employment for a reason or for no reason at all. However, the employer must do so according to the terms of the contract

5, otherwise he would suffer the consequences arising from failure to follow the right procedure of termination. A termination is effective even when wrongful because courts cannot force an employer to keep an employee forever. The employer would have to contend with a claim for damages for wrongful dismissal.

Thus it was stated by Kanyeihainba JSC (as he then was) in ***Barclays Bank of Uganda Vs Godfrey Mubiru in Civil Appeal No 1 of 1998*** "***In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving***

15 ***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***

20 ***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***

25 ***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***

30 ***cases where the period of service is fixed without provision for giving notice."***

I would also like to note that the respondent was wrongfully dismissed from the appellant's employment in an arbitrary manner.

∴ The appellant Bank was uncooperative with the Inspectorate of Government, a constitutional body, which was investigating the circumstances that led to the appellant's dismissal.

The letter from the Inspectorate of Government and the

10 recommendation from *MIS Sebalu & Co Advocates* were put on record after the court had granted the application by counsel of discovery of documents. The Inspectorate of Government's letter is dated 1st October, 1999 and reads:

15 The Chairman
Board of directors

Uganda Commercial Bank
Limited P.O. Box 973
KAMPALA

The above- mentioned persons, who were formerly employed by Uganda Commercial Bank in the Legal Service Department until October 1997, have 25 lodged a complaint with this office for wrongful termination of their services.

This office carried out inquiries and came out with observation outlined below:

i) The two former officers were not given an opportunity to be heard, nor were they informed about the grounds of their termination. Hence, the decision to terminate their services was seen to be arbitrary and unfair.

ii) Although the Bank has a Staff Commendation and Disciplinary Committee, the officers were not subject to its procedure.

iii) The Bank regulations outline breaches and provide for notice of

40 termination in line with the disciplinary procedure. However, no clear guidelines for terminal benefits are given apart from payment where notice of termination is not given. This, however, does not cater for full benefits.

45 iv) Although it is alleged that investigations into the case carried out by the Bank Management as well as an independent external team, the Bank has not provided proven facts/evidence against the former officers to justify the decision to terminate their services.

50 Our recommendation therefore, is that the two former officers should be paid full terminal benefits.

A more detailed Report of the findings is herewith forwarded.

D.C. Psomgen

DEPUTY INSPECTOR OF GENERAL OF GOVERNMENT

**The executive Director,
PERD**

**The Managing Director
Uganda Commercial Bank**

20 The recommendation from MIS Sebalu & Lule, Advocates IS addressed to the Chairman of Board of Directors. It was written as a report after examining all the allegations which had been made against the respondent. The following is its conclusion:

25 *"By and large, the allegations which I have examined did not, in my view, justify termination summary or with notice. The FLO have been able to give explanations which appear to me to be satisfactory.*

30 *In the overzealous execution of their services or due to a wrong*

Judgment the FLO may at times have appeared to have acted more in favour of the other side rather than as Bank's lawyers. This in the final result, in my view, did not justify summary dismissal. I would recommend payment of terminal benefits."

35 From the above extracts one notes that the IGG recommended that the respondent should be paid his terminal benefits. A similar recommendation was made by Ms Sebalu and Company Advocates who were instructed by the appellant to look into the issues regarding the respondent's dismissal from employment and give legal advice to

40 the bank. The recommendations by both the IGG and Ms Sebalu & Co

5' Advocates, however, did not give the legal basis for payment to the respondent of terminal benefits. A careful perusal of both recommendations reveals that the reason why the respondent should be given terminal benefits is that he was arbitrary and unfairly dismissed. The two recommendations seem to equate terminal

10 benefits to damages which is not correct according to the principles of the law of contract of employment.

It is my considered view that there is freedom of contract and courts cannot enforce specific performance of a normal contract of service.

15 The employee, however, expects to be protected from unfair and unwarranted breaches of the contract of employment by the employer. When an employee is wrongfully terminated, the court should use its powers under article 126 (2) (c) to award adequate compensation.

The respondent is a professional who headed the legal division of the appellant for seventeen years. There were no adverse reports about him. Dismissing him in such a manner is inequitable and courts of law should not allow it to go without adequate compensation.

The position of the law on unlawful and unfair dismissal was stated in **Bank of Uganda Vs Betty Tinkamanyire SCCA No 12 of 2007**.

"It is trite that, a court of law should not use its powers to force an employer to retake an employee if no Zonger wishes to continue to engage. However, depending on the circumstances,

30 *an employee who is unfairly or unlawfully dismissed, as in this case, should be compensated adequately in accordance with the*

The facts of that case are very similar to the instant appeal.

5 In that case, the respondent, a lady who had worked for the appellant for several years had her employment abruptly terminated by the Bank. On her return from a study tour of the German Central Bank, she found her successor sitting in her office. None of the Bank officials gave her an explanation.

On the same day her letter of termination was written, a notice was pinned on the notice board reading that staff who are incompetent, poor time managers, alcoholics, thieves, fraudsters and insubordinate would have their services terminated.

This court awarded her aggravated damages of shs. 100,000,000/= because she was greatly embarrassed and inconvenienced by being classified among staff of bad character. Additionally, she was given all her pension rights because the court found it iniquitous for her to

20 lose any of her pension rights.

The instant appeal before this court would be a suitable case for an award of substantial damages. The learned trial judge awarded him general damages amounting to shs 2,000,000/= and exemplary

25 damages of shs 2,000,000/=.

When this appeal was before the Court of Appeal the issue of damages' was not addressed by both counsel. All their submissions were on terminal benefits. This might have confused the Justices of Appeal on

30 he role and the extent of the powers of the court in assessing compensation for wrongful dismissal. Instead of considering the appropriate quantum of damages. in order to compensate the respondent, they awarded him retrenchment/ early retirement benefits

5 which he was not entitled to as his contract had already been terminated. He was
no longer an employee of the appellant. Twinomujuni in his lead judgment stated:
***"It is quite correct for the appellant to say that the Report on Staff Benefits
dated 16th October, 1997 was not binding on
10 them. However, to the extent that it was a proposal for terminal benefits for
members of staff who would be retrenched at a future date, they are relevant as
guide as to how much the appellant was worth to the Bank if he elected to be
retrenched during or after 1997. The appellant who was dismissed without
15 any misconduct would have been entitled to retrenchment benefits if he applied
to do so. What he would have received, as terminal benefit is a good guide as to
how much he should get as a terminal benefits on unlawfully being dismissed."***

In conclusion he stated that:

20 ***"As I have been guided by retrenchment payments, no general damages or
exemplary damages are awarded"***.

It is obvious from the above quotation that the Court of Appeal did not at all consider the award of damages of any category to the 25 respondent.

It is trite that where a contract of the employment has been terminated, the employee has no right to claim payment under the contract.

This was stated by this court In ***Bank of Uganda Vs Betty Tinkamanyire*** (supra) and in ***Rugudu Vs International Law Institute*** (supra).

5- In the case of ***Bank of Uganda Vs Betty Tinkamanyire,(Supra)*** the respondent had been awarded, inter alia, commuted pension she would have received had her termination been lawful and the number of months she would have worked up to retirement age. This court held that such awards are unlawful and Kanyeihamba JSC (as he

10 then was) stated in his lead judgment at P.7 thus;

"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
15 ***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"***.

20 In the case of ***Rugundu Vs International Law Institute*** (Supra), the appellant whose contract was terminated before it commenced claimed for the _ money and other benefits she would have earned from the contract.. The court held that an employee whose contract is terminated receives nothing in regard to the contract. This court

25 quoted with approval the following statement from ***Vires Vs National Dock Labour Board*** [1956] 1QB 658.

"It has long been settled that if a man employed under a contract of personal service is wrongfully dismissed, he has no claim for remuneration due under the contract after
30 ***repudiation. His only money claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can to mitigate them."***

The High court awarded the respondent general damages shillings two million and exemplary damages of shillings two million.

I am of the view that the respondent is entitled to substantial

10 damages because of the wrongful and unfair dismissal. Clearly, this case is one of breach of the contract of employment which should attract substantial damages. The respondent did suffer from the defamatory article that was printed in the Monitor newspaper of November of 20th 1997 and Uganda Confidential of November 28th that year. His reputation was tarnished yet the allegations of fraud were not proved. The board based the respondent's summary dismissal on the complaint from the Privatization Unit of fraudulent dealings in which the respondent was- alleged to have been involved. The appellant bank was arrogant and did not co-operate with the IGG when investigations regarding the respondent's dismissal were being conducted. The appellant was unfair and arbitrary in dismissing the respondent. Unfortunately the respondent did.-not-cross appeal to the Court of Appeal and to his court for enhancement of damages that were awarded to him by the High Court. The appellant did not appeal about the same matter. We take it that both parties accepted the award of damages and the complaint was only about terminal benefits.

Grounds 1 and 2 would succeed.

I now turn to ground 3

My decision on grounds 1 and 2 disposes of ground 3 which IS a complaint against the award of interest on the terminal benefits.

This appeal would substantially succeed.

1. I would restore the order of the High Court on damages to be awarded to the respondent.

a) Exemplary damages in the sum of shillings 2,000,000/= and

10 . b) General damages in sum of shillings 2,000,000/=

2. Interest on the above two at court rate from the date of Judgment till payment in full.

3. Each party should bear its own costs in this court and in the courts below.

Dated at Kampala this..6th... day of December 2011

C.N.B. KITUMBA
JUSTICE OF THE SUPREME COURT

3.

IN THE SUPREME COURT OF UGANDA AT
KAMPALA

(CORAM: ODOKI, C.J, TSEKOOKO, KATUREEBE, KITUMBA AND KISAAKYE,
JJ. S.C)

BETWEEN

STANBIC BANK LTD.....APPELLANT

AND

^K
IYEMBA MUTALE.....RESPONDENT

[Appeal from the decision of the Court of Appeal of Uganda (Mpagi-Bahigeine, Engwau and Twinomujuni J.J.A) dated 9 September 2009, in Civil Appeal No 47 of 2007]

JUDGMENT OF ODOKI, CJ

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

As the other members of the Court also agree, this appeal substantially succeeds with orders proposed by the learned Justice of the Supreme Court.

Dated at Kampala this6th.....day of December 2011

B J Odoki

CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[Coram: Odoki, Tsekooko, Katureebe, Kitumba & Kisaakye, JJSC.]

Civil Appeal No.020 of 2010

{Appeal from the Judgment of the Court of Appeal at Kampala (Mpagi-

Bahigeine, Byamugisha and Nshimye JJA) dated 09th September, 2009 in Civil Appeal No. 470/2007.}

JUDGMENT OF TSEKOOKO, JSC

I have read in draft the lead judgment of my learned sister the Hon. Lady Justice C.N.B Kitumba, JSC and the support judgment of Katureebe, JSC~ I agree that the appeal should substantially succeed. I agree with the orders proposed by my learned sister.

Delivered at Kampala this ...6th day of December 2011

..

IWN Tsekooko.
Justice of the Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI C.J, TSEKOOKO, KATUREEBE, KITUMBA,
KISAAKYE, JJS.C)

CIVIL APPEAL NO.2 OF 2010

STANBIC BANK LTD:.....:APPELLANT

KIYEMBA MUTALE:.....:RESPONDENT

[Appeal from the decision of the Court of Appeal of Uganda. (Mpagi Bahigeine, Engwau and Twinomujuni JJ.A) dated 9th September, 2009, in Civil Appeal No.47 of 2007].

JUDGMENT OF KATUREEBE, JSC

I have had the benefit of reading in draft the judgment of my learned Sister, Kitumba, JSC and I agree with her that this appeal should substantially succeed.

I only wish to add, by way of emphasis a few thoughts about wrongful termination of contract. There is no doubt that the respondent's contract of employment was wrongfully terminated by the appellant, his employer. The question that

needed to be answered was this: what were the consequences of that wrongful termination.

It is trite law that normally an employer cannot be forced to keep an employee against his will. There can be no order for specific performance in contracts of employment. However the employer must be prepared to pay damages for wrongful dismissal, pay for any period of notice stipulated in the agreement, and pay any other benefits, like pension dues, that have accrued at the time of the termination. I believe this is well laid down by this court in the case of *BARCLAYS BANK OF UGANDA -Vs- GODFREY MUBIRU* SCCA No. 1/1998 and *BANK OF UGANDA -Vs- TINKAMANYIRE* - SCCA NO. 12 OF 2007.

By way of analogy the position in England is stated in *HALSBURY'S LAWS OF ENGLAND Vol.16 Para 305* as follows:-

"An employee who has been wrongfully dismissed will normally have no option but to accept the employer's repudiation and sue for damages for breach of contract. "

As for the measure of damages to be given for such a breach, it is stated in paragraph 307 (Halsbury's Laws) as follows:-

"In the case of a fixed term contract, this means that the starting point is the remuneration for the remainder of the fixed term; but most contracts of employment are

terminable by notice so that the employee is entitled to recover only the amount of remuneration during the notice period. That remuneration includes wages or salary; including a reasonable amount of any variable such as commission, loss of a vehicle, and other fringe benefits and any loss of pension rights

As the action is for breach of contract, not debt, the employee is under a duty to mitigate his loss; and certain amounts must also be deducted from the prima facie measure of damages and adjustment made to reflect the incidence of taxation."

The above principles are also cited in *CHITTY ON CONTRACTS Vol.2 paragraph 3636* on "*Damages for wrongful dismissal*" In the instant case, the respondent's employment with the appellant was regulated by his contract of employment and the Personnel Policies Manual (PPM).

Pursuant to those, he was offered payment of three months in lieu of notice. He was offered his accrued pension. The High Court also awarded him Shs. 2,000,000/= as general damages for wrongful dismissal and Shs.2,000,000/= as exemplary damages for the manner by which he was dismissed.

The bone of contention is the award of Shs.115,056,960/= by the Court of Appeal as terminal benefits which was based on what the appellant would have earned had he not been

dismissed and had instead opted for early or voluntary retirement.

With the greatest respect, I think both the High Court and the Court of Appeal were in error here. First it is mere speculation as to what the appellant would have done if he had not been dismissed. He may not have opted for early retirement, as indeed he had not. Secondly, the proposals for employees who took early retirement was a special scheme for those persons. Once his contract of employment was terminated, albeit wrongfully, the respondent could no longer be treated as an employee of the appellant. As indicated above he was entitled to his payment in lieu of notice, his accrued pension, and damages for wrongful dismissal. In that regard I agree with the submissions of counsel for the appellant that the appellant could only be awarded what was in his contract of employment. That contract comprised his 'letter of appointment and the Personnel Policies Manual.

As for the' general damages, the High Court awarded *Shs.2,000,000/=*. The respondent did not appeal against the inadequacy of that award. It appears to me that both the High Court and the Court of Appeal were anxious to award a substantial sum of money to the respondent, but with respect, totally misdirected themselves as to the principles upon which such compensation could be based.

In his lead judgment, Twinomujuni, JA, states in the very first paragraph that “*the respondent had sued the appellant for special and general damages for wrongful dismissal.*” Yet throughout the judgment, the learned Justice of Appeal does not discuss the principles upon which the respondent should be awarded what he sued for, i.e. special and general damages.

Having reached the conclusion that “*the respondent was therefore unlawfully dismissed outside the terms and condition of his employment,*” the learned Justice then went on to state:-

“The fact that the appellant dismissed the respondent ultra vires the contract of employment makes it only difficult to determine the nature of the remedy he is entitled to receive.”

Again, with great respect, this, in my view, was a misdirection as to the law, since the law has been clearly laid down by this court in several decisions and as stated in various legal texts as indicated. Having found that the appellant was wrongfully terminated, the court should have proceeded to make an award of general damages which are always in the discretion of the court to determine. Indeed the learned Justice cited Article 126(2) (c) which provides for the courts to ensure that adequate compensation is awarded to victims of wrongs. However, there is an important qualification in that Article, which sometimes courts tend to forget. The Article states:

126(2) "in adjudicating cases of both a civil and criminal nature, the Courts shall, subject to the law, apply the following principle:

(c) adequate compensation shall be awarded to victims of wrongs." (emphasis added).

Clearly, the court must address itself to the principles of law applicable, and then, within the law, determine the measure of adequate compensation. It cannot be based on mere speculation.

In my view, that adequate compensation would have been a payment in lieu of notice, a measure of general damages for wrongful dismissal, and payment for accrued pension rights. The High Court could have awarded substantial general damages but in its discretion it chose to award only Shs.2, 000,000/=. The respondent did not even see fit to appeal against that award. Strangely, the Court of Appeal did away with general damages altogether. The court, having proceeded, wrongly, on the premise that it could award terminal benefits based on what the respondent would have earned if his contract had not been wrongly terminated, rejected the award of general and exemplary damages which had been made by the High Court.

The learned Justice states, at page 15 of the judgment:

“As I have been guided by retrenchment payments, no general damages or exemplary damages are awarded.”

The respondent apparently accepted this position as he made no cross-appeal against an obviously erroneous position.

With regard to terminal benefits, the authorities indicate that the respondent could only be entitled to what had accrued to him under his contract. He could get payment in lieu of notice, which was offered, and he could get his accrued pension, which was also done. This is because the termination, even though wrongful, takes effect and the employee is no longer in the employment of the employer as to demand for other benefits, let alone those that could be paid to other employees who remain in employment. .

In ***BARCLAYS BANK OF UGANDA -Vs MUBIRU*** (supra), the employee had been awarded by the High Court such items as transport, medical, luncheon and entertainment allowances which he claimed he would have earned. In rejecting these awards, this court, (Kanyeihamba JSC) stated:-

"The trial judge's decision that these allowances were payable from the period the plaintiff was dismissed up to the date when he would have retired from employment of the appellant has no foundation in law."

This position was reiterated in the *TINKAMANYIRE* case where Kanyeihamba, JSC, stated:-

“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.”

In the case of *VINE -Vs- NATIONAL DOCK LABOUR BOARD* [1956] 1 QB 658, cited with approval by this court in *DOREEN RUGUNDU -Vs- INTERNATIONAL LAW INSTITUTE*, Supreme Court Civil Appeal No.8 of 2005, Jenkins L.J stated:-

“It has long been well settled that if a man employed under a contract of personal service is wrongfully dismissed, he has no claim for remuneration due under the contract after repudiation. His only money claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages

and he must do everything he reasonably can to mitigate them." (emphasis added).

The Court of Appeal seemed to appreciate the position of the law when, Twinomujuni, JA, stated at Page 9:

"Clearly the employment of the respondent ended or was terminated on 17.10.1997 and no further payment can be ordered against the appellant."

However, the Justice then proceeded to apply wrong principles based on speculation when he stated, at page. 11, as follows:-

"It is quite correct for the appellant to say that the report on staff benefits dated 16th October 1997 was not binding on them. However, to the extent that it was a

proposal for the terminal benefits for members of staff who would be retrenched at a future date, they are a relevant guide as to how much the appellant was worth to the Bank if he elected to be retrenched during or after 1997. The appellant who was dismissed without any misconduct would have been entitled to retrenchment benefits if he applied to do so. What he would have received, as terminal benefit is a good guide as to how much he should get as terminal benefits on unlawfully being dismissed."

On this basis, the court proceeded to award to the respondent on such items as salary for 12 months, 48 months basic salary as a Long Service Award, etc, all totaling to Shs.115,056,960/=. Lam of the firm view that this award had no basis in law and cannot stand.

The court then states:-

“The respondent has not made out a case for special damages to be paid with interest of 25%. I would order interest on this payment to be 15% from the date of filing the suit till payment in full.”

It is not clear to me whether the court found that a case for special damages had been proved at all, but that it did not deserve interest of 25%.

It is trite law that special damages must be specifically pleaded and proved as having been suffered by the person claiming them. Special damages cannot be based on speculation. If the award of Shs.115,056,960/= is meant to be the special damages, then it has no foundation in law or in fact in this case. First, the respondent had been dismissed and the dismissal had taken effect. Therefore one cannot talk of his worth to the same employer that dismissed him. Secondly, voluntary retirement had been introduced in 1993. As of 1997 when he was dismissed, the respondent had not applied to join that scheme. Clearly, therefore, the court was merely speculating.

I would therefore agree that this appeal succeeds substantially. I have one matter that I must comment on. I think that the respondent could have been awarded substantial general damages for the wrongful termination of his employment, taking into account his status, the manner of the termination and the way he was handled by the appellant. The High Court did not indicate whether it took all that into account in exercising its discretion to award 5hs.2,000,000/= as general damages.

As already observed, the respondent did not challenge the adequacy of that award on appeal, and in fact the Court of Appeal disallowed the award of general damages and exemplary damages.

I think the Court of Appeal erred in disallowing the claim for general damages, which in fact are the damages that should have been awarded under the law.

In my view the order of the High Court that the respondent be awarded the general damages and exemplary damages should be restored. May be the respondent deserved more in general damages but this matter was not canvassed by both counsel in this court. I am constrained not to interfere with the discretion of the trial Judge. I also agree that each party should bear its own costs.

Dated at Kampala this 6th.....day of. December.....2011.

Bart M. Katureebe

Justice of the Supreme Court THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, CJ., TSEKOOKO, KATUREEBE, KITUMBA, KISAAKYE, JJ.S.C.)

CIVIL APPEAL NO. 02 OF 2010

BETWEEN

STANBIC BANK LTD:.....APPELLANT

AND

KIYIMBA MUTALE:..... RESPONDENT

[Appeal from the decision of the Court of Appeal of Uganda (Mpagi-Bahigeine, Engwau and Twinomujuni, JJ.A) dated 9th September, 2009, in Civil Appeal No. 470f2007J

JUDGMENT OF DR. E. KISAAKYE, JSC

I have had the benefit of reading in draft the judgment of my learned sister, Justice Kitumba, JSC and the concurring judgment of my learned brother, Justice Katureebe, JSC. I concur with her that this appeal should succeed. I also agree with the orders that she has proposed. I just wish to add a few comments.

I also believe that this is a case where the Respondent deserved to be awarded more in general damages for the wrongful termination of his employment, given his long service. However, since the respondent did not appeal to the Court of Appeal against the award of damages which the trial judge made, this court cannot interfere with this Award.

The other point I wish to add concerns the current position of the law on the rights of the employees with respect to termination of their services by their employer. The position stated by my learned sister, Justice Kitumba, and which applies to this case under consideration is that the employees' only rights in a case of unlawful termination of his services was for payment in lieu of notice if no notice was given by the employer, any accrued dues for salary, other entitlements, outstanding leave and in deserving cases, general damages for wrongful termination. In no circumstances could the court order reinstatement of an employee who was wrongly dismissed.

The Employment Act, 2006 has since introduced several changes in the law with respect to procedures that an employer is required to follow before terminating the services of his employee. The Act also provides for, among others, situations where reinstatement of an employee may be ordered.

Therefore, courts hearing cases arising after the coming into force of the Employment Act 2006 will have to ensure that employers observed the law and proper procedure when terminating the services of their employees as provided for under the Act whether they complied with the orders as may have been issued by the Labour Officer.

Dated at Kampala this 6th day of December.....2011.

**DR. ESTHER M. KISAAYE
JUSTICE OF THE SUPREME COURT**