

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

10 (CORAM: KATUREEBE, CJ, TUMWESIGYE, KISAAKYE, JJSC, TSEKOOKO,  
OKELLO, AG.JJSC)

**CIVIL APPEAL NO.04 OF 2014**

**BETWEEN**

15 **COMMISSIONER GENERAL,**  
**UGANDAREVENUEAUTHORITY:.....**  
**APPELLANT**

**AND**

20 **WILLIAM MUKASA .....**  
**RESPONDENT**

*[Appeal from the judgment of the court of Appeal at Kampala (Mwondha, Kakuru and Kiryabwire, JJ.A) dated 21<sup>st</sup> November,2013 in Civil Appeal No. 78 of 2009].*

25 **JUDGMENT OF TUMWESIGYE, JSC**

This appeal is brought by the Commissioner General, Uganda Revenue Authority (the appellant) against William Mukasa (the respondent) who was an employee of the appellant before his retirement.

The respondent had sued the appellant in the High Court claiming payment of gratuity and other terminal benefits. The High court dismissed his claim.

5 The respondent then appealed to the Court of Appeal against the decision of the High Court and the Court of Appeal allowed his appeal, hence this appeal.

## **BACKGROUND**

10 William Mukasa, the respondent, was employed as a Principal Revenue Officer (PRO) in Uganda Revenue Authority. He retired from URA in April 2005 after serving in that organization for about 13 years. His retirement was as a result of restructuring that was undertaken in URA in 2005. Personnel who were working in URA at the time of restructuring were given two options, either to  
15 retire voluntarily or to apply for new jobs which were being internally advertised. The respondent opted for voluntary retirement.

There were two major categories of staff in URA, viz management staff and non-management staff.

20 The old Human Resource Management Manual (hereinafter referred to as **“the old manual”**) provided different terms for each category. Management staff served under a contract of 3 years whereas non-management staff served under permanent employment. The respondent as a Principal Revenue Officer was in  
25 the category of non management staff.

On 1<sup>st</sup> August, 2004 the appellant introduced a new Human Resource Management Manual ( hereinafter referred to as **“the new manual”**) to replace the old manual.

5 There were clauses in the new manual which changed the terms of employments of non management staff from permanent to contract terms.

On retirement, the respondent and those employees of the same category who retired with him were paid by the appellant the following terminal benefits:

- 10
- 7 months salary as severance pay
  - 2.5% of basic pay as long service award
  - Commuted leave pay
  - Transport allowance to their homes.

15 The respondent and other employees who were retiring with him were not satisfied with these terminal benefits. They believed they were entitled to a gratuity of 15% based on their gross salary, some NSSF contributions and pension in addition to what they were paid. They each filed a claim against the appellant in the High Court for payment of these additional benefits. It was  
20 agreed in the High Court that the suits should be consolidated under one suit.

Apart from NSSF claim which was settled by the parties before the trial of the suit began, the High Court dismissed the respondent's claim.

Being dissatisfied, the respondent lodged an appeal against the decision of the High court. His memorandum of appeal contained 8 grounds of appeal which were formulated as follows:

5 **1. “The learned trial judge erred in law and in fact when she held that the appellant was rightly paid long service award of 2.5% as per clause 14.7 (a) of the manual.**

10 **2. The learned trial judge erred in law and in fact when she held that the financial provisions of the new manual did not apply to the appellant.**

**3. The learned trial judge erred in law and in fact when she held that the financial provisions of the new manual were suspended.**

15 **4. The learned trial judge erred in law and in fact when she failed to properly consider and evaluate the evidence and the submissions record and held that the appellant was not entitled to gratuity.**

20 **5. The learned trial judge erred in law when she held that the appellant could not sue the respondent in an ordinary suit to enforce compliance with statutory obligations.**

25 **6. The learned trial judge erred in law and in fact and misdirected herself when she failed to properly consider and evaluate the evidence and submissions on record and held that the appellant was not entitled to pension.**

**7. The learned trial judge misconceived and misapplied the law and facts relating to pension for the appellant.**

**8. The learned trial judge erred in law and in fact when she held that the appellant's claim as to remedies had no merit.**

10 On considering the appeal, the Court of Appeal allowed grounds 1,2,  
3,4, 5 and 8 of the respondent's grounds of appeal but dismissed grounds 6 and 7. The court ordered that the respondent be paid gratuity of 15% less 2.5 % which had been paid to him as  
15 consolidated pay, with an interest of 17% per annum from the date of judgment till payment in full.

The appellant was dissatisfied with the decision of the Court of Appeal and filed this appeal. The respondent was also not satisfied with the date from which the interest awarded by the  
20 Court of Appeal was to begin to run. He wanted it to run from the date of filing the suit till payment in full, so he cross-appealed on this ground of interest.

### **Appellant's grounds of appeal**

The appellant's memorandum of appeal contains 5 grounds of  
25 appeal which were formulated as follows.

1. ***The learned Justices of the Court of Appeal erred in law and in fact when they held that the respondent was entitled to gratuity calculated at the rate of 15% of the gross annual salary in accordance with the new Human Resource management manual.***
2. ***The learned Justices of the Court of Appeal erred in law and in fact when they held that the financial provisions of the new manual applied to the respondent.***
3. ***The learned Justices of the Court of Appeal erred in law and in fact when they held that the financial provisions of the new manual were not suspended.***
4. ***The learned Justices of the Court of Appeal erred in law and in fact when they failed to properly consider and evaluate the evidence and the submissions on record and held that the respondent was entitled to gratuity.***
5. ***The learned Justices of the Court of Appeal erred in law and in fact when they held that the respondent is entitled to interest and costs.”***

The appellant prayed court to set aside the judgment of the Court of Appeal and also prayed for costs.

The respondent cross-appealed on one ground , viz that the learned Justices of the Court of Appeal erred in law and in fact when they held that the balance of gratuity of 12.5% of the consolidated pay should accrue from the date of judgment until payment in full rather than from the date when the cause

of action arose. He prayed for an order that interest accrue from the date the suit was filed.

### **Submissions of Counsel**

Mr. Habib Arike appeared for the appellant while Mr. Enock Barata and Ms. Diana Kasabiiti appeared for the respondent. Counsel for the appellant filed written submissions while counsel for the respondent made oral submissions in court.

In his written submissions counsel for the appellant submitted that according to the old manual the respondent fell in the category of non management staff, and according to clause 14.7 of that manual he was entitled on retirement to long service award computed at 2.5% of the basic annual salary multiplied by the number of years served. He stated that the clause provided that gratuity would be paid as ex gratia to staff on contract but such staff on contract would not be eligible for long service award. Therefore, according to that provision, gratuity was only payable to staff who were employed on contract and not to those who were on permanent and pensionable terms. The respondent had confirmed in his testimony in the High court that he was never employed on contract, counsel argued.

In counsel's view, therefore, the learned Justices of Appeal were wrong to hold that the respondent was entitled to gratuity and not long service award that the appellant had duly paid him.

Counsel further stated that the old manual was revised and replaced by a new manual which came into force on 1<sup>st</sup> August, 2004 and which introduced changes. He stated that clause 3.2 of the new manual provided that there would be 3 types of contract: management contract, staff contract and other contracts. Every employee of the rank of Senior Principal Revenue Officer and below would be on staff contract.

The staff contract period was 4 years. On completion of the contract, the employee was eligible for a gratuity of 15% of gross annual salary.

No employee was entitled to gratuity unless he completed one year in service with the Authority.

This, however, was not implemented immediately, he stated. The appointment of management staff on contract was suspended by the Board due to financial constraints.

The Board at its 160<sup>th</sup> ordinary meeting held on 28/07/2004 decided that the appointment on contract would thereafter be implemented after a new structure was put in place and the provisions in the new manual concerning contract for non management staff would be suspended until that time.

Counsel further stated that this decision was communicated to staff through a circular dated 4/8/2004. The circular stated that the Board approved the policy of appointing all staff on contract, but that the Board suspended the implementation and financial implications of this policy to a later date and



accordingly all staff would remain on current terms until further notice.

Therefore, the above circular together with the Board minutes meant that the respondent would remain on terms and conditions of service which applied under the old manual because of the financial implications of the new policy of appointing them on contract.

The respondent, according to counsel, confirmed that “**current terms**” meant “**permanent and pensionable.**” The respondent based his claim on paragraph **2(b)** of the new manual which reads: “**Gratuity is payable to management staff whose contract expires after 1<sup>st</sup> August, 2004 for a 24% of the consolidated pay. For other staff, i.e. below Assistant Commissioner, gratuity will be paid at 15% of the consolidated pay**”. In Counsel’s view, the learned Justices of Appeal erred in holding that the respondent was entitled to gratuity because under the above cited clause the respondent was never employed on contract.

Counsel argued further that at the time the respondent voluntarily retired in April 2005, the suspension was still in place and the Court of Appeal found that the appellant was not employed on contract. Having so found , it was not logical for the court to conclude as it did that the respondent was entitled to be paid gratuity since gratuity was payable only to staff employed on contract, counsel argued.

On ground 5 and cross-appeal, counsel argued that whereas section 26 of the Civil Procedure Act confers discretionary

powers on judicial officers to award interest in deserving cases, in this case the respondent did not make out a deserving a case for award of interest and, therefore, interest should not have been awarded.

5 Counsel prayed court to allow the appeal with costs in this court and in the courts below. He also prayed for the dismissal of the cross-appeal with costs.

Mr. Enock Barata, learned counsel for the respondent, started his submissions by setting out the facts of the case which facts were no different from those submitted in counsel for the appellant's submissions. Counsel argued that the new manual provided that management staff would be paid gratuity at the rate of 24% of basic salary and all other staff would be paid gratuity at the rate of 15%.

15 Counsel cited a clause in the new manual which provided that on completion of a contract, an employee in the category of management staff would be eligible for a gratuity at the rate of 24% of the gross annual salary and in any other cases an employee would be eligible for a gratuity of 15% of the gross annual salary. In accordance with this provision, management staff who retired were paid 24% gratuity instead of being paid 12% under the old manual. Therefore, in his view, this shows that retirees were being paid their terminal benefits on the basis of the new manual and not on the basis of the old manual.

25 Furthermore, counsel argued, there was a Board decision made in April 2005 stating that due to financial constraints the

available funding could only cover those employees who were voluntarily retiring or being terminated under the new policy, and that those employees who were going to be recruited in the organization would be employed on permanent terms and not on contract because of financial constraints, counsel argued.

The Board, according to counsel, was at all times aware that it had to pay non management retirees under the new manual, and it made provision for that. The new manual, according to counsel, provided that they would be paid gratuity of 15% but they were wrongly paid gratuity of 2.5% instead.

Counsel argued further that it was not true that the appellants paid the respondent under the old manual because there were terminal benefits which were not in the old manual but which were picked from the new manual and paid to the non management staff retirees. He cited the payment of 50% transport allowance as an example of one of the benefits which was paid to non management staff retirees and which was picked from the new manual. Management picked and chose as it wished and overruled the Board decision, counsel argued.

It was counsel's argument that the Court of Appeal evaluated the evidence properly and applied the right principles to reach its decision, and therefore their judgment should not be overturned by this court even if this court were to think that it would have arrived at a different decision. Counsel cited the case of **Banco Arabe Espanoe Vs. Bank of Uganda**, SCCA No.08 of 1998 to support this view.

On cross-appeal, counsel argued that the respondent is entitled to interest from the date of filing the suit till payment in full rather than from the date of the judgment.

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### **Consideration of the issues**

The appellant filed 5 grounds of appeal which are closely related. I will not consider the 5 grounds one by one but I will consider them all together.

10 The main issue in this appeal is whether the respondent was entitled to a gratuity of 15% in accordance with the new Manual. Resolution of this issue will entail consideration and resolution of all other related issues.

15 Learned counsel for the appellant argued that the respondent being in the category of non management staff was not entitled to gratuity on his retirement, but was instead entitled to long service award of 2.5% of his basic annual salary. His argument was that gratuity was only payable to staff who were employed on contract  
20 on which the respondent was not employed.

On the other hand, learned counsel for the respondent's argument was that the respondent was entitled to be paid a gratuity of 15% based on the provisions of the new Manual. That the Board of  
25 directors approved payment of this gratuity and it was management which was trying to change it to 2.5%. Counsel argued that management staff who retired were being paid a gratuity of 24% based on the new Manual, therefore non

management staff who retired were equally entitled to a gratuity of 15% from 2.5% in accordance with new Manual.

The trial court, after considering the evidence, was of the view that the respondent was not entitled to gratuity based on the new Manual but was instead entitled to long service award under clause 17.4 of the old manual. The Court of Appeal, however, did not agree with the trial court's decision. Justice Faith Mwendha, JA, who wrote the court's lead judgment, concluded as follows:

10           ***"I therefore find that the new HRMM was applicable in as far as voluntary retirement after 1<sup>st</sup> August, 2004 was concerned as it applied to management staff whose contracts expired after 1<sup>st</sup> August, 2004."***

15           With respect, I do not agree with this finding of the Court of Appeal. I think the Court of Appeal erred in so finding. It seems to me that in deciding the issue of gratuity as claimed by the respondent, the Court of Appeal shifted from considering what the respondent's terms of employment on which his terminal benefits were based were to what the appellant organization paid to management staff who retired, a matter which I respectfully find to be irrelevant to the respondent's claim.

Justice Mwendha, JA, (as she then was) stated in her judgment as follows:

25           ***"This meant that the respondent [appellant in this appeal] was treating the appellant [now respondent] differently when the circumstances were the same. The most important fact to be considered were:***

**(a) Contracts expiring after 1<sup>st</sup> August, 2004**

**(b) Voluntary retirement for other staff after 1<sup>st</sup> August, 2004.**

5 **Management cannot change a Board decision in corporate governance. This would amount to discrimination and therefore infringed on Article 21 of the Constitution. It provides:**

10 **“All persons are equal before and under the law in all phases of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”**

With respect, I do not think that the issue of discrimination was relevant to this case. The respondent’s claim for gratuity in his pleadings was not based on the ground of discrimination. It was based on what he believed to be his rightful entitlement based on the new Manual. For this he relied on the construction of documents which came from the appellant organization.

20 In a number of its decisions, this court has underscored the importance of courts sticking to parties pleadings and avoiding making decisions based on matters which are not pleaded or argued. See for example, **Interfreight forwarders (U) Ltd Vs. East African Development Bank**, SCCA No. 33 of 1992, **Julius Rwabinumi Vs. Hope Bahimbisibwe**, SCCA No. 10 of 2009, and **Attorney General Vs. Zachary Olum**, Constitutional Appeal No. 3 of 2004.

The facts on which this appeal is based are not very much in dispute. The respondent was a principal revenue officer in the appellant's organization. Under the old Manual, a principal revenue officer was in the category of non management staff. Clause 14.7 of the old Manual (Exhibit D1) provided for retirement benefits for non management staff as follows:

**“Long Service Award.**

**(a) In addition to benefits from structured retirement schemes of the Authority, a staff who leaves the Authority on retirement in good grace shall be entitled to a long service award (as a separation hand shake).**

**(b) This shall be computed at 2.5% of the basic annual salary on retirement times the number of years served “unbrokenly” in the Authority as long as the retiree has served a minimum of three years unbroken service.**

**Gratuity Payment**

**(a) Gratuity shall be paid, ex gratia, to staff on contract.**

**(b) Such staff on contract shall not be eligible for the Long Service Award.**

**(c) Retired contract officers of Uganda Revenue Authority staff shall be paid 12% of the staff's annual salary at the end of every year of service, or 1% per month for each contract month (or**

parts thereof) if they do not complete a year or a month any time.

- 5           **(d) Other staff on contract shall be paid 1% per month served at the end of each tenure as Contract Performance Gratuity.**

The old Manual operated from 1992 to 31<sup>st</sup> July 2004 when a new Manual (Exhibit D1) was introduced to replace the old Manual.

10 Clause 3 of the new Manual provided:

**“3.2. contract appointments.**

- (a) All appointments to the Authority shall be on contract**

- 15           **(b) There shall be three types of contracts: management contracts, staff contracts and other contracts.**

**3.2.1 Management contracts**

- 20           **(a) Every Management staff shall be appointed on a management contract.**

- (b) The contract period management contract appointment period shall be 3 years (36 months).**

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**3.3.2 Staff contract**

- (a) Every employee from the rank of Principal Revenue Officer and below shall be appointed on staff contract.**

- 30           **(b) Contract period.**



**Staff contract appointment shall be 4 years (48 months).**

### **3.2.3 Other Contracts.**

- 5 **These could be either specialized skills assignments contracts or post retirement contracts, all of which will normally be for a shorter period.**

### **3.2.3 Gratuity**

10 **(a) On completion of a contract, the employee appointment under 3.2.1 of this Manual shall be eligible for a gratuity equivalent to 24% of the gross annual salary for each completed year of the contract. In any other case, the gratuity shall be 15% of the gross annual salary.**

15 **(b) If the employee leaves employment before the end of his contract he shall be paid gratuity on a pro rata basis.**

20 **(c) No employee shall be entitled to gratuity unless he has completed a minimum of one year of service to the authority.**

While the new Manual came into operation on 1<sup>st</sup> August, 2004, the implementation of the Manual relating to putting non management staff on contract was suspended by the Board.

25

In its 160<sup>th</sup> ordinary meeting held on 28<sup>th</sup> July 2004 (Exhibit D3 (i)) under minute URA/58/2004 entitled **“Implementation of the new HRMM”** the Board decided, among other things, as follows:

**“(b ) Appointment of staff on contract.**

(i) The Board noted that it was important to have a complete URA structure presented by management and approved by the Board in order to establish the staff levels.

5

(ii) That it was important for the new CG to be involved in proposing the URA structure to be considered and approved by the Board.

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(iii) That the appointment on contract would therefore be implemented after this process had been completed and the relevant provisions in the HRMM would therefore be suspended until that time.

15

The Board decision was communicated to the staff through a circular dated 4<sup>th</sup> August, 2004 (Exhibit P7). The relevant parts of the circular read:

**“1. (a) CONTRACTS: (SEC. 3.2.2)**

20

The Board approved the policy of appointing all staff on contract. This shall be spread out starting with PROS and SPROS. However, the Board suspended the implementation and financial implications of this policy to a later date. Therefore all staff remain on the current terms until further notice.

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(b) Gratuity payable to management staff whose contracts expire after the 1<sup>st</sup> August 2004 is provided for at 24% of consolidated pay. For other staff (i.e. below AC) gratuity will be paid at 15% of the consolidated pay”

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A minute of the Board's ordinary meeting held on 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 17<sup>th</sup> April 2005 (Exhibit D3 (ii)) Minute URA/25/2005 reads:

**“(b) Staff Contracts**

5           **The Board noted that although it had earlier considered putting all URA staff on contract terms of service, the necessary funding was not currently available.**

10           **The available funding could only cover voluntary retirement and termination under the new URA structure. Staff below the rank of Assistant Commissioner would therefore continue to be appointed on permanent terms.”**

15           The respondent put in his retirement letter in April 2005 and he retired on 15<sup>th</sup> April 2005 and he was paid, among other retirement benefits, long service award of 2.5% of his gross salary. He and others complained that they should have been paid gratuity at the rate of 15% as contained in the new Manual and which was communicated to them in the circular of 4<sup>th</sup> August 2004.

20           It is clear from the facts of this case as shown above that the respondent was never employed by the appellant on contract. The provisions in the new Manual which changed the respondent's employment terms from permanent to contract were suspended  
25           and he retired from URA before they were implemented.

The respondent himself admitted as much in his testimony to court when he stated that he was never employed on contract. Even the

Court of Appeal found that the respondent was never employed by the appellant organization on contract.

5 His letter of appointment in which his terms of employment were stipulated was never changed by the appellant organization from the old terms because of suspension of implementation of the provisions relating to contract terms for non management staff contained in the new Manual owing to financial constraints.

10 Reading the old Manual and the new Manual and other documents from URA concerning staff terms of employment , it is clear to me that gratuity was attached to contract terms of employment and not to permanent or any other terms of employment. Allen Kagina, former Commissioner General URA, (DW3) emphasized this point  
15 by stating during her testimony in the High Court: -

**“Gratuity is the benefit or money given to staff on contract terms as they leave the institution or as they move from one contract to another. It does not apply to those who are not on contract.”**

20

The circular of 4<sup>th</sup> August, 2004 which communicated the suspension of implementation of contract provisions for non management staff stated that “all staff remain on the current terms until further notice”. In my view, what this meant was that  
25 non management staff would remain on permanent terms as contained in the old Manual because the terms in the new Manual were not applicable to them as they had been suspended by the Board. Their entitlement under the old Manual was long service

award of 2.5% contained in the old Manual and not gratuity which they claim.

5 The respondent's claim cannot find justification in the argument advanced by counsel for the respondent that the appellant organization had the money to pay non management staff retirees a gratuity of 15% and the Board put it aside for that purpose but management overruled the Board and refused to pay it. The respondent's claim can only be justified if the 15% gratuity was  
10 contained in the respondent's terms of employment.

I do not consider it relevant to discuss the unfairness or otherwise of paying management staff gratuity at the rate of 24% by the appellant when the circular of 4<sup>th</sup> August, 2004 stated that "all  
15 staff remain on the current terms". The respondent's claim can only succeed if it is based on his terms of employment and not on the basis of what the appellant organization paid to management staff who retired around the same time.

20 I, therefore, find that appellant's ground 4 of appeal which stated that the learned Justices of the Court of Appeal erred in law and in fact when they failed to consider and evaluate the evidence on record to be proper and justified. If the Court of Appeal had evaluated the evidence properly, it would not have come to the  
25 conclusion it reached. A second appellate court can interfere with the decision of a first appellate court if it is satisfied that the first appellate court failed to properly evaluate the evidence. See, for

example, **Pandya v. R** [1957] E.A and **Kifamunte Henry vs. Uganda**, S.C.Cr. Appeal No. 10 of 1997

On the basis of the evidence contained in the record, it is my finding that the respondent was not entitled to be paid gratuity of  
5 15% as claimed by him.

In the result, this appeal is allowed. Considering the special relationship that existed between the appellant and the respondents, each party shall bear its own costs. The cross appeal  
10 is dismissed.

Dated at Kampala this **29<sup>th</sup>** day of ...**October**.....2015.

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JUSTICE JOTHAM TUMWESIGYE  
**JUSTICE OF THE SUPREME COURT**