

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 198 OF 2009

WILLIAM SSEMWATIKA KIBIRANGO-----PLAINTIFF

VERSUS

MAKERERE UNIVERSITY-----DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts of the plaintiff's case are that he was employed by the defendant for a period of 32 years from 1st day of April 1955 to 30th day of May 1987. The plaintiff voluntarily retired from the said service and accordingly received an Interim Award and a "Long and Meritorious Certificate" in recognition of his service to the defendant.

Under the In-House Retirement Scheme, the defendant had power to employ its own staff on terms and conditions determined by it and one of the said terms and conditions of services was granting the retirement benefits to staff who retire from such service.

In 1993 the defendant issued a circular Ref; 0502.12 dated 29th September 1993 headed " INTERIM AWARD TO RETIRING STAFF IN ESTABLISHED POSTS. The plaintiff was one of the staff referred to therein. The circular interalia noted as follows;

"this is to inform you that The Council has come to realise that with the currency reform in May 1897, coupled with the low salaries being paid to its employees, retiring staff are getting inadequate benefits to live on for

the rest of their lives. Hence Council is currently looking around for an ideal Pension Scheme that would be meaningful to its employees in the future”

The plaintiff received a long service award equal to one year’s salary as a stop gap measure pending the review of Pension Scheme and the introduction of a new optimum scheme which would cover the plaintiff and other members of staff.

AGREED POSITION

Some of the plaintiffs’ colleagues challenged the defendant in the high Court under Civil Suit No. 132 of 2002; David Sentongo & 12 others vs Makerere University. The court determined that the scheme covered former staff of the University like the plaintiff.

While the suit was pending before this Honourable court, the defendant paid the plaintiff 16,672,672/= as part payment of his benefits.

AGREED ISSUES.

- (1) Whether the plaintiff was entitled to benefit under the new pension scheme?
- (2) Whether the Plaintiff is entitled to the remedies sought?

At the trial both parties agreed to file witness statements and when the suit was set down for hearing on 21st day of September 2017, the defendant and his counsel never appeared in court and court entered judgment in default and admitted the plaintiff’s witness statement as his evidence in chief but later the defendant was allowed to take part in the proceedings and he cross examined plaintiff over his statement and filed a witness statement of a one Josephine Nalweyiso.

When the case came up for hearing the 31st day of May 2018, the defendant informed court that he did not have the witness in court. The court stood over the matter until 10;30 to enable the defence counsel get the witness to court but still failed. Court under Order 17 rule 4 proceeded to have the matter determined with the available evidence of the plaintiff and without the defence evidence.

Issue 1

Whether the plaintiff was entitled to benefit under the new pension scheme?

The plaintiff stated in his witness statement that at the time of his retirement the defendant acknowledged that the then existing retirement benefits Scheme for the staff introduced in 1968 had become worthless over time and it was in the process of introducing a new and more meaningful scheme. Therefore he did not receive his retirement benefits.

In 2002 after several visits to the university in demand for his benefits, he was paid 8,889,600/= as an interim award pending new scheme and meaningful scheme. The letters explaining the nature and intention of payments were tendered in court as Exhibits P6-9.

The group of former employees filed a suit demanding for a final payment of their retirement benefits under the new In-House Retirement after the Interim Award in the case of *David B Ssentongo & 12 Others vs Makerere University*. On 25th May 2012 the High Court gave judgment to the plaintiffs in the said suit and held among others that the interim award which were paid was a stop gap measure to assist the retiring staff as a new and more meaningful scheme was being put in place, and that those who received the interim award were entitled to receive final benefits under the new In House Retiring Benefits Scheme.

It is clear that this case was on all fours with the present case and indeed the plaintiff was equally entitled to payment under the new scheme. There was no valid reason to exclude the plaintiff like all the other staff in his category from benefitting under the new scheme.

The ***Court of Appeal in Civil Appeal No.168 of 2014 William Ssemwatika Kibirango vs Makerere University equally*** noted that;

“ In fact, the negotiations culminated in the appellant being paid 8,889,600/= sometime in May 2002, as an interim award. An Interim award, in our view by its very nature could not have been a final award, but was

acknowledgment by the respondent that they still owed the appellant money to be paid to him as a final award or settlement at a future date."

The plaintiff was therefore entitled to retirement benefits in accordance with the new In House retirement Benefits Scheme.

ISSUE 3

Whether the Plaintiff is entitled to the remedies sought?

The plaintiff's major prayer is for payment of his pension calculated in accordance with the formular in in the In-House Retirement Scheme.

The plaintiff contended that he was supposed to have been paid in accordance with Exhibit P 11 which details the assessment formular as follows;

$P*15$ where $P= ab/360$

a=Annual Basic Salary of 1996

b=Number of Months served

The annual basic salary should have been at 4,265,064. He served for 384 months.

$$\frac{4,265,064*384* 15}{360} = 68,241,024/=$$

General damages

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading

and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

In the present case, the plaintiff has sought general damages for being denied his retirement benefits for 21 years without any justification. The plaintiff worked for the defendant for 32 years of his most productive life. The benefits were meant to assist the retiring staff to settle in the new life after employment and the plaintiff had to cope without this crucial support for all this time for the last 27 years of pain and suffering.

The court awards the plaintiff a sum of 100,000,000/= for the quantum of general damages for suffering arising out of the suffering he has endured for the last 27 years.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011,*** Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

General damages and Punitive damages shall attract an interest of 10% from the date of judgment.

Costs

The plaintiff is awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/08/2018