

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO.165 OF 2020
(ARISING FROM CIVIL SUITS NO. 967 OF 2005, 760 OF 2006 AND 138 OF 2008 [AS CONSOLIDATED])

- 1. HENRY LWETABE**
- 2. MAKUBA DENNIS**
- 3. PAUL BALINGANIRE.....:APPLICANTS**
- 4. IGA EDWARD**
- 5. RWEKUUTA REUBEN**
(Suing through their lawful attorney Henry Lwetabe)

VERSUS

- 1. ATTORNEY GENERAL**
- 2. AUDITOR GENERAL.....: RESPONDENTS**
- 3. THE OFFICIAL RECEIVER/LIQUIDATOR(UEB)**
UGANDA ELECTRICITY BOARD

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Section 34 & 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules for the orders that;

(a) The consent judgment/ decree under High Court Civil Suit No.s 967 of 2005, 760 of 2006 and 138 of 2008 namely which formula the Auditor General must follow to compensate the applicants i.e

(i) Basic Salary

(ii) Consolidated salary as the Attorney General advised.

(b) Costs of the application be provided for by the Respondents.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the application but generally and briefly state that;

1) The applicants obtained a consent judgment from civil suit no.s 97 of 2005, 760 of 2006 and 138 of 2008 which among others directed the applicant to engage with UEB and Auditor General to ascertain and verify their claims against UEB for pension, pension arrears, gratuity, unremitted NSSF arrears and general damages and the sums of which were to be payable within a period of one year after the date of the auditor general's report verifying the same amounts.

2) That the applicants have spent 7 years the road since they obtained the consent judgment in 2013 and have not had any opportunity to benefit from the proceeds of their hard-earned income due to the above questions which if not settled in time will occur to a miscarriage of justice.

3) There is a dispute as to what formula the Auditor General should use to pay the Applicants. The

The 2nd and 3rd respondents filed affidavits in reply:

That the Auditor General in accordance with the consent judgment computed the terminal benefits of the applicants. The applicants rejected the Auditor General had used the basic pay while computing the terminal benefits as opposed to consolidated pay.

That the Auditor General subsequently received a letter from the 1st applicant dated 10th February, 2017 stating that the Auditor General erroneously computed the terminal benefits based on basic pay as opposed to consolidated salary.

The applicant was represented by *Mr Kidandaire Joel Israel* and While the 1st respondent *Mr Madete Jeffery (SSA)*, The 2nd respondent was represented by *Mr. Okello Oryem Alfred* while 3rd respondent was represented by *Mr. Allan Kakungulu and Ms. Niringiye Racheal* for the 3rd respondent.

The parties filed written submissions and the same have been considered in this ruling.

On 22nd March 2021 when the matter came up for mention, Counsel for the Applicants informed this Honourable Court that a meeting had been held with the 2nd Respondent and that it had been agreed in the said meeting that interest would be computed at 18% and the general damages would also be computed and paid to the Applicants. Counsel for the Applicants informed court that the only outstanding issue was the date of termination of the service contracts and argued that the service period varies from person to person. It is thus the court's view that the only outstanding issue is in relation to the date of termination of the service contracts of the Applicants or the cut-off date for the contract of employment.

1. *What was the transfer of Uganda Electricity Board or Whether the applicants remained in the Service of Uganda Electricity Board after the transfer date?*

Determination

The applicants counsel submitted that the cut-off date for the employment relationship of the applicants went beyond 31st March 2001 when the winding up (unbundling/liquidation) of the Uganda Electricity Board to various years in which the applicants left the entity. His submission was made in reliance to section 31 of the Public Enterprise Reform and Divestiture Act Cap 98 contending that the legal provision protected the applicants in case of take overs or divestiture of their entities.

The applicants contend that the change from UEB Corporation to UEB Statutory liquidation meant there was a continuity of service. Therefore, it was counsel's submission that the applicants remained in employment with UEB past 2001.

The 1st respondent's counsel submitted that the Applicant's termination letters were produced in court on 31st March 2021. Upon perusal of the Uganda Electricity Board Pension/ Terminal benefits Certificates the date of employment service is stated categorically to be up to 31st March 2001. The said certificates were prepared according to section 130(6) of the Electricity Board Act 1999 in respect of employees in the permanent service of the Uganda Electricity Board (UEB) as at 31st March 2001 who transferred their employment to Uganda Electricity Distribution Company Ltd, (UEDCL), Uganda Electricity Transmission Company Ltd. (UETCL), Uganda Electricity Generation Company Ltd (UEGCL) or Uganda Electricity Board Statutory Company UEBSCO each as a new employer.

It is their contention that the pension/ terminal benefits certificate reflects each applicant's full and final entitlement in respect of their service with UEB to 31st March 2001. It does not include any benefit entitlement which the Applicants earned in respect of their service with their new employer.

The 3rd respondent counsel submitted that the date of unbundling of UEB as prescribed by law was the 30th day of March 2001. Some employees chose to retire and get terminal benefits while other opted to transfer their services to the successor companies.

They contended that the applicants cannot maintain the narrative of continuous service because the terms of their employment were varied when they transferred their services to the successor companies. They started contributing towards NSSF which was never the case when they were employees of UEB since UEB was an exempt organisation.

The applicants cannot claim having continued in employment of UEB in order to claim both NSSF and Pension at the same time which is illegal and or contrary to the law.

Analysis

The Ministry of Energy and Mineral Development in liberalizing Uganda's power sector adopted the Government's Power Sector Reform and Privatisation Policy in June 1999. This policy and Public Enterprises Reform and Divestiture Act of 1993 Cap 98 formed the basis for the Electricity Act of 1999 Cap 145.

The Electricity Act provided for the unbundling of Uganda Electricity board and creation of successor companies. Section 126(1) of the Act required the Minister to appoint a transfer date by an order to be published in the gazette. Section 126(2) provides; *On the transfer date appointed under subsection (1), the Uganda Electricity Board shall cease to exist and shall be taken dissolved.*

Section 29 of the *Public Enterprise Reform and Divestiture Act* provides;

(1) On a date appointed by the responsible Minister by statutory Instrument, the undertaking of the public enterprise named in the instrument shall, by virtue of this section, vest in the successor company of that enterprise.

In accordance with the above provision, ***The Public Enterprise Reform and Divestiture (Vesting of Undertaking of Uganda Electricity Board) Instrument No. 18 of 2001*** was passed on 29th March 2001. Regulation 2 provided as follows;

(1) The 30th day of March 2001 is appointed to be the date on which the undertaking of Uganda Electricity Board shall vest in its successor companies, Uganda Electricity Generation Company limited, Uganda Electricity Transmission Company Limited and Uganda Electricity Distribution Company Limited.

Section 126 of the ***Electricity Act, 1999 Cap 145*** made similar provision in respect of a cut-off date;

(1) The Minister may by order published in the gazette, appoint a transfer date and on that date, all property, rights and liabilities to which the Uganda Electricity Board was entitled or subject to immediately before that shall become, by virtue of this section, the property, rights and liability of the successor company.

The transfer date and unbundling of Uganda Electricity Board was a question of law and the different cases cited by the applicants counsel are very irrelevant to the present case. The cut-off date or transfer date was made by legislation and it cannot be imagined from the facts or documents. Where the language of legislation is clear, the intention of the Legislature has to be gathered from the language used. The intention of the legislature was not to create any further obligation on Uganda Electricity Board after the transfer date or unbundling.

It is inconceivable that the applicants can claim to have continued to work for an entity which has ceased to exist under the law. Upon the Minister appointing a transfer date as 30th March 2001, their employment relationship stopped/ceased with UEB and now vested in other entities created under the law. Section 126(2) provides; *On the transfer date appointed under subsection (1), the Uganda Electricity Board shall cease to exist and shall be taken dissolved.*

The above position of the law is equally supported by the documentary evidence presented to court by the applicants and 3rd respondent. The letter dated 29th March 2001 addressed to the 1st applicant noted as follows;

".....While in employment of Statutory Entity (UEB) your designation will be confirmed or you may be re-designated to be in accord with the new organisation structure of Statutory Entity (UEB).

I take this opportunity to thank you for the diligent service to UEB from 26th June, 1989 when you were appointed on permanent terms to 30th March, 2001."

Another letter addressed to 4th applicant dated 24th April 2001 also indicated as follows;

"I write to inform you that it has now been decided that you transfer your service to the Statutory Entity (UEB) instead."

In the letter to the 3rd applicant dated 29th March, 2001 indicated as follows;

"..... In the interim your designation will remain the same and you will maintain the same reporting relationship. However while in the employment of Statutory Entity (UEB) your designation will be confirmed or you will be re-designated to be in accord with the new organisation structure of Statutory Entity (UEB).

I take this opportunity to thank you for the diligent service to UEB from 15th October 1991 to 17th December, 1991 when you joined on temporary terms. And

from 18th December, 1991 when you were appointed on permanent terms to 30th March, 2001”

The cessation of employment with Uganda Electricity Board is also buttressed with the payments for NSSF monthly contributions. During the applicants’ employment with Uganda Electricity Board, the employees never made any contributions to NSSF because they were exempt as they were eligible under the Pensions Act.

The applicants cannot claim to have continued in employment with Uganda Electricity Board as well as the new companies that were created after unbundling. This would have meant that the applicants are entitled to both pension as well as NSSF contributions which would be illegal or contrary to the law.

The court should not decide issues in the abstract. Judicial art of interpretation and appraisal is imbued with creativity as well as realism, because interpretation implies a degree of discretion and choice, regardless of the conventional principles that judges are to expound and not to legislate.

Therefore, the applicants’ cut-off date of their employment was 30th March 2001 and the same should be used to compute their entitlements.

I make no order as to costs

I so Order

SSEKAANA MUSA

JUDGE

6th/08/2021