

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

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**CORAM: HON. JUSTICE S.G. ENGWAU, JA
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE C.N.B. KITUMBA, JA**

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CIVIL APPEAL NO.78 OF 2004

B E T W E E N

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UGANDA WILDLIFE AUTHORITY.....APPELLANT

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HON. FRANCIS MUKAMA.....RESPONDENT

JUDGMENT OF TWINOMUJUNI, JA:

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This is an appeal against the judgment of the High Court allowing the respondents claim for wrongful dismissal by the appellant. The facts in this appeal can be simply stated: In a letter dated 31/1/2000, the respondent was appointed as a Deputy Director Human Resources and Administration on a contract of four years. The appointment was effective 15/2/2000 and it was subject to existing terms and conditions of service as well as an employment contract which the parties would sign later. The contract was indeed executed between the parties on 15/2/2000. On 30 16/5/2001, the Chairman of the Board of Trustees of the appellant terminated the

services of the respondent. The respondent having been aggrieved by the decision of the Board, filed a suit in the High Court.

At the hearing, two issues were framed for determination;

- 5 (1) Whether the termination of the respondent's employment by the appellant was lawful.
- (2) Whether the respondent is entitled to any remedies.

10 On issue No.1, the trial judge ruled that the contract having been for a fixed period of time, (4 years) and providing no termination by notice, the respondent could only be dismissed for a fundamental breach on his part. Since there was no such breach, the reason assigned for the termination by the appellant was not part of the respondent's terms of employment with the appellant and therefore, the dismissal was wrongful.

15 On issue No.2, the respondent was awarded several reliefs including special damages, general damages, gratuity and leave pay. The learned trial judge entered judgment for the respondent, hence this appeal on eighth grounds:-

- 20 **1. The learned trial judge erred in law and in fact in holding that the termination of the plaintiff's contract by the defendant was wrongful.**
- 2. The learned trial judge erred in law and infact in holding that the plaintiff's claim for the unexpired term of the contract must succeed.(sic)**
- 3. In view of the fact that the plaintiff was a member of Parliament when he filed the suit, the learned trial judge erred in law and infact in awarding**
- 25 **to the plaintiff salary for the unexpired period of the contract as shs.1,450,000 x 31 months = 44,950,000/=(sic)**
- 4. The learned trial judge erred in law and infact in awarding the plaintiff shs.2,900,000/= for salary leave.(sic)**
- 5. The learned trial judge erred in law and infact in awarding the plaintiff**
- 30 **gratuity of shs.11,237,500/=(sic)**
- 6. The learned trial judge erred in law and infact in awarding the plaintiff shs.2,000,000/= for general damages.(sic)**
- 7. The learned trial judge erred in law in awarding to the plaintiff excessive interest at the rate of 20% on both special and general damages.**

8. The learned trial judge erred in law and in fact in awarding interest on special damages from the date of breach.

At the hearing of the appeal Dr. J. Byamugisha, learned counsel for the appellant,
5 conceded grounds 1 and 2 of the appeal. This means that counsel accepts the findings of the learned trial judge that the dismissal of the respondent was wrongful/unlawful and also that the learned trial judge was correct when he found that the plaintiff's claim for the unexpired term of the contract must succeed.

10 Counsel for the appellant argued grounds 3, 5, 6, and 7 & 8 together. Counsel for the respondent argued grounds 3, 5 and 4 together, 6 7 and 8 together.

GROUND THREE:

15 In ground No. three, the complaint is that in view of the fact that the respondent was a member of Parliament when he filed the suit, the learned trial judge erred in law and in fact in awarding to him salary for the unexpired period of the contract at shs.44,950,000/=.

Counsel for the appellant argued that the award is unattainable in view of the judge's
20 findings that the respondent got an alternative job quickly and did not deserve payment for the period he was a member of Parliament. Counsel relied on the case of **Southern Highlands Tobacco Union Ltd vs David Maqueen (1960) E.A. 490 at pg.492.**

25 In reply, counsel for the respondent argued that the respondent having become a member of Parliament was not an employment but just a service and asked this court to find this ground of appeal misconceived.

In my view, this ground of appeal is similar to ground two to which counsel for the
30 appellant conceded. It seems ground No.3 means that that if the respondent had no job at all, he would be entitled to claim for payment of the unexpired term of his employment contract. That since he is now a member of Parliament, he is not entitled to such a claim. The question to decide is whether becoming a member of Parliament

is employment within the meaning of that term as used in **Southern Highlands Tobacco Case**(supra).

5 In **Southern Highlands Tobacco vs Moqueen**; it was stated that where a person is wrongfully dismissed, he is entitled to be compensated fully for the financial loss he suffers as a result of his dismissal, subject to the qualification that it is his duty to do what he can to mitigate his loss. It was further stated in the above case that where the plaintiff has obtained other employment before the action begins, his actual emoluments in the new employment can be taken into account but where he has not
10 obtained other employment, the court has to assess the likelihood of employment being obtained and the remuneration which the plaintiff may be expected to earn.

In Uganda, becoming a member of Parliament ((MP) is a highly tricky business. In many cases the candidate has to spend so much in the process that there is no guarantee that he/she will ever recover the money during the time he is a member of
15 Parliament. When one is finally elected, the demands of the job are such that he has to spend the facilitation on expenses such as travel, entertainment, fundraising and donation to various demands in his constituency. It is a well known fact that many members of Parliament end up with huge debts and fail to improve themselves. I personally do not think that this is the type of employment their Lordships in
20 **Southern Highland Tobacco case** had in mind. Therefore he is entitled to recover in full what was conceded to in ground two of the appeal.

GROUND NO.4

25 Learned counsel for the appellant objected to the respondent being awarded leave salary on the ground that he was already a member of Parliament. With respect, I think the respondent's contract of service entitled him to annual leave. If he was entitled to recover his unpaid dues for the balance of the contract he did not serve, which was conceded by counsel for the appellant, then he is entitled to recover the
30 value of the leave he should have taken. The calculation by the trial judge was not contested. This ground of appeal should fail.

GROUND NO.5:

I now turn to ground No.5 which states that the learned trial judge erred in law and in fact in awarding the plaintiff gratuity of shs.11,237,500/=. Counsel for the appellant argued that since the respondent got another job (employment), he did not deserve the gratuity payment.

Counsel for the respondent in reply contended that the respondent was entitled to be paid gratuity by the trial court saying that it was pleaded as a relief and the respondent gave evidence that he was entitled to gratuity.

Having rejected the submission that the respondent obtained alternative employment, I find that his claim for gratuity is not contested. Moreover, the formula upon which the learned trial judge relied to arrive at the award of Ug.shs.11,237,500/= as gratuity was supplied by counsel for the appellant. It was not contested at the trial or on appeal that the respondent's contract entitled him to gratuity of 25%. This ground of appeal should fail.

GROUND NO.6:

In ground No.6, the complaint was that the learned trial judge erred in law and in fact in awarding the plaintiff shs.2,000,000= for general damages. Counsel for the appellant argued that this was again another error by the trial judge. That the breach of contract was mitigated and therefore there was no need for an award of general damages. Counsel relied on the case of **Ahamed Ibrahim Bholm vs Car & General Ltd Civil appeal No.12/2002 to support this argument.** Counsel further contended that since the respondent was already awarded terminal benefits, then, there was no need for him to be awarded the general damages.

In reply, counsel for the respondent cited the authority of **Obongo & Anor vs Municipal Council of Kisumu (1871) EA.91** to show that the damages awarded by the trial judge were justified. Counsel further contended that awards made as punitive damages were deserved and asked court to find no merit in this ground.

I think that the arguments of counsel for the appellant are misconceived. Firstly, I have already rejected the submission that the respondent obtained alternative employment. Being a member of parliament is not being employed within the meaning of **Southern Highland Tobacco Union Ltd vs Moqueen (supra)**. Secondly,
5 Once it is proved that an employee was wrongfully and unlawfully dismissed then the court has to award him general damages. Such damages are meant to be compensation to the employee for all the hardships that he might have gone through.

I think that the principles relied upon by the trial judge in arriving at the sum of
10 2,000,000 as general damages are sound and this court cannot interfere with that award. The arguments for counsel for the appellant that since the respondent was already awarded terminal damages, then he should not get general damages are baseless and I find no merit in such argument. This ground of appeal should therefore fail.

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GROUND 7 AND 8:

Counsel for the appellant argued these grounds together and the complaint is that the
20 learned trial judge erred in law in awarding to the plaintiff excessive interest at the rate of 20% p.a on both special and general damages. Counsel contended that the respondent was given interest on moneys that he would not have earned. Interest should be given from the time of judgment but not from the time of breach of contract. He relied on the authority of **Ahmed Ibrahim Bholm vs Car & General**
25 **(supra)** where it was held that a rate of interest of 20% is very high. It should be reduced to 10%.

In reply counsel for the respondent argued that the award was justified. That it was intended to put the respondent where he should have been if he was not dismissed
30 disgracefully.

Having considered arguments of both counsel, I find that the interest rate of 20% p.a is not excessive. It is a reasonable prevailing commercial rate which I do not find erroneous. I therefore agree with the learned trial judge that the interest rate should be

20% p.a paid on both special and general damages from the date of filing of the appeal till payment in full and not from the date of breach. This ground of appeal should fail.

5 In the result, I would dismiss the appeal with costs here and in the lower court to the respondent.

Dated at Kampala this ...02nd ...day of ...February...2010.

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Hon. Justice Amos Twinomujuni

JUSTICE OF APPEAL.

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JUDGMENT OF ENGWAU, JA

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I have had the benefit of reading, in draft form, the lead judgment prepared by my learned brother, Twinomujuni, JA and I entirely agree with his reasons and orders. I have nothing more to add.

25 Dated at Kampala this2nd...day ofFebruary2010

S.G.Engwau,
Justice of Appeal