

**THE REPUBLIC OF UGANDA,**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO 168 OF 2012**  
**(ARISING FROM HIGH COURT CIVIL SUIT NO 943 OF 1999)**  
**(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)**

10 **JAMES MUFUMBIRO) .....APPELLANT**

**VERSUS**

**UNILIVER UGANDA LIMITED) .....RESPONDENT**

(Appeal from the decision of the High Court of Uganda at Kampala (Civil Division) by  
 Hon. Mr. Justice Benjamin Kabiito delivered on 23<sup>rd</sup> March 2012)

**JUDGMENT OF COURT**

This is an appeal from the decision of his Lordship Hon. Mr Justice Benjamin Kabiito delivered on 23<sup>rd</sup> of March 2012. The brief facts as contained in the appellant's submissions is that the appellant successfully appealed to the Court of Appeal in Civil Appeal No 85 of 2005 against the judgment of the High Court of Uganda in HCCS No 93 of 1999 delivered by Hon. Mr Justice JB A Katutsi on 20<sup>th</sup> May, 2005. The Court of Appeal allowed the Civil Appeal No 85 of 2505 the computation of the appellant's pension back to the High Court. In determining what constitutes the appellant's pension entitlements, the learned the trial Judge Hon. Mr Justice Benjamin Kabiito allowed the claim for deferred pension benefit of Uganda shillings 4,739,626/= and rejected the claim for defined pension benefit of Uganda shillings 74,674,229/=. The appellant appealed the decision against the computation of pension. The appellant was employed by the respondent and its predecessors Blenders Uganda Limited from July 1972 to February 1999. The grounds of appeal are:

1. The learned trial Judge erred in law and fact when he rejected the plaintiff/appellants pension entitlement described as the "defined pension benefit" computed in the appellant's actuary report dated 16th of September 2011 exhibited as exhibit P8 that is based on exhibit P5.



5 benefit. Secondly, the learned trial Judge also stated that it was incumbent for the  
plaintiff to establish that there were terminal benefits under a defined pension scheme  
and that these benefits were specific and that he was entitled to claim such specific  
benefit. He submitted that it was clear that the learned trial Judge ignored the fact that  
the appellant had already been awarded his pension by the Court of Appeal. The  
10 reference back to the High Court was simply to compute the quantum of the claim. It  
was incumbent on the respondent rather the appellant to guide the court on the  
quantum. The respondent particularly refused to comply and did not produce a single  
document before the trial court.

The Appellant's counsel further submitted that the learned trial Judge erred when he  
15 failed to give the deserved evidential weight to the vital documentary and oral evidence  
that the appellant relied on to support payment to him of his defined pension. She  
submitted that the appellant's claim for Uganda shillings 74,674,229/= of his defined  
pension benefit was computed on the basis of his actuarial report dated 16<sup>th</sup> September,  
2011 exhibit PE 8. This was based on exhibit P7 which is a letter by the respondent to  
20 one Loyce Mudondo dated 29th of October 2002. By that letter the respondent paid  
Loyce Mudondo, a former employee, her terminal benefits from the years of service that  
she rendered to the respondent and its predecessor Blenders Uganda limited. Just like  
the appellant, she was among the employees assumed in 1994 by the respondent from  
Blenders (U) Ltd listed in the schedule of the agreement dated 4th of August 1994  
25 between the government of Uganda and the respondent and marked as exhibit P2. She  
submitted that in the absence of any other formula, the computation in the appellant's  
actuarial report exhibit P8 was based on the formula in which the respondent in exhibit  
P5 paid Loyce Mudondo, a former employee who, like the appellant, worked for both  
the respondent and its predecessor. The appellant's counsel referred court to the  
30 evidence on record in support of the argument.

The appellants counsel further submitted that the Judge wrongly rejected the  
appellant's claim for service/pension benefits. On this issue she submitted that reference  
to terminal benefits in exhibit P5 were in fact a reference to service benefits that are also  
termed as retirement benefits or pension. She referred to the evidence on the pleadings  
35 recognised by the Court of Appeal that the appellant in the original suit claimed the  
pension. The Court of Appeal held that the contention that it was not specifically  
pleaded and strictly proved is untenable. The learned trial Judge did not consider the  
issue of pension and the quantum of pension remained uncertain. The appellant's



5 pension scheme had fully vested in him and should be paid to him. Furthermore, when Blenders (U) Ltd was dissolved, the respondent was paid all the contributions of its staff. The respondent never paid the appellant his contributions. Therefore the amount of the pension is uncertain.

10 Because the quantum of the pension remained uncertain, it was found that when Blenders (U) Ltd was dissolved, all contributions paid by the members of staff were paid to the respondent. It was incumbent upon the respondent to pay the pension to the appellant. No specific amount of the pension was ascertained. The trial Judge was directed to compute the appellant's pension. It was held that the respondent was in a better position to give accountability of the pension as the same was paid to the  
15 respondent company. Furthermore, the trial Judge should consider the 27 years during which the appellant was in the employment of the respondent and its predecessors. It follows that the pension in dispute which the court considered and which the respondent was ordered to account for was the pension under the Provident Fund/Pension Scheme or "deferred pension" as opposed to "defined pension" which  
20 was without any basis and came before Hon. justice Benjamin Kabiito, Judge of the High Court. The respondent discharged the burden of proof to account for the appellant's pension as ordered by the court according to the Actuarial Report exhibit D1. The appellant's payslips were adduced in evidence.

25 With regard to the employer's contribution to the pension scheme, it was noted that in addition, the respondent has proposed an amount of Uganda shillings 320, to be used as the employers contribution for the purpose of computing the pension benefit. Interest was applied on the contribution at the rate of 12.5% per annum up to 30<sup>th</sup> of September, 2011.

30 On the second issue of whether the trial Judge erred in law and wrongly shifted the burden of proof to the appellant, the respondent's counsel replied that the respondent did not have any burden of proof to show that the appellant was entitled to "defined pension". From the judgment of the Court of Appeal, the respondent had the burden to account for the deferred pension under the Pension/Provident Fund and the said burden was duly discharged. The respondent contends that is the appellant who raised  
35 the claim for defined pension in the High Court, a claim which had not been presented to the Court of Appeal in Civil Appeal Number 85 of 2005. He submitted that the appellant had the burden to prove that he was entitled to the said claim under his terms of service but failed to do so.

5 In the premises learned counsel for the appellant submitted that the trial Judge never shifted the burden of proof to the appellant contrary to the directions of the Court of Appeal for the respondent to account for the appellant's pension because, the Chief Executive Officer of the respondent appeared as a witness to account for the appellant's pension. The respondent was able to determine and account for the appellant's pension  
10 under the scheme partly on the basis of the appellant's payslip which partially formed the basis of the actuarial report.

Further, the respondent's counsel submitted that sections 101, 102 and 103 as well as 106 of the Evidence Act puts the burden on the appellant to prove that apart from pension the pension under the Provident/Pension Fund he was entitled to "defined  
15 pension". The appellant did not adduce any evidence at all on his alleged claim of a defined pension. None of the documents prescribed the appellant's right to defined pension. Consequently, the trial Judge rightly found that the pension scheme under exhibit P1 was for a particular category of employees in the category of assistant manager and manager respectively.

20 The respondent's counsel submitted that the undisputed evidence on record is that the appellant was employed by the respondent in the position of administrative supervisor. There are also definitions of "assistant manager" and "manager" at page 75 of the record. With reference to the computation in favour of Loyce Mudondo, the respondent's counsel contended that she was of a different status. It was incumbent  
25 upon the appellant to adduce evidence of show that his position as administrative supervisor entitled him to the benefits similar to that of Ms Mudondo. Consequently, the learned trial Judge found that the plaintiff as an administrative supervisor at his last posting with the defendant was not entitled to claim benefit under the defined retirement benefit arrangement from Gailey and Roberts Uganda and UIA Uganda. This  
30 finding was not appealed.

The respondent's counsel further submitted that it is not true that the learned trial Judge failed to compute the appellant's pension. The Court of Appeal did not specifically award defined pension as counsel for the appellant contends. The learned trial Judge followed the directive of the Court of Appeal in the computation of pension.  
35 Further, counsel submitted that it was also not true that the respondent did not guide the court on the pension computation. The evidence of the respondent that the documents relating to the scheme were lost was not contested by the appellant's



5 packages" of the former staff of Blenders (U) Ltd and not service or defined pension as  
contended by the appellant's counsel. The appellant was never retrenched and the  
service benefits that were given to the former employees of Blenders Uganda Limited  
were for those who were retrenched in April 1999 and were not applicable to the  
appellant. The respondent's evidence that the scheme under exhibit P1 does not apply  
10 to the appellant was not challenged at all.

Whether the learned trial Judge wrongly rejected the appellant's claim for  
service/pension benefits?

Having failed to prove that the appellant was entitled to any terminal benefits under the  
defined pension scheme in exhibit P1, it was submitted that he was entitled to claims  
15 similar to that of Loyce Mudondo described as "retirement benefits" or pension. The  
pension arrangement between the respondent and the appellant were clearly  
contractual and not based on legislation.

The pension of Uganda shillings 4,739,626/= as computed by the actuary called by the  
respondent was consistent with the appellants terms of service and the judgment of the  
20 Court of Appeal in Civil Appeal Number 85 of 2005. The trial Judge consequently did not  
disregard the findings of the Court of Appeal in his finding that the assessment of what  
was mentioned in the letter of Loyce Mudondo should have been pleaded as special  
damages. The letter did not refer to the assessment of terminal benefits as "pension". If  
the appellant was claiming benefits, it was correct to have claimed as special damages  
25 because the quantum of benefits was specific.

On the issue of whether the appellant was denied payment of "accrued pension" which  
vested in him at the time of his dismissal, the respondents counsel submitted that the  
contributions by the appellant in the pension scheme for 27 years together with the  
respondent's contribution to the scheme constituted the "accrued pension". This is the  
30 deferred pension or accrued pension that was computed. Furthermore the arguments of  
the appellant's counsel that the former employees of Blenders (U) Ltd were paid the  
service benefits in 1998 as evidenced by exhibit P3 on the record is not correct because  
the said employees received "retrenchment benefits".

Furthermore the judgment of the Supreme Court in **Bank of Uganda v Betty**  
35 **Tinkamanyire SCCA No. 12 of 2007** is not helpful to the appellant's case. The Supreme  
Court ordered the defendant to pay the accrued pension and other terminal benefits  
but the matter now before the court of appeal was an order to the trial Judge to



5 defined pension and the respondent did not pay him. This appears in the testimony of PW1, the respondent's Chief Executive Officer. He testified that it was an oversight that the plaintiff was not paid his service benefits.

10 The position taken by the respondent not to pay the appellant his defined pension benefits amounting to Uganda shillings 74,674,229/= for the services he had worked for, is grossly unlawful. The respondent in the written arguments failed to justify why it paid Loyce Mudondo all her pension/service benefits and yet chooses not to extend the same justice to the appellant. Loyce Mudondo not only served the respondent at a lower rank than the appellant but also earned less. She earned only Uganda shillings 23,436/= per month. The appellant earned Uganda shillings 176,026/= per month. 15 Furthermore the respondent failed to explain the candid admissions of its Chief Executive Officer PW1 when it said that all employees who were assumed by the respondent from Blenders (U) Ltd were paid their service benefits for the years worked and that if the appellant was not paid, it was an oversight.

20 Appellant's counsel further submitted that the respondent wrongfully indicated that the appellant did not adduce any evidence to assert any rights to his defined pension. The appellant submits that his defined pension was already vested in him and the Court of Appeal had declared his entitlement to his pension. The case was referred back to the High Court for computation only. In the premises the appellant should be paid what he earned and what is due to him.

25 The letter of the respondent exhibit P5 having been admitted by the respondent's Chief Executive Officer, offered the much-needed formula for computation of the service of employees who had worked for the respondent and its predecessor in title. The appellant did not have to labour beyond the letter that was self-explanatory.

30 For the evidence that the appellant earned much more than Loyce Mudondo, the appellant's counsel indicated that the appellant earned Uganda shillings 176,026/= per month while Loyce earned Uganda shillings 23,436/= per month. The housing allowance of the appellant was Uganda shillings 83,013/= per month and that of Loyce was Uganda shillings 18,749/=. This can be examined from exhibit P4, P5 at pages 86, 87 and 88 of the record of appeal. In the premises the respondent had no justification for 35 paying Loyce for her service benefits for the years she worked and not paying the appellant.



5 The background to this appeal is that the appellant had filed a suit HCCS No. 943 of  
1999 which was decided by Hon. Mr Justice Katutsi on 20<sup>th</sup> May, 2005. The appellant was  
awarded a sum of Uganda shillings 1,124,350/= as housing, transport and lunch  
allowance together with interest at the rate of 12% from the date of judgment till  
10 payment in full. The appellant was originally employed by the respondent's predecessor  
Messrs Blenders (U) Ltd in 1972. The respondent took over the assets and liabilities of  
the Blenders (U) Ltd including its employees. The respondent suspended the appellant  
on half pay between 29<sup>th</sup> October 1998 and 17<sup>th</sup> February, 1999 when he was finally  
dismissed from employment. He had served as an employee of the respondent and its  
15 predecessors for 27 years. While on suspension, the appellant was not paid housing,  
transport and lunch allowances. The appellant's monthly pay was subjected to monthly  
deductions of PAYE and NSSF. An amount of Uganda shillings 160/= was deducted by  
the respondent from the appellant's salary towards the Pension/Provident Fund for  
some months. The decree of the High Court in the original suit indicates that judgment  
20 was entered in favour of the appellant. The appellant was awarded a total of Uganda  
shillings 1,144,350/= which was broken down as special damages of Uganda shillings  
566,260/= as outstanding half pay of the net salary withheld while the appellant was on  
suspension. Secondly, the appellant was awarded Uganda shillings 352,052/= as one  
month's payment in lieu of notice. Thirdly, the appellant was awarded Uganda shillings  
176,026/= as housing allowance. Fourthly, the appellant was awarded Uganda shillings  
25 50,000/= as transport allowance. Fifthly, the appellant was awarded Uganda shillings  
50,000/= as lunch allowance. Interest was awarded on the monetary awards at the rate  
of 12% and from the date of judgment till payment in full.

The appellant appealed to the Court of Appeal in Civil Appeal No 85 of 2005 against  
part of the judgment of the High Court. The lead judgment of the Court of Appeal by  
30 Engwau JA indicates that two issues were framed for resolution of the appeal namely:

1. Whether the termination of the appellant's employment by the respondent was  
lawful?
2. Whether the appellant is entitled to the reliefs sought in his pleadings, and if so,  
what quantum?

35 In this appeal, we are not concerned with the first issue of whether the termination of  
the appellant's employment by the respondent was lawful. We are concerned with the  
second issue of reliefs sought in the pleadings and the question of quantum of  
damages. Among the issues considered was whether the appellant was entitled to

- 5        2. What constitutes pension entitlement to the plaintiff?  
          3. What remedy is the plaintiff entitled to?

The plaintiff who is the appellant in this appeal was awarded Uganda shillings 4,739,646/= as at 30<sup>th</sup> of September 2011.

10        In the written submissions of counsel, ground 1 is whether the learned trial Judge erred in law and fact when he rejected the appellants "entitlement" described as defined pension benefit computed in the appellant's actuary report dated 16<sup>th</sup> of September, 2011 that is based on exhibit P5. In answering this question the appellant's counsel addressed court on the burden of proof and contended that the learned trial Judge  
15        wrongly shifted the burden of proof on the appellant. The respondent's counsel on the other hand contended that the burden of proof was on the appellant to prove its entitlement to "deferred pension".

20        We have carefully considered the submissions of counsel on the question of burden of proof. As we have quoted above, the Court of Appeal was very explicit about what the High Court was supposed to do. The specific words of the Court of Appeal in the judgment of Hon. Mr Justice Engwau, JA are repeated for emphasis and are as follows:

25        "It was incumbent upon the respondent to pay the pension to the appellant. No specific amount of appellant's pension is certain. It is for that reason that I direct the learned trial Judge to compute appellant's pension. The respondent is in a better position to give accountability of the said pension as the same was paid to the respondent company. The trial Judge should consider the 27 years during  
30        which the appellant was in the employment of the respondent and its predecessors."

30        Before proceeding any further, there are some very clear resolutions of the Court of Appeal which we shall break into components. What the Court of Appeal had done or established could not be reopened by the High Court.

The first noteworthy holding is that the duty was on the respondent to pay the pension to the appellant.

35        Secondly, it was established that no specific amount of the appellant's pension is certain. The inquiring mind, should establish what is meant by "pension" in the above passage. However, the word "pension" was used with certainty. That is why the Court of Appeal held *inter alia* that "*the quantum of the pension remained uncertain.*"





5 We have carefully considered the issue and think that much weight on the burden of  
proof leads to one issue of accountability by the respondent only. We agree with the  
appellant's counsel only on the basis that the issue of burden of proof could not be  
shifted to the appellant with specific reference to the directives of the Court of Appeal  
on accountability for contributions made towards pension by employees of Messrs  
10 Blenders (U) Ltd. The Court of Appeal explicitly indicated that it was the respondent to  
account for the pension. We further agree with the respondent's counsel that the  
accountability related to a contributory scheme to a pension fund. In resolving the  
question, it is imperative that the context in which the holding of the Court of Appeal in  
Civil Appeal No. 85 of 2005 was made is addressed first. The holding of the Court of  
15 Appeal came under the subheading "*Pension*" at page 15 of the judgment. This is when  
the Court of Appeal said about the submissions and the issue at pages 16 and 17 that:

20 "In the present case, according to the appellant, he had served the respondent  
and its predecessors for 27 years. By the time of his dismissal, all the appellant's  
contributions to the pension scheme had fully vested in him and should be paid  
to him.

25 Counsel for the appellant contends that when Blenders (U) Ltd was dissolved, the  
respondent was paid all the contributions of its staff. The respondent never paid  
the appellant his contributions. Therefore, the amount of pension is uncertain. In  
Miscellaneous Application No 417 of 2004, the defence counsel, Mr Jacob  
Oulanya promised to produce relevant documents but failed to do so. In  
counsel's view, the default by the respondent's lawyers to produce documents, it  
still remains that the appellants pension accrued and had already vested in him  
by the date of his unlawful dismissal. As the quantum of his pension is unknown,  
30 the appellant proposes an award of a lump sum of Uganda shillings 60,000,000/=  
(Sixty Million), bearing in mind that he had served and made contributions for 27  
years, and also the depreciation of the value of money these days.

35 The respondent submitted that any pension due to the appellant should have  
been specifically pleaded and strictly proved as special damages, and that the  
learned trial Judge cannot be faulted for not awarding the same. In counsel's  
view, the appellant's proposition is misconceived. The pension had accrued  
before trial. In the premises, the appellant ought to have specifically pleaded and  
strictly proved the same. In the circumstances, there is no justification for the  
appellant's criticism of the learned trial Judge in not awarding pension."



5 not available. Subsequently, the matter proceeded before Hon Mr. Justice Benjamin  
Kabiito when the counsel for the defendant informed the court that the defendant could  
not trace documents relating to Uniafric Provident Fund which managed the plaintiff's  
pension. Secondly, the court was informed that there were payslips in respect of the  
10 plaintiff's salary. He informed the court that the defendant was deducting Uganda  
shillings 160,000/= for pension from the plaintiff's salary towards pension. It was  
subsequently proposed that each party engages an actuary to look up payslips to come  
up with the computation of the plaintiff's pension at the time he left the respondent.  
Further evidence was called in support of the actuarial reports. We have accordingly  
15 considered the actuarial reports to establish some basic facts about the said pension  
scheme.

The actuarial report of the plaintiff by one Geoffrey Emenyi at page 96 of the record of  
appeal has no details about any trust scheme or pension scheme. He used a formula for  
terminal benefits as one month's basic wage for each completed year of service. He  
wrote that if the person worked for less than five years, it was one month basic wage for  
20 each completed year. Secondly if it is five years but less than 10 years it is two months  
basic wages for each completed the year of service. Finally if the person worked 10 years  
or 10 years and more, it was three months wages for each completed year of service.  
The appellant had worked for 27 years and the basic wage at the time of termination  
was Uganda shillings 482,041/=. He calculated one month's basic wage for each year of  
25 service amounting to Uganda shillings 13,015,107/=. Total benefits as at 17 February  
1999 was 13,015,107/= together with compound interest at 15% for the period which  
amounted to Uganda shillings 61,659,122/=. He established that the total benefits due  
to the plaintiff/appellant was Uganda shillings 74,674,229/=. Most importantly he wrote  
at the end of the report as follows:

30 "The trust deed and rules of the scheme was not provided for this calculation to  
verify the information used by the Human Resource Manager. The assumptions  
are that the Human Resource Manager used the correct benefits provision as  
stipulated in their trust deed and rules of their terminal benefits scheme or any  
other document detailing benefits provision for employees of Unilever Uganda  
35 limited. My work was to ensure that the basis of this calculation does not deviate  
from the past benefits computation by the same employer as evidenced by the  
attached worksheet by the Human Resource Manager and that the compound



5 records of the respondent and some commodities of the company were lost in the  
period 2008 and the incident was reported to the police. The deductions were for the  
years 1972 to 1998. PW1 further testified that the scheme was eventually wound up  
when NSSF came into force. Secondly, in the NSSF scheme, an employee contributes 5%  
while the Corporation contribute 10%. He testified that the plaintiff was part of the  
10 management team and he was an Administration Supervisor. In cross-examination, he  
testified that in 1998, the pension scheme was wound up. The respondent started  
another scheme in 2004 but that was inapplicable to the appellant. They do not have a  
scheme jointly with Gailey and Roberts though he agreed that it was the retirement  
benefit arrangement by 1995. He also testified that they did not avail the actuary this  
15 report. In a statement which became controversial he testified that he had no problem  
with the computation of the terminal benefits of Loyce Mudondo subject to  
employment status and grades of the individual employee. While he testified that Loyce  
Mudondo earned Uganda shillings 23,436/= per month, the appellant was earning  
Uganda shillings 176,026/= per month. In re-examination he testified that the appellant  
20 was neither an assistant manager nor a manager and the scheme was applicable to  
managers and assistant managers.

PW2 Mr Abed Mureithi, the actuary of the respondent, confirmed his actuarial report. In  
cross examination he testified that pension is the monthly payment after retirement. The  
lump sum is referred to as a provident lump sum. Terminal benefits referred to special  
25 benefits provided in addition to what would have been provided. There are also  
voluntary early retirement benefits. He testified that contributions were made by  
everyone and deposited on a provident fund for investment. He was not provided  
information as to what was the historical interest rates applicable and they applied the  
rate of 12.5% per annum.

30 The plaintiff's actuary also testified and confirmed his report. He assumed that what was  
computed for Miss Loyce Mudondo was based on the current benefit formula for  
Unilever. He noted that there are usually two kinds of retirement benefits. The first one  
is the pension benefit which can be paid monthly, quarterly, half yearly or annually and  
are regular payments till death. Secondly, there is the provident fund which is paid in a  
35 lump sum upon retirement. A provident fund is not pension. If one has not yet reached  
retirement age, both benefits are paid in a lump sum. Finally there is the computation of  
interest and he applied the 15% which was used in 2002 in the Loyce Mudondo case.  
The actuary was not aware that the plaintiff was contributing to a pension scheme. He



5 That was the evidence that was established at the appellate court level and the question is why further evidence was taken on the issue? Furthermore, at page 16 of the judgment, the Court of Appeal noted that:

10 "Counsel for the appellant contended that when Blenders (U) Ltd was dissolved, the respondent was paid all the contributions of its staff. The respondent never paid the appellant his contributions. Therefore the amount of pension is uncertain. In Miscellaneous Application No 417 of 2004, the defence counsel, Mr Jacob Oulanya promised to produce the relevant documents but failed to do so. In counsel's view, the default by the respondents lawyer to produce documents, it still remains that the appellant's pension accrued and had already vested in him  
15 by the date of his unlawful dismissal. As the quantum of this pension is unknown, the appellant proposes an award of a lump sum of Uganda shillings 60,000,000/=..."

The respondent's answer to the submission was that pension had not been specifically pleaded and strictly proved as special damages if it accrued. So it could not be proved  
20 and the Court of Appeal overruled the submission in objection. We would like to further repeat the holding of the Court of Appeal at page 18 of the judgment that:

25 "The quantum of the pension remained uncertain. The Human Resource Manager of the respondent, one Onyait John Steven, DW1, confirmed that when Blenders (U) Ltd was dissolved, all contributions paid by the members of staff were paid to the respondent. It was incumbent upon the respondent to pay the pension to the appellant. No specific amount of the appellant's pension is certain."

It is clear from the holding that what was in issue is what was paid to the respondent from the contributions of members of staff. It is the documents of the respondent which were missing at the time of the trial of the issue. It follows that the respondent could not  
30 account for the appellant's pension and the matter proceeded afresh on the same issue. It is our finding that the directive of the Court of Appeal in Civil Appeal No 85 of 2005 was not followed because it could not be followed by the respondent who had no records of the appellant's pension that had been paid to it after a certain pension scheme had been wound up.

35 In the resolution of the issue of what pension is, the learned trial Judge concluded that pension is a fixed sum and paid regularly to an employee by an employer. It is paid as a retirement benefit and upon the retirement of the employee from work. He noted that



5 what his entitlement was and was going to pray for discovery of documents. The defendant failed to avail these documents. In the premises the trial court's duty was to assess the pension of the appellant from the available materials presented by the parties.

10 We also established from the judgment over Hon. Mr Justice J.B.A. Katutsi that he established that the gross salary of the appellant was Uganda shillings 595,679/= per month from which there was a total deduction of Uganda shillings 312,498/= leaving a net payment of Uganda shillings 283,181/=. The learned trial Judge relied on exhibit P5 which can be found at pages 86 and 87 of the record of appeal. We have considered the pay slip for the month of February 1998 which shows that, the appellant was entitled to  
15 gross pay of Uganda shillings 539,099/=. Out of this a total deduction of Uganda shillings 184,589/-was made leaving a net amount of Uganda shillings 354,510/=. From a reading of the exhibit, NSSF pension/provident fund deduction was Uganda shillings 15,717/= and not Uganda shillings 160 only. The basic shows NSSF/provident fund is Uganda shillings 15,717/= and Uganda shillings 160.

20 The respondents actuary relied on the figure of Uganda shillings 160 being the employees contribution and Uganda shillings 320 being the employer's contribution. The appellant's counsel relied on the terminal benefits calculated for one Ms Loyce Mudondo whose services were terminated later than that of the appellant. This is based on a letter dated 29<sup>th</sup> October, 2002 which letter gives the formula for terminal benefits.  
25 The letter addressed to Ms Loyce concerned terminal benefits and not pension.

It follows that ground one of the appeal that the learned trial Judge erred in law and fact when he rejected the plaintiff/appellants pension entitlement described as the defined pension benefit computed in the appellants actuary report dated 16<sup>th</sup> September, 2011 exhibit P8 that is based on exhibit P5 is without any basis and has no  
30 merit. The learned trial Judge distinguished between pension and terminal benefits. We also noted that Loyce Mudondo had only worked for seven years while the appellant had worked for 27 years. The above notwithstanding, the crux of the issue was that the respondent was supposed to account for a particular benefit and no evidence was adduced as to how much the respondent received from the contributions made by the  
35 members of staff inclusive of the appellant upon dissolution of Blenders (U) Ltd. The learned trial Judge had resorted to taking evidence of actuaries and accepted the evidence of the respondent's actuary when the actuary did not even know about the



5 for a period of 25 years would be  $352,052 \times 12 \times 25 = 105,615,600/=$ . We would consider an award the plaintiff 20% of Uganda shillings 105,615,600/= as damages in lieu of pension entitlement amounting to Uganda shillings 21,123,120/= and discount therefrom Uganda shillings 1,123,120/= and award the appellant Uganda shillings 20,000,000/=.

10 We further award the appellant general damages for breach of the duty by the respondent to account for the appellant's pension which had been paid to the respondent and for the inconvenience caused amounting to Uganda shillings 8,000,000/=

15 We further award the appellant interest on the damages in lieu of pension with effect from 23<sup>rd</sup> March 2012, the date of judgment of the High Court at the rate of 18% per annum till payment in full.

Further interest is awarded at court rate on the aggregate general damages for breach and inconvenience from the date of this judgment till payment in full.

The appellant's appeal succeeds with costs.

20 Dated at Kampala the 11<sup>th</sup> day of July 2019

**Kenneth Kakuru**

**Justice of Appeal**

25 **Geoffrey Kiryabwire**

**Justice of Appeal**

**Christopher Madrama Izama**

**Justice of Appeal**