

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 06 OF 2010
(Arising from Civil Suit No.10 of 2008)

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BETWEEN

NATIONAL INSURANCE CORPORATION LIMITED:..... APPELLANT

VERSUS

LILIAN B. MUJUNI:..... RESPONDENT

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(Appeal from the judgment of the High Court of Uganda before
the Honourable Lady Justice Elizabeth B. Musoke
dated 21st September 2009 arising from High Court Civil Suit No.010 of 2008)

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CORAM: HON. LADY JUSTICE FAITH E. K. MWONDHA, JA
HON. MR. JUSTICE RICHARD BUTEERA, JA
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

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JUDGMENT OF THE COURT

BACKGROUND

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The appellant, is an Insurance Company which employed the respondent for 18
years and 9 months. She voluntarily resigned from the employment by a letter
dated 5th January 2007 when she was 47 years old. Her resignation was accepted
by the appellant on 14th March 2007.

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She was paid terminal benefits in the sum of Ug.shs.41,899,996/=. This was calculated basing on the respondent's one month's consolidated pay, multiplied by the number of years served, less PAYE deductions. The respondent contended that she was underpaid. She claimed she was entitled to terminal benefits
5 calculated in accordance with the provisions of paragraph 4(c) and Appendix 6A of the Appellant's Staff Regulations (Terms and Conditions of Service) 2004 (The Staff Regulations) under those regulations and schedule, the applicable formula for computing her terminal benefits was two months consolidated pay, multiplied by the number of years served, less PAYE. This would entitled her to a further Ug.
10 Shs.53,164,512= over and above what she was paid in terminal benefits.

The appellant contended that the respondent did not fall under the categories provided in Appendix 6A of the Staff Regulations. That the appellants said Staff Regulations only applied to three instances where an employee had reached the
15 mandatory retirement age of 60 years, where employee sought early retirement having reached the age of 55 years, or where she retired on medical grounds. According to the appellant the respondent was 47 years old when she opted to resign and was not qualified for benefits under the above stated regulations. That when the appellant paid her using the formula of one month's gross pay,
20 multiplied by years worked, less PAYE, it did so gratuitously, taking into account consideration of her long service to the appellant. The trial judge found that the respondent was entitled to benefits under Appendix 6A of the Regulations.

The appellants were dissatisfied with this finding, hence this appeal.

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Legal representation.

At the hearing of the appeal the appellant was represented by learned counsel, Mr. Ronald Tusingwire, whilst the respondent was represented by learned
5 counsel, Mr. Benson Tusasirwe. Neither party was in court on the day of hearing the appeal.

For submissions both counsel adopted their conferencing notes as their
10 submissions and applied to court that the judgment be based on conferencing notes. This was accepted by Court.

Issues.

Counsel agreed on four issues to be resolved by Court.

- 15
1. Whether the learned trial judge was right to hold that the respondent was entitled to terminal benefits stipulated in Appendix 6A of the Appellant's Staff Regulations?
 2. Whether the learned trial judge used the right formula when computing the respondent's terminal benefits?
 - 20 3. Whether the learned trial judge was right to hold that the Appellant's Staff Regulations were ambiguous, poorly drafted and not well thought out?
 4. What remedies are available to the parties?

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Legal arguments for the appellant.

According to the appellant's conferencing notes he presented his legal arguments on issues number one and number two together. He reiterated the submissions he had made before the High Court and had further submissions in addition.

The substance of the appellant's submission of the two issues were the following:-

That the respondent was not entitled to terminal benefits calculated in accordance with Regulation 4 read together with Appendix 6A of the Staff Regulations.

According to counsel for the appellant the respondent resigned at the age of 47 years having worked for 18 years. The plaintiff's resignation was voluntary. Counsel for the appellant according to his adopted conference notes contends that for an employee to get terminal benefits calculated in accordance with Appendix 6(A), that employee must have attained the mandatory retirement age of 60 or the early retirement age of 55 years and above or be retiring on medical grounds. Counsel further contends that the respondent is not among those intended to be affected by Appendix 6(A).

According to counsel for the appellant the learned trial judge was wrong to hold that the respondent was entitled to terminal benefits calculated basing on the formula stipulated in Appendix 6(A) of the appellant's Staff Regulations. Counsel

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contended that the judge wrongly interpreted the appellant's Staff Regulations in calculating the respondent's terminal benefits.

Counsel prayed court to find ground one and two in favour of the appellant.

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Legal arguments by counsel for the respondent.

Counsel for the respondent also repeated the arguments he had advanced at the High Court and advanced further arguments in addition according to his conferencing notes.

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Counsel for the respondent conceded that the respondent did not fall under any of the three categories of retirement on reaching the retirement age, early retirement or retirement of medical grounds. However, to counsel, it is erroneous to suggest that the payment of benefits under 6A of the Regulations was limited to the three categories. Counsel contends that to give the regulations that narrow interpretation would lead to absurd construction.

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According to counsel for the respondent the appellant's Staff Regulations were part and parcel of the respondent's contract of service with the appellant. The regulations are a standard form document which is incorporated into the contract of service it specifically adopts them or by necessary inference are part of the contract.

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According to counsel, when interpreting such provisions, contained in standard form documents of general application, as opposed to specific provisions, of the actual contract signed by the parties, they have to be construed in a way that does not erode the main purpose of the written/signed contract. Counsel called
5 on this Court to adopt a purposive approach to construction. That there are other provisions in the main body of the regulation which made Appendix 6(A) applicable to other situations of cessation of employment. According to counsel, Regulation 7, which is on retirement prescribes the same formula in Appendix 6(A) for the three categories of retirement being referred to by the appellant and
10 Regulation 4 adopts the same formula for cases of resignation generally without prescribing the age of resignation. Counsel contended further that where there is ambiguity in the provisions of a contract, the ambiguity will be resolved against the party who made or drafted the provision or who was intended to benefit from it.

15 Counsel prayed court to find that the respondent was entitled to terminal benefits under Regulation 4 read together with Appendix 6(A).

The Court Decision

20 It is appropriate at this point to remind ourselves of our duty as a first appellate Court. This duty is stated by Rule 30 (a) of the Court of Appeal Rules. It provides:-
25 **“(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may-**

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(a) Reappraise the evidence and draw inferences of fact; and

The contents of this rule have been considered in numerous cases by the Supreme Court and this Court.

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In essence the duty of this Court is to reconsider the entire evidence on record and subject it to a fresh and exhaustive scrutiny and make its own conclusion, bearing in mind that it did not have the opportunity to hear or see the witnesses and should make due allowance in that regard (See Pandya v R (1957) EA 336,
10 Kifamunte Henry vs Uganda SCCA.10/1997 and Others).

We have studied the trial court's record, the conferencing notes of both counsel and the useful authorities they availed to Court. We shall proceed to resolve the appeal on the principles stated above.

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In this appeal the facts to the case as given in the background are not disputed.

There are four issues framed for courts resolution. The critical issue in our view is issue No.1. The other three are intertwined with it and their resolution may be
20 affected by the resolution of the issue No. 2.

Issue No. 1 and issue 2.

Whether the learned trial judge was right to hold that the respondent was
25 entitled to terminal benefits stipulated in Appendix 6A of the appellant's Staff

Regulations and whether the learned trial judge used the right formula when computing the respondent terminal benefits.

5 The respondent claimed to be entitled to terminal benefits calculated in accordance with the provisions of paragraphs 4(c) and Appendix 6A of the Appellant's Staff Regulations (Terms and Conditions of Service) 2004 (the Staff Regulations).

10 The appellant contended that the respondent did not fall under the categories provided in paragraph 6A of the Staff Regulations.

15 The trial judge found that she was entitled to benefit under the provisions of Appendix 6A of the Staff Regulations. The appellant was dissatisfied with this finding and that is the essence of this appeal. The appellant contended that the trial judge used a wrong formula in calculating the respondent's terminal benefits.

Regulation 4 of the Staff Regulations states as follows:-

RESIGNATION

20 **"A permanent employee wishing to leave the services of the Corporation shall through his Head of Department give the relevant notice or pay the Corporation in lieu thereof as stipulated in Appendix A."**

The Corporation will then pay the employee his outstanding leave days if any, salary for days worked up to the date of resignation and other benefits as indicated in Appendix 6(A).”

5 Appendix 6(A) provides as follows:-

“On attaining the mandatory, or early retirement age or at retirement on medical grounds, all permanent staff who have completed a maximum of 1 year of service shall receive terminal benefits computed as herein below
10”

The appellant’s contention is that the respondent retired at 47 years of age having worked for 18 years. She did not retire mandatorily or early or any certified medical reasons. The plaintiff resignation was purely voluntary.

15 The parties were not agreed on the interpretations of the Staff Regulations which in the instant case formed part of the contract of employment between the appellant and the respondent. The relevant Staff Regulations 7. 2, 7.3 and 7.4 are here below quoted for ease of reference:-

20 **“ 7.0 RETIREMENT**

7.1 CONTRIBUTION TO DEPOSIT ADMINISTRATION

The Corporation has in place a Deposit Administration Plan (DAP). An employee on joining the Corporation after completing his probationary period is admitted to the scheme by filling in an
25 application form.

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The contributions for the fund which may be revised from time to time are 5% from the employee's salary and 10% from the employer on a monthly basis. Accumulated contributions plus interest are payable to employees on leaving, or to his next of kin on death.

Notwithstanding any provision in the scheme, the Corporation reserves the right to withhold, confiscate or otherwise dispose of any terminal benefits, if the employee had previously offered, pledged or assigned the same terminal benefits as security for any other liability to the Corporation or has lost Corporation property or money.

7.2 MANDATORY RETIREMENT

On attainment of the age of sixty (60) an employee shall retire from employment and will be paid as set out in Appendix 6(A). Provided that where the company considers retiring the employee's services absolutely necessary, the employee may be given a two year renewable contract.

7.3 EARLY RETIREMENT

An employee may opt to retire from the services of the Corporation if he has attained the age of 55 years and above, and will in this case be entitled to benefits as set out in Appendix 6(A).

7.4 RETIREMENT ON MEDICAL GROUNDS

5 The Board may retire an employee on medical grounds on the basis of a medical report from the Corporation's approved Doctors certifying that the employee is incapable of satisfactorily carrying out his duties. The employee affected shall be paid as set out in Appendix 6."

10 It was the trial judge's duty to interpret the contract to establish whether or not the respondent qualified to benefit under Appendix 6A.

The critical question in this appeal is whether the learned trial judge was justified in so interpreting the Staff Regulations.

15 Court's duty in interpretation of contracts as is the case in the instant case was stated by Justice Sir Clement De Lestang in Jiwaji v Jiwaju [1968] EA as follows:-

20 "Court will not, of course, make contracts for the parties but they will given effect to their clear intentions."

Which was cited with approval by the Supreme Court in Osman vs Mulangwa [1995-98] 2EA 275. Again on interpretation of contracts the Supreme Court in Civil Appeal No.16 of 2001 Godfrey Magezi and Another vs Sudhir Ruparelia approvingly quoted Chitty on Contracts 27th Edition Par.12-039 which deals with
25 general Rules of Construction of written agreement and states that:-

“The object of all construction of the terms of a written agreement is to discover therefore the intention of the parties to the agreement.”

Para.12-040 goes further to state that:-

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“The cardinal agreement is that parties have intended what they have in fact said, so that their words must be construed as they stand.... One must consider the meaning of the words used, not what one may guess to be the intention of the parties. However, no contract is made in a vacuum. In constructing the document, the Court may resolve the ambiguity by looking at its commercial purpose and the actual background against which it was made.”

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Applying the above principles we need to look at the wording used by Appendix 6A.

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We find that 6A is written in clear language, it provides as follows:-

“On attaining the mandatory or early retirement age or must have retired on medical grounds.”

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The categories it caters for are 3.



It is true Regulation No.4 and No.7 refer to Appendix 6(A). The reference by these Regulations to Appendix 6(A) would not in any way alter its meaning which is clear.

5 We refer to chitty on contracts, Para 12-040 at page 581.

“If the provisions are clearly expressed, and there is nothing to enable the Court to put upon them a construction different from that which the words import, no doubt the words must prevail.”

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We do find that the respondent did not retire at a mandatorily age or early retirement or for any certified medical grounds and therefore she was not covered by Appendix 6(A). The learned trial judge was not correct to have found that the respondent was one of the persons covered by Appendix 6(A) and therefore used a wrong formula in computing the respondent’s terminal benefits.

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We therefore find grounds one and two of the appeal in favour of the appellants.

Issue No.3

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We have already discussed the Staff Regulations when handling grounds one and two above. We have already stated that the regulations are clear. They are not ambiguous. They do not cover the category in which the respondent found herself. The regulations cover other categories. The regulations need not cover

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everybody to be regarded as clear. We therefore find ground three of the appeal in the negative.

Issue No.4:

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Having resolved grounds 1 and 2 in favour of the appellant and ground 3 in negative as discussed above we consequently find that the learned trial judge erred in law and fact when she held that the appellant used the wrong formula when computing the respondent's terminal benefits.

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The consequence of our finding is that the judgment of the lower court is set aside. The respondent did not qualify for computation of benefits under Appendix 6(A) of the Staff Regulations.

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The appeal therefore succeeds with costs to the appellant.

Dated at Kampala this 13th of April 2015.

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Mwondha

Hon. Lady Justice Faith E. K. Mwondha

JUSTICE OF APPEAL

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Richard Buteera

Hon. Mr. Justice Richard Buteera
JUSTICE OF APPEAL

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Geoffrey Kiryabwire

Hon. Mr. Justice Geoffrey Kiryabwire
JUSTICE OF APPEAL

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