

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: Owiny-Dollo, CJ, Mwendha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, JJ.SC

CIVIL APPEAL NO. 06 OF 2020

BANK OF UGANDA:.....APPELLANT

VERSUS

J.B KABUYE:.....RESPONDENT

(Appeal arising from the judgment of the Court of Appeal at Kampala in Civil Appeal No. 48 of 2010 before Kasule, Kakuru & Kiryabwire, JJA dated 31st July 2018)

JUDGMENT OF MWONDHA, JSC

This is a second appeal, by the appellant who was dissatisfied with the decision of the Court of Appeal and appealed to this Court. The memorandum of appeal had three grounds as follows;

1. The learned Justices of the Court of Appeal erred in law when they failed to properly evaluate the evidence and thereby arrived at the wrong conclusion that the appellant breached its contract obligations with the respondent by deducting the respondent's housing loan without a hearing.
2. The learned Justices of the Court of Appeal erred in law when they held that it was the appellant's duty to renew or extend the respondent's leasehold title upon expiry.
3. The learned Justices of the Court of Appeal erred in law when they awarded the respondent general damages in the sum of Ug. Shs. 20,000,000/= with interest of 20% p.a from the date of retrenchment.

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The appellant prayed that: -


- (1) The appeal be allowed,
- (2) Set aside the judgment of the Court of Appeal
- (3) Restores the judgment of the High Court
- (4) Costs of this court and the courts below be provided for.

Background.

The background of this appeal as accepted by the Court of Appeal was that the respondent was employed by the appellant from 13/11/1987 up to 30/04/1995 when he was retired at the level of Principal Banking Officer, Building Section, under the appellant's involuntarily retirement scheme, where an employee would be compulsorily retired by the appellant.

The appellant represented to the respondent that, pursuant to the resolution of the appellant's Board, he as a pensionable staff retired under the involuntary retirement scheme, was to receive a severance package, similar in all respects, to that awarded to staff retired under the voluntary termination scheme, (VTS) in December 1994. Under the VTS an employee voluntarily chose to retire or to remain in employment and if the employee had been advanced a housing loan, then it would not be deducted from the retirement package but would continue to be settled under the original terms.

The respondent by 30/04/1995, the retirement date, had taken up a housing loan and another personal loan from the appellant. On retirement the appellant deducted all his loan amounts from the retirement package, which consumed all the money and left the respondent still indebted to the appellant.

The respondent lodged HCCS No. 93 of 2001 against the appellant seeking to be re-paid  the sum deducted as housing loan from his retirement package and to be awarded general and special damages. The High Court dismissed the suit with costs on 27/03/2009 so the respondent appealed to the Court of Appeal. The Court of Appeal set aside the judgment of the High Court and entered judgment in favour of the Respondent. The appellant was dissatisfied with the decision of the Court of Appeal hence this appeal.

Representation.

At the hearing of the appeal, Mr. Emmanuel Kakenga represented the respondent while Mr. Eria Mikka represented the appellant. Both counsel filed and adopted their written submissions.

Appellant submissions.

Learned counsel for the appellant abandoned grounds 1 and 2 of the appeal and conceded to the findings of the Court of Appeal upon application of Clause 5 of Exhibit D1, titled Early Retirement Voluntary Termination of Service.

Counsel also conceded to the award of Ug. Shs. 20 million damages however, contested the interest rate of 20% awarded as well and the time when that interest would start running.

Counsel submitted that the learned Justices of the Court Appeal misdirected themselves on the principle of law that interest on general damages accrues from the date of assessment of the damages as opposed to the date or time of the wrong doing whether tortious or contractual. He added that the rate on general damages is at a Court rate and not on Commercial rate as found by the Court of Appeal. For this argument counsel cited **Hope Mukankusi v. Uganda Revenue Authority, CACA No. 6 of 2011** which cited this Court's decision in **Omuniyakol Akol Johnson v. Attorney General, SCCA No. 6 of 2012**. Counsel also cited earlier cases of **Prem Lata v. Peter Musa Mbiyu, [1965] 1 E.A 592** and **Sietco v. Noble Builders (U) Ltd, SCCA No. 31 of 1995**.

Could prayed that this court allows ground 3 in relation to the high interest rate on general damages and the date when such rate should accrue. He also prayed for costs.

Respondent submissions.

Counsel for the respondent submitted that awards of interest rate are discretionary. Could relied on Section 26(2) of the Civil Procedure Act to the effect that court may order an interest rate as it deems fit. Counsel cited **Sieto v. Noble Builders, supra** and **Premchandra Shenoï & Another v. Maximor, SCCA No. 31 of 2003** to emphasized that an award of interest rate is discretionary and that in this case, the learned Justices of the Court of Appeal exercised their discretion and warded the same at a rate of 20%.

On the issue of when the interest should accrue, counsel argued that the learned Justices of the Court of Appeal were aware of the date when the interest should accrue but, after considering the circumstances of the instant case, court saw it prudent to award the interest from the date when the respondent was retrenched. Counsel submitted that the Omuniyakol case is distinguishable from the instant case because in that case the learned trial Judge had awarded omnibus interest rate on the aggregate sum of general, special and aggravated damages from the date of dismissal until payment in full unlike in the instant case where the interest awarded was only on general damages considering the fact that the respondent's retirement package was subjected to arbitrary deductions by the appellant and also taking into account the inflation trends in the economy.

Counsel prayed that the appeal be dismissed with costs and uphold the judgment of the Court of Appeal.

Consideration of the appeal.

This is a second appeal and the duty of a second appellate Court was long settled in various cases in this Court. In the case of **Tito Buhingiro v. Uganda, SCCA No. 8 of 2014**, it was stated, "*it is trite law that as a second appellate court, we are not expected to re-evaluate*

the evidence or question the concurrent findings of fact by the High Court and Court of Appeal. However, where it is shown that they did not evaluate or re-evaluate the evidence or where they are proved to be manifestly wrong on findings of fact, the court is obliged to do so and to ensure that justice is properly and timely served". See also Kifamunte Henry v. Uganda, SCCA No. 10 of 1997.

I shall be guided by the above principles in resolving this appeal.

The appellant appealed on three grounds as stated in the memorandum of appeal, however, in his written submissions, Counsel abandoned grounds 1 and 2 and conceded to the findings of the Court of Appeal. Counsel also abandoned part of ground three and argued only the part in relation to the rate of interest and when such interest would accrue. This meant that he was not appealing against the award of 20m in general damages to the respondent and I will therefore proceed to resolve the appeal only on the part of ground 3 of interest and when it was to start.

S. 26 of the **Civil Procedure Act, Cap 71** provides as follows:

"S. 26 Interest.

- (1) Where an agreement for the payment of interest is sought to be enforced, and the court is of opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by legal process, the court may give judgment for the payment of interest at such rate as it may think just.**
- (2) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.**
- (3) Where such a decree is silent with respect to the payment of further interest on the aggregate sum specified in subsection (2) from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 percent per year."**

The issues that arise out of the partial ground number 3 are as follows: -

- 1) Whether the Court of Appeal exercised its discretion judicially to award the 20% interest on the 20m awarded as damages

- 2) Whether the Court of Appeal was justified in law to order the interest to run from the date of retrenchment.

For clarity I will reproduce the part of ground 3 which is being contested. "The learned Justices of the Court Of Appeal erred in law when they awarded interest of 20% p.a payable from the date of retrenchment."

When the Court of Appeal considered and awarded the 20% interest they reappraised the evidence on record as at page 43 of the Record of Appeal. The case of **Mot v. Chanchalbhai (1915/1916) 6 E.A.L.R.1** was cited.


They reproduced the relevant facts as (1) his (appellant) retrenchment was sudden

(2) He was Principal Banking Officer, a high rank in the respondent Bank.

(3) His retrenchment package was reduced to nothing through the respondent's arbitrary deductions

(4) He was reduced to a pauper incapable of financially supporting his family and relatives.

(5) He was rendered incapable of investing into economic venture as he was deprived of use of his money.

There are a number of decisions of this Court and in East Africa which settled the principles to guide Courts on whether to interfere with the exercise of discretion of a trial Court/Court. 

This is from the understanding that awarding interest is a matter of discretion. See **Premchandra Sheno & Another v. Maximor Oleg Petrovich (supra)** Oder, JSC held inter alia, ... "I agree that the principle applied by this Court in **Sietco v. Noble Builders (U) Ltd** Supreme Court Civil Appeal No. 31 of 1995 to the effect that it is a matter of the Court's discretion is applicable. The basis of awards of interest is that the defendant has taken and used the plaintiff's money and benefited. Consequently, the defendant ought to compensate the plaintiff for the money".

In **Uganda Development Bank v. National Insurance and Another**, SCCA No. 28 of 1995, this court cited the case of **Mbogo v. Shah [1968] E.A 93**, where Newbold at page 96, stated the principle to be that "...a Court of Appeal should not interfere with the exercise of discretion of a Judge unless it is satisfied that the Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision or unless it is manifest from the case as a whole that the Judge has been clearly wrong in the exercise of his discretion that as a result there has been a misjustice"

While in **Shah v. Allu [1974] 14 EACA**, it was held inter alia that, it must be shown that there was unjudicial exercise of discretion at which no judge could reasonably arrive at

whereby injustice has been done to the party complaining.

I noted that in the instant appeal apart from dismissing the suit with costs there was no other order made. So interference of the Court of Appeal in the discretion of the trial Judge could not arise.

However, the principles cited are applicable to this Court as the Court of Appeal is the first appellate Court.

I have already reproduced s.26 of the Civil Procedure Act which governs awards of interest. I have read the record of appeal in respect of the award of the 20% interest and this is what the Court of Appeal said; *"The appellant in this appeal was a Principal Banking Officer, a high rank in the respondent's establishment. His retrenchment was sudden and his retrenchment package was reduced to nothing through the respondent's arbitrary deductions. He was reduced to a pauper, incapable of financially supporting his family and relatives. He was rendered incapable of investing into any economic venture as he was deprived of use of his money. Doing the best in the circumstances, being guided by the case authority referred to above and taking into consideration the inflationary trends in the economy Court awards the appellant Shs. 20 million general damages.*

Though in the normal course of things interest on general damages runs from the date of judgment, in this case, the appellant has suffered being deprived of use of his retirement package money from the date of retrenchment, and since Court has ordered that he is not to be refunded any money of the housing loan, that was wrongly deducted from him. It is only fair and just that general damages awarded carry interest of 20% p.a from 24.04.1995 the date of retrenchment".

According to the Record of Appeal the Court of Appeal declined to order the respondent to repay back the money wrongly deducted on the housing loan on the basis (a) The loan payment period had long expired.


(b) That the Court could not grant a relief that the respondent refunds the said loan amount to the appellant.

(c) That it was money the respondent was entitled to receive from the appellant within that period up to December 2010 by way of loan repayment, though in monthly installments. So the Court denied the appellant that prayer.

Resolution of issue (1) whether the Court exercised its discretion judiciously to award 20% interest on the sum of 20 million as damages. I find sub rule (2) of section 26 of the Civil

Procedure Act applicable to the above reasoning of the Court of Appeal. For clarity, I shall reproduce it, "where and in so far as a decree is for payment of money, the Court may in a decree or order of interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to full payment."

The Court of Appeal did not adjudge further interest in addition. On further perusal of the Record of Appeal, the appellant stated that he lost his 12-year-old son in 1996 for he had no money to pay for his son's medication. His sister he was supporting in school had to drop out of school. He said he would have invested the retrenchment package money into poultry and piggery.

In almost a similar case **Bank of Uganda v. Masaba & 5 Others, SCCA No. 03 of 1998**, the Court of Appeal cited it. The facts and parties were all from the Banking sector. Briefly the facts were that the Respondents were employees of the appellant (Bank of Uganda) and the appellant's Governor wrote to its employees offering them voluntary retirement scheme. Among the conditions in the scheme was a clause that exempted deductions on housing loans. The respondents individually applied to the appellant (Bank of Uganda) to retire on the basis of the terms and conditions specified in the Governor's letter (retirement scheme). Payments of their respective retirement packages were made to the respondent however, the appellant had made deductions of housing loan from their retirement packages. Due to the deductions, the respondents were left with little or no money to start retirement life. The respondents successfully sued the appellant in the High Court. The appellant (Bank of Uganda) unsuccessfully appealed to the Court of Appeal hence the appeal to the Supreme Court and while dismissing the appeal, Oder, JSC, cited **Flint v Lowell 1935 1 kb 354** where Greer, CJ said, *"In order to justify reversing the trial judge on the question of amount of damages it will generally be necessary that this court (appellate court) should be convinced either that the judge acted upon some wrong principle of law, or the amount awarded was so extremely high or so very small as to make it, in the judgement of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."* 

Both the Court of Appeal and the Supreme Court left undisturbed the award.

The Court of Appeal considered the facts as already stated in this judgment. I have also perused the Court Record though there is a presumption in favour of judicial discretion being rightly exercised. I was satisfied that the facts as stated above from the Record of Appeal, the 6% interest which is a default rate cannot satisfy the ends of justice. Every case has to be determined according to its own facts and circumstances. The learned Justices

considered the circumstances and taking into account all what the appellant did to the respondent, I find that, they exercised their discretion judicially.

I am unable to fault the learned Justices of the Court of Appeal and I would not interfere.

On the issue whether the learned Justices were justified to order the interest to run from the time of retrenchment instead of date of judgment I have reproduced already in this judgment the reasons why they said so and what stated cannot be separated from the reasoning of when it should run.

The Justices of the Court of Appeal considered and took into account the various circumstances of the case to justify the departure from the principle. S. 26 (2) lays the ground for the interest rate and I have already reproduced it. As to when the interest would start I would rather go by that, that the interest would run from the date of suit to full payment. The guidance in that subsection is clear. I too take into account the circumstances of the case as stated above, that the interest of justice would demand that. This would be fair to both parties in my view.

Also I have considered the fact that the Court of Appeal did not adjudge an additional interest. The 20% interest per annum from the date of commencement of the suit till full payment would suffice.

In the result the appeal partially succeeds and I would make the following orders: -

- (1) Uphold the Court of Appeal decision on interest of 20% per annum.
- (2) The interest to accrue from the commencement of the suit till payment in full.

Dated at Kampala this 6th day of December 2023



.....
Faith Mwendha
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: OWINY - DOLLO CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE AND CHIBITA JJSC

CIVIL APPEAL NO. 06 OF 2020

BANK OF UGANDA.....APPELLANT
VERSUS

J.B KABUYE..... RESPONDENT

(Arising from the decision of the Court of Appeal in Civil Appeal No. 48 of 2010 before Kasule, Kakuru and Kiryabwire, JJA dated 31st July 2018)

JUDGMENT OF OWINY - DOLLO; CJ

I have had the benefit of reading, in draft, the judgment of my learned sister Mwondha, JSC. I concur with the reasoning, conclusions, and orders proposed therein.

Since Tibatemwa-Ekirikubinza, Tuhaise, Chibita, JJSC, also agree, orders are hereby issued in the terms proposed by Mwondha JSC in her judgment.

Dated, and signed at Kampala this th 6th day of December 2023



Alfonse C. Owiny - Dollo

Chief Justice

JUSTICE OF TEE SUPREME COURT.

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

(CORAM: OWINY-DOLLO, CJ; MWONDHA; TIBATEMWA-
EKIRIKUBINZA; TUHAISE; CHIBITA; JJSC)

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*[Appeal arising from the judgment of the Court of Appeal at Kampala before Kasule, Kakuru,
Kiryabwire, JJA, in Civil Appeal No. 48 of 2010, dated 31st July, 2018]*

JUDGMENT OF TUHAISE, JSC.

I have had the benefit of reading in draft the Judgment prepared by my learned sister Hon. Justice Faith Mwondha, JSC.

I agree with her decision, and the orders therein.

Date at Kampala, this^{6th} day of*December*.....2023.



Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

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

(CORAM: OWINY-DOLLO, C. J; MWONDHA; TIBATEMWA; TUHAISE; CHIBITA;
JJ.SC)

CIVIL APPEAL NO: 06 OF 2020

BANK OF UGANDA APPELLANT
VERSUS

J.B. KABUYE RESPONDENT

*[An appeal arising from the judgment of the Court of Appeal at Kampala in Civil Appeal
No. 48 of 2010 before Kasule, Kakuru & Kiryabwire JJA, dated 31st July 2018]*

JUDGMENT OF CHIBITA, JSC

I have had the benefit of reading in draft the judgment prepared by my learned sister, Hon. Justice Mwondha, JSC and I agree with her reasoning and her conclusion.

I also agree with the orders that she has proposed.

Dated at Kampala this^{6th}.....day of*December*.....2023


Justice Mike Chibita
JUSTICE OF THE SUPREME COURT