

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 255 OF 2017

1. MUKEBEZI MOBY MOSES

2. MUGULI SYLVIA ::::::::::::::: APPELLANTS

3. RESTY NAMULI & 13 OTHERS

VERSUS

BANK OF BARODA (U) LTD. ::::::::::::::: RESPONDENTS

CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA

HON. JUSTICE STEPHEN MUSOTA, JA

HON. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

This appeal arises out of a Labour dispute award of Hon. Lady Justice Linda Lillian Tumusiime Mugisha, Hon. Justice Ruhinda Asaph Ntengye and the panelists Ms. Hariet Nganzi Mugambwa, Mr. Michael Matovu, and Mr. Ebyau Fidel in Labour dispute reference No. 093 of 2014 originating from HCCS 236 of 2012 which was referred to the Industrial Court by the High Court.

Background

The claimants were employed by the respondent in various capacities until their retirement. In 2012, they filed H.C.C.S No. 236 of 2012 against the respondents alleging breach of contract by underpaying them gratuity entitlements contrary to the revised gratuity scheme

that took effect on 1/1/2009. The Appellants claimed that the new scheme was meant to improve their gratuity but the Respondent misinterpreted the new scheme and applied a maximum cap of Ugx 50,000,000=. They also claimed none payment of their leave entitlement and prayed that this Court awards the total amount claimed in the lower Court of Shs. 403,072,735=, general damages of Shs. 200,000,000= per Appellant, interest of 20% from the time of default to the time of full payment, and costs of the lower Court and this Appeal. The appellants claim was dismissed apart from the claim of 7 claimants who were found to have been underpaid to wit;

1. Mukula Teko E. C. No. 500125 Banking Supervisor Lira.
2. Kikonyogo James E. C. 500073 Banking Supervisor Kampala Main.
3. Estellah Kizito E. C. 500150 Sr. Banking Assistant Entebbe.
4. Juliet Kataza E. C. 500047 Sr. Banking Assistant Jinja.
5. Musenero James E. C 500062 Officer/Joint Manager Mbarara.
6. Mrs. Sauda H. Ucungi E. C. 500065 Officer Kansanga.
7. Ms. Resty Namuli E.C 500145 Sr. Banking Supervisor Kampala Main.

Grounds of appeal

The appellants were dissatisfied with the decision and filed an appeal to this court one ground namely;

1. The learned trial Judges and the panelists erred in law and or failed to properly evaluate the evidence on record and thereby came to a wrong conclusion that the respondent did not misapply the new gratuity scheme.

5 **Representation**

At the hearing of the appeal, Mr. Emmanuel Kakenga appeared for the appellants while Mr. Johnson Kanyemebwa appeared for the respondent.

Appellant's submissions

- 10 Counsel for the Appellant submitted that the respondent misapplied the revised gratuity scheme whose purpose was to improve the gratuity paid out to employees in monetary terms. It is not disputed that the respondent's old gratuity scheme only catered for the period of service up to 20 years and that above 30 years, but not between
15 20 to 30 years. According to the old gratuity scheme, the amount of gratuity payable to an employee was 55% of the monthly salary/basic pay last drawn for every completed year of service, subject to a maximum of 20 months' pay. For the period beyond 30 years, an additional amount equivalent to $\frac{1}{2}$ of the 55% of monthly salary for
20 each completed year was payable. The revised scheme that came into effect on 30th March 2009 stated that gratuity shall be payable to an employee at the rate of one months' pay for every completed year of service and that pay would mean 75% of basic salary last drawn by an employee.

Counsel argued that the learned Judges of the Industrial Court erred when they applied the Ugx 50,000,000/= cap to the entire period of service to the appellants. That clause 2(a) of the revised scheme provides for a different formula which uses PAY as a basis for computation for the period up to 20 years of service. PAY under the revised scheme was defined to mean 75% of basic salary last drawn.

Respondent's submissions

In reply, counsel for the Respondent submitted that the capping of gratuity payable to the appellants at Ug. Shs. 50,000,000/= was consistent with the terms of the said scheme. That the dues payable under the said scheme for the period served upto up to 30 years were capped at Ug. Shs. 50,000,000/= and the said cap would only be exceeded where a claimant served in excess of 30 years.

Counsel argued that the lower court rightly found that whereas gratuity under the old scheme was calculated at 55% of the last salary drawn for every year served for 20 years only, the new revised scheme had increased it to 75% of the last salary drawn for every year for 20 years and the period beyond the 20 years would also be reckoned.

Counsel submitted that the appellants were not entitled to any gratuity payments in excess of 20 months' pay or UGX 50,000,000/= whichever was less. In addition, that the 1st appellant had entered a consent judgment with the respondent in H.C.C.S No. 355 of 2011 and accepted to receive gratuity as capped and that the 1st appellant

was estopped from claiming in the latter labour complaint that he was underpaid.

Consideration of the appeal

5 I have carefully studied the court record, considered the submissions of both counsel, the law applicable and the authorities cited in the determination of this appeal.

This is a first appeal and the principles on first appeal are as follows:

On a first appeal, the law enjoins this court to review and re-evaluate the evidence as a whole, closely scrutinize it, draw its own inferences,
10 and come to its conclusion on the matter. This duty is recognized in **Rule 30 (1) (a)** of the Rules of this Court.

30. Power to reappraise evidence and to take additional evidence.

15 *(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—*

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

(b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.

20 The cases of **Pandya v R [1957] EA 336** and **Kifamunte Henry v Uganda SCCA No. 10 of 1997** have also succinctly re-stated this principle. I will apply those principles herein.

The respondent operated a gratuity scheme prior to 1/1/2009 in which the amount of gratuity payable to an employee was 55% of the monthly salary/basic pay last drawn for every completed year of service subject to a maximum of 20 months' PAY. The respondent
5 introduced a revised scheme which provided among others that gratuity was to be paid at the rate of 75% of the basic salary last drawn by an employee and the period of service beyond 20 years would be reckoned subject to a maximum cap on the amount of gratuity payable which would be equivalent to a total of 20 months
10 basic salary or Ugx 50,000,000/= whichever is less.

For the period of 30 months, an additional amount is equivalent to $\frac{1}{2}$ of 75% of the basic salary last drawn for each completed year of service beyond 30 years. Explanatory note 4 subjected the payment to a cap of a maximum of 20 months or UGX 50,000,000/= which
15 ever was less. The trial court at page 763 of the Record of Appeal applied both formulae and compared both the 55% and the 75% that each claimant would have received under each scheme. I will not reproduce the calculations here, but note that as stated by the trial court, the new scheme increased the gratuity due to the claimants
20 but with a cap of a maximum of 20 years or 50 million shillings, whichever was less.

The trial court held that;

*In the instant case, the respondents determined the new gratuity scheme to improve the old one by increasing the basis of
25 calculation from 55% to 75% albeit with a cap of a maximum of*

20 years or 50 million which ever was less. The same was communicated by circular to the claimants. The claimants did not oppose it or raise any complaint regarding its provisions.

This court therefore cannot be seen to alter the gratuity set by the respondents, by removing the cap or applying it the way the claimants had chosen to interpret it. In any case the new formula under the new gratuity scheme had satisfied its purpose i.e it had improved the gratuity previously given under the old scheme.

...in the premises the application of the cap of a maximum of 20 months or UGX 50,000,000/= which ever was less, in calculating the claimants gratuities cap had not led to under payment of the claimants' gratuities save for the 7 claimants mentioned above. The balance of the 7 claimants' gratuities should be paid at an interest of 20% from the time they were supposed to be paid until full and final payment...."

I find no reason to interfere with the findings of the trial court in this regard. The appellants were not entitled to any gratuity payments in excess of 20 months' pay or UGX 50,000,000/= whichever was less.

According to note 4, page 524 of the Record of Appeal, the new gratuity scheme provided that;

"04. Earlier, gratuity payment was limited to 55% of 20 months monthly salary base pay whereas now amount of gratuity shall be payable at the rate of one months' PAY (i.e 75% of last Basic Salary drawn by the employee) for every completed year of

service subject to maximum of Total of 20 months' Basic salary last drawn by an employee or shs. 50 million shillings, whichever is less." (Emphasis added)

5 The claimants were all paid UGX 50,000,000/= which was found to be validly paid in accordance to the new scheme save for 7 claimants who had worked beyond 30 years.

I therefore find no merit in this appeal and dismiss it accordingly. I uphold the judgment and orders of the trial court. This case having arisen from a labour dispute, I order that each party bears its own
10 costs of this appeal.

I so order.

Dated this 4th day of Aug 2022

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Stephen Musota

JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(CORAM: CHEBORION, MUSOTA, MADRAMA, JJA)**

CIVIL APPEAL NO 255 OF 2017

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2. MUGULI SYLVIA}
3. RESTY NAMULI AND 13 OTHERS} APPELLANTS**

VERSUS

**BANK OF BARODA LTD} RESPONDENT
(Appeal from the award of Hon. Lady Justice Linda Lillian Tumusiime
Mugisha, Hon. Justice Ruhinda Asaph Ntegye and Panelists Ms. Harriet
Nganzi, Mugambwa, Mr. Michael Matovu, Mr. Ebyau Fidel in Labour Dispute
Reference No. 093 of 2014)**

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Justice Stephen Musota, JA.

I concur with him that the appeal ought to be dismissed for the reasons he set out his judgment with each party to bear its own costs of the appeal and I have nothing useful to add. Since Hon.

Dated at Kampala the 4th day of Aug 2022



Christopher Madrama

Justice of Appeal

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(Coram: Cheborion Barishaki, Stephen Musota & Christopher Madrama,
JJA)

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2. MUGULI SYLVIA

3. RESTY NAMULI & 13 OTHERS:::::::::::::APPELLANTS

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VERSUS

BANK OF BARODA::::::::::::: RESPONDENT

JUDGEMENT OF CHEBORION BARISHAKI, JA

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I have had the benefit of reading in draft the judgment of my learned brother, Stephen Musota, JA. I agree with him that this appeal has no merit and should be dismissed. Since Madrama JA also agrees, the appeal is dismissed and each party shall bear its own costs of the appeal.

Dated in Kampala this.....4th.....day ofAug.....2022

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Cheborion Barishaki

JUSTICE OF APPEAL