

UGANDA / JUDGMENT

Alaba v Bank of Uganda (Labour Dispute 53 of 2017) [2025] UGIC 33 (4 April 2025)

[2025] UGIC 33

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J

CASE / FILE NUMBER

Labour Dispute 53 of 2017

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 053 of 2017 *(Arising From MGLSD No. 477 Of
2017)*

HELLEN ALABA ::CLAIMANT

VERSUS

BANK OF UGANDA::RESPONDENT

Before: The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Can Amos Lapenga.

Representation:

1. Mr. Richard Okalany of M/S Alliance Advocates for the Claimant.

2. Mr. Bwogi Kalibbala M/S MMAKS Advocates for the Respondent.

Case Summary

Employment law- Dismissal- Entitlement to retirement benefits after dismissal-

Contract law-doctrine of estoppel and equity-

*The Claimant, a former Banking Assistant at the Bank of Uganda, was dismissed in 1994, with
^a letter stating her benefits would be frozen until retirement age. Upon reaching that
age, the bank denied her benefits, citing a rule that excluded employees who had been dismissed.

The claimant sued, arguing she was entitled to her pension based on the dismissal letter and the principle of estoppel. The court examined the bank's Retirement Benefit Scheme rules and the circumstances of her dismissal. The Court ruled in favour of the claimant, declaring she was entitled to her accrued benefits up to her dismissal date and awarding her general and exemplary damages, as well as costs of the claim.*

AWARD

Introduction

- [1] After nineteen years of waiting for retirement benefits, the Claimant was informed that the Respondent had erroneously frozen her retirement benefits, and she was not entitled to any benefits.

Background facts

- [2] On the 7th of July 1978, the Bank of Uganda which is established under Section 2 of the Bank of Uganda Act Cap. 54, employed the Claimant as a Banking Assistant. On the 4th of June 1990, she was promoted to the position of supervisor. On the 1st of May 1984, she was enrolled as a member of the Respondent's Retirement Benefit Scheme(RBS). On the 10th of February 1994, she was dismissed from employment and her contributions to the RBS were frozen until she attained the normal retirement age of fifty-five years. Upon reaching that age, she approached the Respondent to request her benefits. In reply, the Respondent suggested that the Claimant had ceased to be entitled to any benefit under Rule 8 of the RBS Trust Deed of 1967 and therefore the indication that she would be paid was made in error.
- [3] Aggrieved, the Claimant lodged a complaint with the Commissioner, Labour at the Ministry of Gender, Labour and Social Development. The Respondent did not provide the Commissioner with any response. On the 17th of March 2017, the Commissioner referred the matter to the Court.

The Claim

- [4] By her memorandum of claim(MOC) filed in Court on the 5th of April 2017, she sought ^a declaration that she was entitled to her pension benefit, an order compelling the Respondent to account and pay her pension benefits, general damages, exemplary and punitive damages, interest and costs of the claim. She contended that she had been subjected to a lot of frustration and economic hardship and that the acts of the Respondent were high-handed, oppressive in nature and unconstitutional.

The Reply

- [5] In its reply, the Respondent acknowledged the Claimant's appointment and admission to the non-contributory RBS on ¹ May 1984, which was governed by the Bank of Uganda RBS Trust Deed and Rules (hereinafter referred to as **the Rules**). The Respondent contends that when the Claimant was dismissed on the 10th of February 1994, it was mistakenly stated that her benefits were frozen until she attained the normal retirement age of fifty-five years. It was pleaded that this was an obvious mistake and Rule 8 of the Rules excluded members who left the service of the Respondent for any reason before the normal pension date, except for early retirement. That upon her dismissal, she ceased to be entitled to any claim. ^I

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The issues

- [6] The parties filed a joint scheduling memorandum, which this Court adopted with the following issues for determination.
- *(i) Whether or not the Claimant is entitled to any pension or retirement benefits from the Retirement Benefits Scheme operated by the Respondent?*
- *(ii) What remedies are available to the parties?*

The Evidence

- [7] The documents in the Claimant's trial bundle filed in Court on the 30th of April 2018 were admitted in evidence and marked CEX1 to CEX9, while the documents in the Respondent's trial bundle filed in Court on 8th May 2018 were admitted in evidence and marked REX1 to REX4.

The Claimant's testimony

- [8] She testified to her employment history with the Respondent, serving from 1978 to 1994. She confirmed being a member of the RBS under Number 0631 and her dismissal in February 1994. She said the dismissal letter (CEX4) expressly stated that her benefits to RBS were frozen until she reached the normal retirement age of fifty-five (55) years. She says that the Respondent's Executive Director of Administration, the late Joshua Mugenyi, advised her not to contest her dismissal because she had substantial benefits under the RBS. She told us that when she attained 55 years in 2013, she sought her benefits. The Respondent declined to release her benefits. It was her evidence that it was unfair, unjust and a trick for the Respondent to assure her of a pension or retirement benefit and then turn around and allege it was an error. She said the Respondent should not be allowed to have its cake and eat it too.

- [9] During cross-examination, she stated that she was aware of the Trust but had not reviewed the Trust Deed. She stated that the Trustees were secretive and that she was unaware of the terms or rules outlined in the deed. She informed us that she had read part of the deed after her dismissal in 1994, but had not read the entire deed between 1978 and 1994. She said no money was being deducted from her salary for purposes of a contribution. She informed us that she was unaware that the scheme was noncontributory. It was her evidence that she was not aware that when a person is dismissed, they are not entitled to a pension. She was shown REX8 and read out rule 8 (and said that according to the rule, she would not be entitled to a pension. She also read me ¹ paragraph 6 of CEX 4 and confirmed that no one was making contributions to the RBS.

She stated that her discussions with Mr. Joshua Mugenyi were not documented in writing, and he had only persuaded her not to sue the Respondent. She noted that the contents of CEX 6 were incorrect and that this was not what Mr. Mugenyi had shown her.

- [10] In re-examination, she stated that her lawyer, Rebecca Kadaga, had visited Mr. Mugenyi, and subsequently she went to see him, which is why she did not challenge the dismissal. She confirmed that the RBS was with the National Insurance Corporation, where the Respondent made the contributions.

The Respondent's testimony

- [11] Titus Mulindwa, the Respondent's Deputy Legal Counsel, testified next, confirming the employment contract between the Claimant and Respondent, her dismissal, and the error in freezing her benefits until the normal retirement age of 55 years. It was his evidence that the Claimant ceased to be entitled to any benefit upon her dismissal. He asked that this claim be dismissed.
- [12] During cross-examination, he stated that the Claimant was dismissed before he joined the Respondent on August 9, 2000. He stated that he knew Joshua Mugenyi. He said that there was no error in CEX1, the Claimant's appointment letter. He told us that the Director of Human Resources signed the letter of dismissal, and he did not doubt its authenticity. He said if he were in the Claimant's shoes, he would rely on the letter. He conceded that it took the Respondent 20 years to realise its mistake in paragraph 6 of the dismissal letter because the Claimant had not reached retirement age. He conceded that accountability involves penalties and that this was a corporate mistake. He informed us that the Deed (REX2) was amended in 1995; however, the 1967 Scheme still applied to the Respondent. He also informed us that Trustees are typically bank employees and confirmed that the first signature on REX2 was that of Governor Joseph Mary Mubiru. He told us that the Governor signed the 1995 Deed, as well as other bank employees and former employees. He said he was familiar with the term "waiver," but that it would be incorrect to suggest that clause 8 constituted a waiver. He told us that there was a letter correcting the mistake, and he did not deserve either a slap or a pat. He stated that he was informed that employees who are dismissed forfeit their retirement benefits. He told us that the Respondent operates within a

regulatory framework and that it had made an error.

- [13] In re-examination, he clarified that pension is only earned when one reaches retirement age. A claim could only be made when the Claimant reached retirement age. L

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- [14] At the close of the Respondent's case, we invited Counsel to file written submissions. We are grateful to Counsel for the succinct submissions, which have been summarised and considered in rendering this award.

Determination.

Whether or not the Claimant is entitled to any pension or retirement benefits from the Retirement Benefits Scheme operated by the Respondent?

Claimant's submissions

- [15] In his written submissions to the Court, Mr. Okalany made two points: First, Counsel argued estoppel, contending that the Respondent was estopped from denying its promise to pay the Claimant her retirement or pension benefits as contained in CEXH3, CEXH 4 and CEXH 6. Counsel cited Section 114 of the Evidence Act, the maxim *"allegens contraria non audiendus"* and the cases of *Ramsden v Dyson*, *Ibaga v Tarakpe* and *Crabb v. Arun District Council* in support of the proposition that the circumstances of the case and the conduct of the Respondent met the threshold of promissory estoppel in favour of the Claimant.
- [16] The second point was that the Respondent could not approbate and reprobate. For this proposition, Mr. Okalany cited the Zimbabwean dictum of Mathonsi J. in *Wangayi v Mudukuti*. It was suggested that the Respondent had laid a bed of thorns and must lie on it.

Respondent's submissions

- [17] Mr. Kalibbala respectfully disagrees with Mr. Okalany's propositions. In Mr. Kalibaala's view, the Claimant did not make any contributions to the RBS and therefore paragraph 6 of CEXH 4 was contrary to REX4. It was submitted that Rule 8 of the REX4 disentitled the Claimant from retirement benefits under the RBS upon her dismissal. It was suggested that *Ramsden*, *Ibaga*, *Crabb* and *Wangayi* were wholly inapplicable to the Claimant's case and that *Stanbic Bank Uganda Ltd v Uganda Crocs Limited* qualified the conditions of estoppel to include intentional act or omission by the person against whom estoppel is to be set up. Counsel contended that the Respondent was consistent on the error in REX4.
- (2018) UGHCLD Per Mubiru J
- [1975] 3 All E. R. 865 Per Denning LJ

- ⁴ (20171ZWBHC 155
- 5 120051 UGSC 16

(1866) LR ¹ HL 129

[18] It was also submitted that the doctrine of promissory estoppel is of limited application, and for this, we were directed to ^a passage from Halsbury's Laws of England, which suggested that the doctrine could not create a cause of action where none existed. Thus, estoppel is a shield and not a sword. In the absence of proof of any agreement between the Claimant, her erstwhile lawyers, Kadaga and Co Advocates, and Mr. Joshua Mugenyi, we were asked to answer issue one in the negative.

Rejoinder

[19] In rejoinder, Counsel for the Claimant reiterated his submission in the main, adding that the no-contributory scheme did not disentitle the Claimant from her benefit. We were referred to Lord Nottingham's dicta in **Maynard* v *Moseley*[6](#page-5-0),* **"The Chancery mends no man's bargain"** to dispel the idea that the Respondent made an error for which it should be excused. We were also pointed to the **contra proferentum** rule, which suggested that the ambiguities in CEXH 4 should be interpreted in favour of the Claimant. For the above reasons, we were asked to find in favour of the Claimant.

Decision

- [20] The common and undisputed facts in this matter are that the Claimant was dismissed from employment on 10th of February 1994 and in the letter of dismissal her contributions to the Retirement Benefits Scheme(RBS) were frozen until she attained the normal retirement age of fifty-five years when she could take it up with the Respondent or National Insurance Corporation. When the Claimant attained normal retirement age and took it up with the Respondent in 2014, the Respondent declined to pay her benefits because the dismissal letter had frozen the benefits in error under the aegis that the RBS Trust Rules did not entitle her to these benefits upon dismissal.
- [21] The Claimant asserts that the Respondent is estopped from denying its promise to pay and cannot approbate and reprobate. At the same time, the Respondent counters that estoppel is not available because there was no intention to cause the Claimant to act on the promise to pay retirement benefits. In this determination, the question is quite crisp, in our view. Is the Claimant entitled to any retirement benefits given the **"error"* in the dismissal letter?
- [22] But, let us start with the Claimant's primary argument: estoppel. Section 114 of the Evidence Act Cap. 8, as correctly cited by Mr. Okalany for the Claimant, provides for estoppel within our legal system. Counsel agreed that under this principle, one party must intentionally cause another to believe a thing to be true, and that person whol made tlje-

⁶ 3 Swan. 651, at 655, 36 E. R. 1009, at ¹⁰¹¹ (Ch. 1676) as cited at [<https://www.istor.org/stable/24874735>]([https://www.istor.org/stable/24874735_last_accessed_\(j.2025jS%2523r\)](https://www.istor.org/stable/24874735_last_accessed_(j.2025jS%2523r))) last accessed (j.2025jS#rajm

representation shall not be allowed to deny the truth of that thing. Mr. Kalibbala suggests that the mistake in freezing the benefits was not intentional. The question, therefore, is whether estoppel would be applicable as Counsel for the Claimant proposes? Mr. Kalibbala cited **Stanbic Bank Uganda Ltd v Uganda Crocs Limited*⁷. In that case, our apex Court was considering an appeal where the respondent's directors had fraudulently changed the signing mandate from requiring any two to sign to requiring any one to sign. The doctrine of estoppel was found not to apply to the Appellant Bank because it was unaware of the fraud until a police report was issued.

[23] In the present context, it has not been shown on the evidence that there was an intentional declaration, act or omission on the part of the Respondent to cause the Claimant to act one way or the other to her detriment. Her evidence is that the late Joshua Mugenyi had prevailed over her and her lawyers not to challenge the dismissal because she was to receive a sizable pension. That proposition would have been believable if there had been some correspondence to the effect. At the time of her dismissal, the Respondent clearly laid out the terms of her dismissal, including the freezing of her benefits. While the Claimant suggests that she instructed M/S Kadaga & Co Advocates, who are said to have met with Mr. Mugenyi, we do not think it plausible that no correspondence was generated. Therefore, we are unable to accept the proposition that the Claimant could anchor her claim on the doctrine of estoppel. And we are fortified in this view by the dicta of the Court of Appeal in **Uganda Railway Corporation* v *Kasolo Kiberu and ¹²⁸ Others*³. In that case, the Court of Appeal was considering a claim for pension payments by former employees of the East African Common Services who had transitioned to the Uganda Railways Corporation. The Respondents had anchored their claim on estoppel because other employees of the URC in the same category had been paid. The Appellants contended that these payments were in error. The Honourable Dr. Justice FMS Egonda Ntende JA, with Muzamiru Kibeedi JAfas **he then was)** and Gashirabake JA concurring held:

> **The basis of the respondent's claim is that other employees who had previously retired from the appellant had calculated their pension benefits to include the period of service with the East Africa Railways Corporation. The appellant answers that it had done so in error. The thrust of the respondent's claim is based not in contract but simply estoppel. However, estoppel is a shield and not a sword. It can act as a defence to a claim rather than as a basis for a**

7 (20051 UGSC 16

612022] UGCA ¹⁶⁷

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claim. Had the appellant sought to recover this money from those it had paid, they would rightly plead estoppel, but it cannot be a basis for instituting a claim.

- [24] In view of the above, we think the extract from Halsbury's would be applicable. The Claimant, in the instant case, bases her action on estoppel as a sword, not a shield. In this way, **Ibaga** is helpful, as it equates proprietary estoppel with promissory estoppel. In that case, a claimant to land was under a unilateral misapprehension that they had acquired the land and was encouraged by the legal owner's representations. The doctrine would prevent the owner of land from profiting from a mistake where they had not asserted their ownership. **Crabb** and **Ramsden**, cited therein, also relate to actions for recovery of land where the legal owner seeks to assert ownership over the same land as a party that has asserted a right over it. That is the proprietary estoppel. The dicta of Lord Denning in **Crabb** also speaks to a similar disposition of promissory estoppel. And we will return to this point after considering one more case.
- [25] In the present context, we think the doctrine of estoppel as expressed in the above cases to be inapplicable to the matter. The Respondent suggests, quite correctly, that estoppel is a shield and not a sword, and we agree. Estoppel is a shield and not a sword. In the case of **Mujibhai Madhvani & Co. Ltd. & Anor. v Francis Mugarura & 35 Ors.**[9](#page-7-0) The Court found that the Appellants had made representations that they would pay the terminal benefits and that there were certain changes to the terms and conditions of service. Those representations were made to avoid litigation, and the Respondents genuinely believed them to be true. The Court observed that when a company has a document outlining its terms and conditions of service, which specify payment plans and benefit options, an employee should be allowed to rely on those terms and conditions. If that were not the case, then an employer could write enticing retirement packages into their bylaws to attract better employees, but then dishonour the terms when the individual seeks to retire. Here, the Appellant had raised estoppel as a shield and not a sword as the Claimant wields in this litigation. But we shall return to a qualification of estoppel shortly.
- [26] The other proposition was that the Respondent could not approbate and reprobate. Our attention was directed to the Zimbabwean case of **Wangayi**. Counsel for the Respondent did not challenge this point. In that case, Mathonsi J was confronted with an applicant who, on the one hand, liquidated a judgment debt allowing her property to be sold in execution, was imprisoned for a civil debt and paid a number of instalments towards the debt and then, somewhere along the line, turned round and challenged the judgment. The

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⁹ (2010) UGSC 21

Judge found that, having elected to comply with the judgment and liquidated it, the applicant could not turn round and challenge it. She could not approbate and reprobate a course in the same proceedings.

- [27] Is the Respondent approbating and reprobating? In **Mubende Parents School Limited v *Uganda Development Bank Limited and 2 Others**⁰ Wabwire J. observed that the doctrine required two conditions: one that the person in question has two choices and is

treated as having made an election from which he cannot resile. He must have taken benefit under the first election which is inconsistent with his subsequent conduct. We do not think the doctrine is applicable here because while attributing the denial of retirement benefits to the Claimant, the Respondent does not appear to have taken any benefit from the initial promise to attend to the claim after the Claimant reached normal retirement age. The Respondent's two positions were conflicting, but we are not persuaded by the evidence that the Respondent was approbating and reprobating.

- [28] Counsel for the Claimant's other proposition was that this Court should not modify the initial contractual terms. This was the central thesis in **Maynard**. It was Counsel's view that the Respondent's bargain was to freeze the benefits and pay them later. We agree, but not for the reasons of **Maynard**. In that seventeenth century case, Lord Nottingham's view was that the Chancery, which John C. P. Goldberg, Henry E. Smith and P. G. Turner in **Equity and Law** regard as modern courts of equitable jurisdiction, **'mends no man's bargain'* was that the Court does not rewrite the contract. The Editors suggest that in various cases, Lord Nottingham granted relief which modified a contractual bargain, or showed himself willing to do so.
- [29] Are we confronted with a dispute where the Industrial Court is called to mend the Respondent's bargain? We think not. Because the Court is called upon to consider the evidence before it to determine the fairness of the matter. In this way, in **Crabb**, Lord Denning qualifies promissory estoppel in the interposition of equity. Equity, His Lordship holds, comes in, true to form, to mitigate the rigours of strict law by 'raising an equity'. Her Lordship referred what to Lord Cairns said in **Hughes v Metropolitan Railway Co** [10 1] (#page-8-0)² that the first principle upon which all Courts of Equity proceed will prevent a person from insisting on his strict legal rights—whether arising under a contract, or on his title deeds, or by statute—when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties. Short of an actual promise, if a man, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights knowing or intending that the other will act on that belief—and

¹² [1874-80] All ER Rep 187 at 191

¹⁰ (20221 UGCommC 25

¹¹ Published online by Cambridge University Press: 26 July 2019 <[httpsV/ www.cambridge.org/core/books/abs/equity-and-doctrine-and-practice/424A4F6E9CCF70391CAA46087B80C5D3](https://www.cambridge.org/core/books/abs/equity-and-doctrine-and-practice/424A4F6E9CCF70391CAA46087B80C5D3) last accessed 3.4.2025 12.17 p.m.

he does so act, that again will raise an equity in favour of the other, and it is for a court of equity to say in what way the equity may be satisfied.

- [30] The Industrial Court is a Court of equity. What is the equity of the present case? One of equity's maxims is *"ubi jus, ibi remedium"*,* which translates to *"where there is a right, there is a remedy"*.* The Claimant's initial benefits are, in our view, anchored on being ^a member of the RBS. She received a certificate of membership on the 1st of May 1984. That certificate was exhibited as CEXH3. Under Rule 3 of the Rules, membership was open to the Respondent's employees aged between eighteen and fifty and ordinarily resident in Uganda, with the exception of joining employees under other schemes requiring the written consent of the Income Tax Department. This, in our view, and in agreement with Mr. Okalany for the Claimant, is the starting point of the Claimant's entitlement to retirement benefits.
- [31] The dispute revolves around disentitlement with Rule 8 RBS being the basis of disagreement. For a fuller appreciation of the import of Rule 8(a) of the Rules, which Mr. Kalibbala maintains disentitles the Claimant, we have employed its full text. It reads:

"8. LEAVING THE EMPLOYER'S SERVICE: Subject to the provision of paragraph (b) of this Rule:

(a) Should a Member leave the service of the Employers for any reason before Normal Pension date other than on early retirement in accordance with Rule 6 he shall thereupon cease to be entitled to any benefit under the Scheme and the benefits already accrued in respect of such Member shall be dealt with by the Trustees as the Employers shall direct."

[32] Our reading of Rule 8 of the RBS Trust Deed and Rules is that it conferred a benefit on the Claimant from the 1st of May 1984 up to or until the date she left the employment of the Respondent on 10th of February 1994. Therefore, from that date, she was not entitled to any further benefit. What happened to the benefits she had accrued from the 1st of May 1984 until the 10th of February 1994, or the benefits already accrued? In our judgment, ^a very clear answer was provided in paragraph 6 of her letter of dismissal. Mr. F. X. Tinkasimire, the then Director, Human Resources, wrote the following words to the Claimant;

> *"By copy of this letter, the Chief Accountant is requested to pay you the following terminal benefits, less any dues you owe the Bank:-* ^y *"**

6. Your contributions to the Retirement Benefits Scheme are frozen until you attain the normal retirement age of fifty-five (55) years. You may take it up then with Bank of Uganda or NIC"

[33] The Claimant waited nineteen years and upon clocking 55 years in 2013, she approached the Respondent. The Respondent, by letter under the hand of Dr. Louis Kasekende, then Deputy Governor, suggested that the Claimant had ceased to be entitled to any benefit under the scheme, and it is this interpretation that the Claimant took issue with. But what did Rule 8 say? What did cease to be entitled to any benefit under the scheme mean? Because she was dismissed before reaching normal retirement age, Mr. Kalibbala believed her right to claim benefits under the RBS ceased or was extinguished. We think that the construction of this rule, wiping away the entitlement to retirement benefits, would be of limited construction.

The exception under Rule 6, for early retirement, allowed a member to retire before their 50th birthday with the employer's consent. In her dismissal letter CEXH4, the Claimant was dismissed on the grounds of indiscipline. It was also her testimony that she attained 55 years in 2013, implying that she was dismissed at the age of 36 years. Therefore, to the extent that the Claimant did not leave the Respondent's service by early retirement, she would not be entitled to any benefits under the scheme as would be available to any person retiring early. The use of the expression "cease" means to bring or come to an end.[13](#page-10-0) According to Black's Law Dictionary[14](#page-10-1) the word cease means to stop, forfeit, suspend, or bring to an end. It also means to become extinct; to pass away. Therefore, Rule 8 of the Trust Deed and Rules in the first part would be construed to the effect that upon her dismissal, the Claimant would not be entitled to any benefit under the Scheme because she did not leave the Respondent by normal retirement.

- [34] That would be all there is to the construction of Rule 8 except that the rule had a second part. The effect of the second part of the rule renders the reading of the rule in paragraph [33] above to be too restrictive. The rules of interpretation of contracts require us to read the contract as a whole and construe the trust deed and rules in their wholeness to derive the nature and intention of the parties[15](#page-10-2). The second part of the rule reads as follows:

> *and the benefits already accrued in respect of such Member shall be dealt with by the Trustees as the Employers shall direct"*

¹³ Chambers Combined Dictionary And Thesaurus Edited By Martin Manser and Megan Thomson at page 198

¹⁴11" Edn by Bryan Garner at page 277

¹⁵ Ronald Kasibante v Shell Uganda Ltd [2008]ULR 690

- [35] What was meant by "benefits already accrued"? According to the Cambridge English Business Dictionary,[16](#page-11-0) accrued benefits mean the money that an employer owes to an employee as a pension, which is based on the amount of time the employee has worked for the employer. By way of further illustration, in *IBM Canada Limited v Waterman*[17](#page-11-1)* The Supreme Court of Canada was considering a case in which IBM dismissed the Respondent who had a vested interest in IBM's defined benefit pension plan. Under the plan, IBM contributed a percentage of the Respondent's salary to the plan on his behalf. By a 7:2 majority decision, the Court described pension benefits as a form of deferred compensation for the employee's service and constituted a type of retirement savings.

- [36] The RBS history shows that when Governor Joseph Mary Mubiru affixed the Common Seal of Bank of Uganda onto the Trust Deed and Rules on the 17th day of April 1968, the object of the scheme was the provision of benefits for Members on retirement on the Normal Pension Date or relief for their dependents in the event of earlier death, and of such other or ancillary benefits as secured to Members under the Rules. The scheme offered various types of benefits, including an Annuity Benefit, a Life Assurance Benefit, and an Augmented Annuity, with the Respondent's consent. The scheme was noncontributory and under Rule 4, the Respondent made the contributions on behalf of the Members or its employees. That might explain why Dr. Kasekende's letter suggests that the reference to the Claimant's contributions was an error, but what Rule 4 meant, in our view, is that the Claimant was not required to make any contributions to the scheme in order to be entitled. Indeed, Mr. Kalibbala, in cross-examination of the Claimant and the Respondent's written submission, pressed the point that the Claimant did not make any contribution to the scheme. A non-contributory scheme means it did not require the Claimant or any employee to make any contributions.[18](#page-11-2)
- [37] In our view, the contributions would be the contributions made by the Respondent in favour of the employee up to the date of leaving the Respondent's service by any means, either termination or dismissal, as in the present case. Such contributions in respect of the Claimant would be from the 1st of May 1984, when she was first admitted to membership of the scheme, until 1994, when she was dismissed. Already accrued benefits are a form of deferred income or savings, or a form of benefit after one's work life. The Claimant, for whom the Respondent was making contributions to the Scheme, earned this deferred income every day that she served the Respondent from the 1st of May 1984 until the 10th of February 1994. In **Bank of Uganda v Betty Tinkamanyire*[19](#page-11-3)* the Supreme Court thought that it would be iniquitous for the Respondent to lose any of her

¹⁹ [2008] UGSC 21

¹⁶ [<https://dictionary.cambridge.org/dictionary/english/accrued-benefits>](<https://dictionary.cambridge.org/dictionary/english/accrued-benefits>_last_accessed_3.4.2025) last accessed 3.4.2025 8:39 p.m.

¹⁷ [2013] 3 SCR 985

¹⁸ [<https://www.lexisnexis.co.uk/legal/glossary/non-contributory-scheme>](<https://www.lexisnexis.co.uk/legal/glossary/non-contributory-scheme>_last_accessed_3.04.2025_7:46) last accessed 3.04.2025 7:46 a.m.

pension rights. The Court, in conformity with the principles laid down in **Barclays Bank of Uganda* v. *Godfrey Mubiru*[20](#page-12-0)* held the view that it could save all her pension rights that she had already earned.

[38] In contrast to the proviso in the present context which grants the Respondent discretion to deal with accrued benefits, the Court of Appeal in **Bank of Uganda v Kibuuka and Four Others*[21](#page-12-1)* considered a proviso to the RBS rules in force at the time. There, the proviso to Rule 7(a) RBS read as follows:

> *"However, in the case of an employee not satisfactorily completing his probationary period (of) service or in the case of a Member resigning to avoid dismissal for misappropriation of the Employer's monies or other serious misconduct or if^a Member shall at any time be dismissed for the above reasons there shall be payable ^a return of his contributions only together with interests at the date of his leaving service"*

The Honourable Lady Justice Mulyagonja JA found that the proviso provided for misconduct and dismissal, and the employee took the consequences of misconduct. In the present case, the proviso to Rule 8 (a) suggests that the Respondent can do with the accrued benefits as it deems fit, and in this case, it agreed to freeze them until such time as the Claimant attained normal retirement age.

- [39] We are emboldened in the view that this matter boils down to a question of construction and construction alone. In our judgment, the rights to Claimant's accrued benefits originated from Rule 3 of the Rules as a member of the scheme by virtue of being an employee of the Respondent. According to **Kasolo Kiberu,** the right to claim benefits could not have been founded solely on paragraph 6 of the dismissal letter. Instead, this letter froze the already accrued benefit until the Claimant reached normal retirement age. The Claimant had a right to accrued benefits as a form of pension or social protection. Indeed, in **Nsereko Joseph and Ors v Bank of Uganda*[22](#page-12-2)*, the Supreme Court agreed with Counsel for the Appellants that whether or not an employee is entitled to pension depends first on the contractual relationship between the employee and the respondent and, secondly, on the interpretation of circular G. 019. Circular G. 019 also created a contractual relationship between the Respondent and two categories of employees, namely those opting for early retirement and those opting for termination of their services.
- 20 F19991 UGSC 22
- ²¹ [2021] UGCA 33
- ²² [2003] UGSC 15

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- \$[40]\$ In our estimation, the dismissal letter did not create or extinguish the right to already accrued benefits. It was simply a direction on how the Claimant's already accrued benefits would be managed. The Claimant was entitled to whatever accrued benefit for which she had been depositing on by way of offering labour in exchange for the Respondent's contribution to her retirement benefit. What was left to the Respondent was to determine

what to do with the accrued benefits, and these were frozen by the dismissal letter in accordance with the proviso to Rule 8 of the Rules until she reached normal retirement age. In other words, the Respondents' Board of Directors at its 200th meeting held on the 22nd of December 1993, directed the freezing of the Claimant's terminal benefits until she attained the normal retirement age. That was a prerogative of the Respondent as the employer, as per Rule 8, and that is the decision it made.

- \$[41]\$ This Court would not reach any other conclusion other than that, beyond the date of dismissal, the Claimant was not entitled to any further benefits, but that accrued benefits would be frozen until she reached normal retirement age. While Mr. Okalany took some refuge in the contra proferentum rule, a more appropriate approach to labour jurisprudence is adopted in *Tumshabe v Normandy Company*²³ invoking the maxim 'in dubio pro operario', which principle suggests that when a court is in doubt, it ought to rule in favour of the worker. In our view, the accrued benefits were frozen until the Claimant reached normal retirement age. We find that Rule 8 of the Rules did not entirely disentitle the Claimant from accrued benefits. The fact that it was a non-contributory scheme did mean that it disentitled the Claimant to benefits already accrued under RBS.
- [42] Freezing the accrued benefits would still fit within the social protection ambit of retirement or pension benefits. The International Labour Organisation (ILO) promotes pensions based on a rights-based approach to the protection of older persons, which is grounded in international human rights and social security standards.²⁴ This is the approach taken by the ECOWAS Community Court of Justice in *Boley v Republic of Liberia and Others*²⁵. In that case, Dr. George S. Boley, former Vice Chairman of the Council of State, Republic of Liberia, resigned to contest for political office and sought his retirement benefits. The Court considered retirement benefits under Article 9 of International Covenant on Economic, Social and Cultural Rights which is **pari-materia** with the provision of Article 1 of the African Charter on Human and People's Rights and Article 22 of the Universal Declaration of Human Rights taking a social protection dimension in that everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State.

²⁵ [2019] ECOWASCJ 24

²³ [2025] UGIC 14 The principle was applied in Kasozi v United Bank of Africa Uganda Limited [2025] UGIC 28</u>

²⁴ <https://www.ilo.org/universal-social-protection-department/areas-work-social-protection-department/policy-development-and-applied-resultrich/pensions>

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- [43] And at a national level, under Section 15 of the Pensions Act Cap. 89, provides for pension and gratuity for a dismissed public officer if the Pensions Authority finds it fit. It is not an outright disentitlement. Under the National Social Security Fund Act Cap.230, a dismissed employee does not appear to be disqualified from accessing their benefits provided they meet the statutory criteria.
- [44] Therefore, a denial of retirement benefits in the instant case would not be consistent with the social protection and old-age protection dimensions of retirement benefits. In the final analysis, the Respondent holds the view that these benefits ceased, and it was an error to freeze them for 19 years. With tremendous respect and for the reasons that our construction of Rule 8 herein does not reflect any error as envisaged by the Respondent but a discretion to apply already accrued benefits in the manner it deems fit, we disagree with Mr. Kalibbala's proposition. We find and hold that under a proper construction of Rule 8 of the Rules, the Claimant is entitled to already accrued benefits for the period 1st May 1984 until the 10th of February 1994. The Respondent only froze the payment until the Claimant had reached normal retirement age.
- [45] It is our judgment that the answer to issue one is affirmative.

Issue II. What remedies are available to the parties?

Declaratory relief

- [46] The Claimant sought a declaration that she is entitled to retirement benefits from the Respondent. The Respondent contended that the Claimant was not entitled to any benefits under the RBS.
- [47] Having found as we have in issue one above, it is hereby declared that the Claimant is entitled to already accrued benefits for the period of service starting 1st May 1984 to 10th July 1994 when she was dismissed from the service of the Respondent.

Damages

General Damages

[48] Citing *Robert Coussens v Attorney General*²⁶ and other cases, Mr. Okalany contended for UGX 100,000,000/= (shillings one hundred million) in general damages. He ^a

"SCC No. ⁸ of ¹⁹⁹⁹

the Claimant had not received her benefits for over 9 years. On the authority of *Stroms v Hutchinson*^[27] Mr. Kalibbala suggested that there was no violation of rights for which the Claimant should be entitled to general damages.

- [49] Counsels' restatement of the law is accurate except that in Industrial jurisprudence, the award of general damages is better explained in **Uganda Post Limited v Mukadisi*,²⁸ where the apex Court, by unanimous decision, confirmed that an employee would be entitled to a claim for general damages as an independent award for unlawful termination. The relevant principle in determining general damages is that general damages are not tied to specific financial losses. The court assesses general damages and is not restricted to the salary or pecuniary benefit stipulated in the employment contract. They are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal.
- [50] In the present case, it is our judgment that, having been deprived of her accrued benefits for well over nineteen years, to be told that she was not entitled to any benefits, the Claimant would be entitled to general damages. Counsel did not lead evidence of her earnings per month. In our considered view, the sum of UGX 19,000,000/= (shillings nineteen million) should suffice for general damages, and we so award her.

Exemplary or punitive damages

- [51] Mr. Okalany sought UGX 100,000,000/= (shillings one hundred million) in exemplary damages. In his submissions, he split the plea for exemplary damages and also sought UGX 50,000,000/= (shillings fifty million) as punitive damages. In **Obongi v Municipal Council of Kisumu Town*[29](#page-15-1)* Spry VP puts punitive or exemplary damages in one category. We think it was not appropriate to split the claim.
- [52] Citing **Rookes and Barnard*[30](#page-15-2)* Mr. Kalibbala suggested that the conditions for an award of exemplary damages were not present. That is, there had been no oppressive, arbitrary and unconstitutional actions by government servants; the defendant's conduct was not calculated to make a profit, and no law authorised the payment of exemplary damages. Mr. Okalany submitted that the wilful acts of the Respondent were malicious, reckless and wanton in denying the Claimant her pension.

²⁰¹ ²⁷ [1905] AC 515 ²⁰ [2023] UGSC 58. We cited this decision in *Sserunjogi v Safeboda (Labour Dispute Reference 47 of 2022)* [2024] UGIC 3I ²⁹ [1971] ⁹¹ *J* ³⁰ As cited in *Obongi* *ibid* thony Wabwire

- [53] In **Nabatereqa v KCB Bank Uganda Limited*³, we observed that, from the dicta of decided cases, exemplary or punitive damages are an exception to the rule that damages are intended to compensate the injured person. These are awardable to punish, deter, and express the court's outrage at the defendant's egregious, high-handed, vindictive, oppressive, and malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. The Court of Appeal in **DFCU Bank Limited v*

Donna Kamuli^[31](#page-16-0)² held that punitive damages are awardable in employment disputes with restraint as punishment should be confined to criminal law and not the law of tort or contract. In *Kamuli* Barishaki JA set aside the Industrial Court's award of punitive damages as they were unpleaded. In the present case, the Claimant's plea is for both punitive and exemplary damages.

- [54] In the present case, we do not think that the Court should exercise restraint because the period of nineteen years to advise the Claimant of the error of 1984 is not excusable. It is an act which falls within those for which the Court's outrage must be expressed. We think that the Claimant is entitled to another UGX 19,000,000/= in exemplary damages which we so award.

Costs

[55] The Respondent sought a dismissal with costs. Ordinarily, costs follow the event.^[33] (#page-16-1) Costs in employment disputes are the exception, except in cases where the losing party has been found to have committed misconduct.^[34] (#page-16-2) In the present case, we are persuaded to award the Claimant costs. The Respondent issued a letter of dismissal on the 10th of May 1994 and waited nineteen years before telling the Claimant that her long-awaited and promised accrued benefits were not forthcoming. We are persuaded that the Claimant should have the costs of the claim.

Final Orders

- [53] In conclusion, the Claimant's case succeeds in terms of the following declarations and orders;
- (i) It is hereby declared that the Claimant is entitled to already accrued benefits for the period of service starting 1st May 1984 to 10th July 1994 when she was dismissed from the service of the Respondent. Consequent upon this declaration and under Section 8(3)(d) of the Labour Disputes(Arbitration and Settlement) Act Cap. 227, the

³¹ (20241 UGIC 14

³² (20191 UGCA 2088

³³ Section *27* Civil Procedure Act Cap. 282

³⁴ See *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH* [20231 UGIC 89

Respondent is directed to compute and pay the Claimant her already accrued benefits for her term of service and file ^a report of such payment with the Registrar of this Court within 90 days of this award.

- (ii) The Respondent is ordered to pay the Claimant the sum of UGX 19,000,000/= (shillings nineteen million) in general damages and UGX 19,000,000/= (shillings nineteen million) in exemplary damages.
- (iii) The Respondent shall pay the Claimant's costs of the claim.

It is so ordered **Signed, sealer) and delivered at Kampala this day of April 2025**

3. Hon.. Can Amos Lapenga

2. Hon. Emmanuel Bigirimana &

4th April 2025

10:24 a.m.

Appearances

1. **For the Claimant:** Mr. Douglas Rwambale

2. **None for the Respondent:**

Claimant in Court

Court Clerk: Mr. Samuel Mukiza.

Mr. Rwambale:

Court:

Matter for award. Respondent is absent, but we are ready to receive it.

It appears that there is no affidavit of service of the notice of the award served on the Respondent. Where a matter is fixed for award, it is imperative that, beyond cause listing, the matter for award, the Registrar of this Court must ensure service on all parties so that we may comply with the requirements of Section 15(2) LADASA.

Nevertheless, as the matter was cause listed, we proceeded to deliver the award in the presence of the Claimant and her Counsel. A copy of the award shall be posted on the Court website and transmitted to the Uganda Legal Information Institute.

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Prepared on 13 October 2026 · Esheria