

UGANDA / JUDGMENT

Bank of Uganda v Betty Tinkamanyire

[2008] UGSC 21 (16 December 2008)

[2008] UGSC 21

COURT

Supreme Court of Uganda

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ODOKI, C. J., TSEKOOKO, KANYEIHAMBA, KATUREEBE}{\f37\insrsid5204195 ,}
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betty tinkamanyire}

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{\b\f37\fs28\insrsid5204195\charrsid5668387 RESPONDENT

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\f37\fs24\insrsid5204195\charrsid5668387 decisions and}{\f37\fs24\insrsid5204195 orders }

{\f37\fs24\insrsid5204195\charrsid5668387 of the Court of Appeal (Mukasa- Kikonyogo, D. C.,}

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Twinomujuni , Kitumba, JJ. A) in Civil Appeal No.} {f37\fs24\insrsid10823252 }
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\par JUDGMENT OF KANYEIHAMBA, J. S. C

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 \itap0\pararsid5204195 {f37\fs28\insrsid5204195 This is a second appeal from the judgment and
 orders of the Court of Appeal in Civil Appeal No.}{

f37\fs28\insrsid10823252 } {f37\fs28\insrsid5204195 49 of 2005, in which the appellant\rqoute s
 appeal was dismissed with costs.

\par The facts of this case are not in dispute. The r

espondent was an employee of the appellant at the time she was wrongly dismissed from her
 employment. The dismissal followed a circular prepared and published to all employees of the
 appellant and prominently displayed on its notice boards reading as fol

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Staff who are incompetent, poor time managers (particularly late coming), alcoholic, thieves,
 fraudsters and those who are insubordinate, will no longer be tolerated in the Bank.\94 }
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 pinned on the appellant\rqoute s

notice boards and read by all and sundry, the respondent received a letter signed by a senior
 member of the appellant\rqoute s management namely, the Deputy Governor, informing the
 respondent that at a meeting held on the 16}{

August 2002, the Board of Directors

of the appellant had resolved to retire her from its services with immediate effect. No reasons were given in the termination letter by the Deputy Governor but he offered the respondent three months salary in lieu of notice, commutation of annual leave

and pension cash commutation. She was also advised to sort out and clear her outstanding obligations to the appellant. Indeed, when the appellant

s officials disclosed the nature, extent and value of those obligations, her stated terminal benefits were virtually wiped out by the appellant's claims of the alleged respondent's obligations to it.

Subsequently, the respondent filed a suit in the High Court claiming reinstatement and damages or in the alternative, compensation for involuntary or forced retireme

nt which she considered to be unfair, unjust, arbitrary, harsh, wrongful and illegal and which resulted in her loss of reputation, employment, all leading her to suffer mental anguish. The appellant denied liability asserting that it was within its right

s to terminate the respondent's employment and claimed that the action was done lawfully.

After considering counsel's submissions and arguments on the facts agreed between the parties, the learned trial judge (Okumu Wengi) allowed her claims and awarded com

pensatory damages which became the subject of the appeal in the Court of Appeal by the appellant. The learned Justices of Appeal dismissed the appeal and confirmed or varied the orders of the High Court. This appeal is mainly about that confirmation and

orders.

The Memorandum of Appeal contains five grounds framed as follows:

1. The learned trial judge erred in law in awarding the respondent three months salary in lieu of notice, commutation of annual leave and pension cash commutation.

2. The learned trial judge erred in law in awarding the respondent compensation for involuntary or forced retirement.

The learned Judges of the Court of Appeal erred in law in upholding the award to the Respondent of damages for wrongful dismissal which exceeded the three (3) months salary which would have been payable to her in lieu of notice.

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The Learned Judges of the Court of Appeal erred in law and fact in upholding the award to the Respondent of general damages of Shs. 30,000,000/= and punitive damages of Shs. 20,000,000/= there having been no basis in fact or}

in}{\b\f37\fs28\insrsid5204195\charrsid4075258 law for either of the award and/or for awards in that quantum.

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The Learned Judges of the Court of Appeal erred in law and in fact in upholding the award to the Respondent of payment of three (3) months salary

in lieu of notice in the sum of Ug. Shs. 12, 44,000/= in spite of it having been an agreed fact that these monies had indeed been paid to her by a debt offset.

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arguments in this court that the dispute revolves around the nature and quantum of the damages awarded to the respondent as shown in each ground of appeal.

\par Mr. Masembe - Kanyerezi represented the appellant while Mr. Richard -Okallany represented the respondent in this court Mr. Masembe - Kanyerezi argued grounds 1 and 2 of the appeal together and ground 3, 4 and 5 separately.

\par On the first two grounds, counsel for the appellant contended that while conceding that the dismissal was unlawful that the app

ellant is only liable to pay such sums of money as the respondent would have received in lieu of notice together with any such other sums including commuted pension as she would have received had the termination of her employment been lawful. Counsel cri

ticized the Court of Appeal for confirming the decision of the learned trial Judge who based the respondent\rqoute

s compensation on the number of months she would have worked and paid for up to the time of her retirement had she not been unlawfully dismissed. Counsel for the appellant cited the cases of {{\b\f37\fs28\insrsid5204195\charrsid16332370 John Eletu }}

{\b\f37\fs28\insrsid5204195 v}{\b\f37\fs28\insrsid5204195\charrsid16332370 Uganda Airlines Corporation (1984) H. C. B. 39 and Godfrey Mubiru }}{\b\f37\fs28\insrsid5204195 v}{\b\f37\fs28\insrsid5204195\charrsid16332370 Barclays Bank of Uganda Limited, }}

{\f37\fs28\insrsid5204195 Civil Appeal No 1 of 1998, (S. C) (Unreported) for his submissions on these grounds.

\par Mr. Okallany for

the respondent opposed the Appeal and supported the findings and awards of both the Court of Appeal and the High Court. On ground 1, counsel for the respondent contended that at the time the respondent was unlawfully dismissed she was in advancing years

with little prospects of finding alternative employment elsewhere but still young enough to work for the appellant for a long period of time. Counsel cited }

{\b\f37\fs28\insrsid5204195\charrsid2119304 Nartey Tokoli and Others }}

{\b\f37\fs28\insrsid5204195 v}{\b\f37\fs28\insrsid5204195\charrsid2119304 Voltar Aluminum Ltd}{\b\f37\fs28\insrsid5204195 . }{\f37\fs28\insrsid5204195\charrsid2119304 1990}{\f37\fs28\insrsid5204195 , L. R. C. (Comm) P5 79 -604 and }}

{\b\f37\fs28\insrsid5204195\charrsid2119304 Coussens v Attorney General}{\f37\fs28\insrsid5204195 (1999) I. E. A.41 in support of his submissions on damages and compensation for unlawful dismissal.

\par I will first consider ground 1. it is trite that, a court of law should not use its powers to force an employer to retake an employee it no long

er wishes to continue to engage. However, depending on the circumstances, an employee who is unfairly or unlawfully dismissed, as in this case, should be compensated adequately in accordance with the law. Be that as is it may, on dismissal, whether unfa

ir or unlawful, this Court has had opportunity to pronounce itself on the matter.

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 Barclays Bank of Uganda }\b\f37\fs28\insrsid5204195 v}{

\b\f37\fs28\insrsid5204195\charrsid6493908 Godfrey Mubiru, }
 {\f37\fs28\insrsid5204195\charrsid2105667 C. A No.1 of 1998}{\f37\fs28\insrsid5204195 (S. C)
 (Unreported), I had opportunity to say.

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 cont}{\b\f37\fs28\insrsid5204195 r}{

\b\f37\fs28\insrsid5204195\charrsid4350201 act of employment, like the present}
 {\b\f37\fs28\insrsid5204195 ,}{\b\f37\fs28\insrsid5204195\charrsid4350201 stipulates that a party
 may terminate it by giving notice of}{\b\f37\fs28\insrsid5204195 a}{

\b\f37\fs28\insrsid5204195\charrsid4350201 specified period, such contract }
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an be terminated by giving the stipulated notice for the period. In default of such notice by the
 employer, the employee is entitled to receive payment in lieu of notice and where no period for
 notice is stipulated, compensation will be award}{

\b\f37\fs28\insrsid5204195 ed}{\b\f37\fs28\insrsid5204195\charrsid4350201 for reasonable notice
 which should have been given, depending on}{\b\f37\fs28\insrsid5204195 the}
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nature and duration of employment. Thus}{\b\f37\fs28\insrsid5204195 ,}
 {\b\f37\fs28\insrsid5204195\charrsid4350201 in the case of }
 {\i\f37\fs28\insrsid5204195\charrsid4475981 Lees }{\i\f37\fs28\insrsid5204195 v}{

\i\f37\fs28\insrsid5204195\charrsid4475981 Arthur Greaves Ltd, }
 {\f37\fs28\insrsid5204195\charrsid4803958 (1974){\i\f37\fs28\insrsid5204195\charrsid4803958)}
 {\f37\fs28\insrsid5204195\charrsid4803958 I. C. R. 501}{

\b\f37\fs28\insrsid5204195\charrsid4350201 , it was held that payment in lieu of notice can be
 viewed as ordinary giving of notice\85. The right of the employer to terminate the contract of
 service}{\b\f37\fs28\insrsid5204195 ,}{

\b\f37\fs28\insrsid5204195\charrsid4350201 whether by giving notice or incurring }
 {\b\f37\fs28\insrsid5204195 a}{\b\f37\fs28\insrsid5204195\charrsid4350201 penalty of paying
 compensation in lieu of notice for th

e duration stipulated or implied by the contract cannot be fettered by the }
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employee is entitled to full

compensation only in those cases where the period of service is fixed without provision for giving notice.⁹⁴

The contention is that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

I would confine the compensation for the unlawful dismissal of the appellant to the monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice. The principles established by this court in *Barclays Bank of Uganda v. Godfrey Mubiru* (supra) remain good law that governs the relationship between an employer and employees with regard to termination of the latter's employment.

I would therefore allow ground 1 of the appeal and limit the appellant's liability to compensation in lieu of notice of three months. In that respect, counsel for the parties disclosed that compensation in lieu of notice had been offered to, accepted and received by the respondent. Therefore nothing more needs to be said on this matter again. I would therefore hold that ground 1 of the appeal partially succeeds.

My findings and decision on ground 1 effectively nullifies the awards given in ground 2, 3 and 5 which also ought to succeed in this appeal.

I will now determine ground 4 of the appeal. For the appellant, Mr. Masembe - Kanyerezi criticized the Justices of Appeal for confirming the award of general damages in the sum of Sh.30,000,000 and of punitive damages in the sum of Shs. 20,000,000. Counsel contended that a court is only limited to award aggravated damages. In his opinion, the award of the

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mbined sums of 30,000,000 and 20,000,000 to make 50,000,000 is too excessive and has no basis in law and moreover, no reasons were given to justify it. Mr. Masembe - Kanyerezi contended that for a case of this nature general damages should be in the regio

n of 10,000,000 shillings.

\par For the respondent, Mr. Okallany supported the awards of both aggravated and punitive damages as justified and reasonable. In his view, damages awarded on the facts and evidence heard by a trial judge and confirmed by the first

appellate Court ought not to be interfered with by a second appellate court. Counsel contended further that in assessing the general and punitive damages, the courts below carefully analyzed and were guided by the pleadings and evidence in this case. T

hus, in her lead judgment, Kitumba, J. A, reviewed the evidence and observed:-

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these}\b\f37\fs28\insrsid5204195\charrsid621597 damages. She was a senior }
\b\f37\fs28\insrsid5204195 member of staff and her }\b\f37\fs28\insrsid5204195\charrsid621597 services were terminated wrongly. }\b\f37\fs28\insrsid5204195 She}{

\b\f37\fs28\insrsid5204195\charrsid621597 was greatly embarrassed and inconvenienced. She was classified among people who were alcoholics, late comers and fraudsters who were mentioned in Exhibit P. S. }\i\f37\fs28\insrsid5204195\charrsid12000769

In Kiyingi }\i\f37\fs28\insrsid5204195 v}\b\f37\fs28\insrsid5204195\charrsid621597 }
\i\f37\fs28\insrsid5204195\charrsid12000769 National Insurance Corporation}
\b\f37\fs28\insrsid5204195\charrsid621597 , }\f37\fs28\insrsid5204195\charrsid2580327

(1985) H. CB 4}\f37\fs28\insrsid5204195 ,}\f37\fs28\insrsid5204195\charrsid2580327 }
\b\f37\fs28\insrsid5204195\charrsid621597 where a senior member of staff}
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\b\f37\fs28\insrsid5204195 we}\b\f37\fs28\insrsid5204195\charrsid621597 re wrongly terminated, the court awarded him general damages for embarrassment and inconvenience\94. }
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judgment, the learned Deputy Chief Justice, Mukasa- Kikonyogo observed.

The humiliation suffered by the respondent on her return from abroad on official duty only to find her successor seated in her chair, was unacceptable and, hence justified the award of punitive damages.

The respondent on her return from abroad on official duty only to find her successor seated in her chair, was unacceptable and, hence justified the award of punitive damages.

The illegality and wrongs of the appellant were compounded further by its lack of compassion, callousness and indifference to the good and devoted services the appellant had rendered to the bank. After her unlawful dismissal, the appellant's

officers carried out an inquiry into the respondent's history of employment and performance. They found that not only had she a clean record but

her zeal and performance as an employee of the appellant were exemplary. In the inquiry, her fellow workers expressed praises and commendations of her. The report of the inquiry showed quite clearly that this should have been an excellent case where the

respondent should have been reinstated with apologies. Instead, the senior managers of the appellant chose to stand on their high horse of pride and confirmed the illegal termination of her employment.

In my opinion, the acts of the appellant were not only unlawful, but were degrading and callous. In my view, a good case has been shown for the respondent to be eligible for the award of aggravated damages.

From the facts and evidence as well as submissions of counsel in this case, the respondent was only for

years from the date of retiring with full pension rights. The evidence shows that she would have continued to serve the appellant faithfully, diligently and in an exemplary manner. In my opinion therefore, it would be iniquitous for her to lose any of

her pension rights. Consequently, in conformity with the principles laid down by this Court in *Barclays Bank of Uganda v. Godfrey Mubiru* (supra), while the court may not order her reinstatement, it is my view that it can save all her pension rights that she had already earned.

In my opinion therefore, this appeal partially fails. I would confirm the findings, decisions and orders of the Court of Appeal and High Court and modify them as follows:

In my opinion therefore, this appeal partially fails. I would confirm the findings, decisions and orders of the Court of Appeal and High Court and modify them as follows:

In my opinion therefore, this appeal partially fails. I would confirm the findings, decisions and orders of the Court of Appeal and High Court and modify them as follows:

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\jclisttab\tx1440\aspalpha\aspnum\faauto\ls2\adjustright\rin0\lin1440\itap0\pararsid5204195
{\f37\fs28\insrsid5204195 I would hold that this appeal substantially fails.

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enp1033\insrsid5204195 \hich\af37\dbch\af0\loch\af37 (b)\tab}I would

award the respondent aggravated damages in the sum of Uganda Shillings 100,000,000 (one
hundred million)

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enp1033\insrsid5204195 \hich\af37\dbch\af0\loch\af37 (c)\tab}I would order that the respondent be
paid her accrued pension and other terminal benefits, if any.

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enp1033\insrsid5204195 \hich\af37\dbch\af0\loch\af37 (d)\tab}I would order that the appellant pay
'bd the costs of this appeal and of the two courts below.

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KATUREEBE AND OKELLO, JJ. SC)

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\par CIVIL APPEAL NO. 12 OF 2007

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\par BETWEEN

\par BANK OF UGANDA\85\85\85\85\85\85\85\85\85. APPELLANT

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\par AND

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\par BETTY TINKAMANYIRE\85\85\85\85\85\85. RESPONDENT

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[An appeal from the decision of the Court of Appeal at Kampala (Mukasa-Kikonyogo DCJ,
Twinomunjuni and Kitumba . JJA) in civil Appeal No. 49 of 2005 dated 25]
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\par }\b\fl\fs28\insrsid5204195\charrsid1274743 JUDGMENT OF ODOKI, CJ

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I have had the advantage of reading in draft the judgment prepared by my learned brother Kanyeihamba JSC, and I agree with it and the orders he has proposed.

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\par As the other members of the court also agree, this appeal is allowed in part with orders in the terms proposed by Kanyeihamba JSC.

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\par Dated at Mengo this 16}{\f1\fs28\super\insrsid5204195\charrsid1274743 th}
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\pararsid5204195 {\b\f2\fs28\ul\cgrid0\insrsid5204195\charrsid9576645 JUDGMENT OF
TSEKOOKO, JSC

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reading in draft the judgment prepared by my learned brother, Kanyei

hamba, JSC., which he has just delivered and I agree with his conclusions}
{\f2\fs28\cgrid0\insrsid5204195 and orders}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 .}
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\par As Mr. Masembe Kanyezezi, counsel for the appellant correctly conceded during the hearing
of the appeal, this appeal is essentially on the quantum of damages. The five grounds of the
appeal complain about the various awards given by the two courts below.

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\par Th){\f2\fs28\cgrid0\insrsid5204195 e facts of the case are well summarised in the judgment of
my learned brother. Just to emphasise. {\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 The
respondent who had served the appellant}{

\f2\fs28\cgrid0\insrsid5204195 bank){\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 for ten year}
{\f2\fs28\cgrid0\insrsid5204195 s){\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 in }
{\f2\fs28\cgrid0\insrsid5204195 various }

\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 position){\f2\fs28\cgrid0\insrsid5204195 s}
{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 and apparently without blemish on her record}
{\f2\fs28\cgrid0\insrsid5204195 had only }

\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 four years){{\f2\fs28\cgrid0\insrsid5204195 left be}
{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 for){\f2\fs28\cgrid0\insrsid5204195 e her }
{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 normal}{

\f2\fs28\cgrid0\insrsid5204195 retirement. Indeed on 25}
{\f2\fs28\supercgrid0\insrsid5204195\charrsid10504942 th){\f2\fs28\cgrid0\insrsid5204195

August 2002, the appellant sent the respondent to Germany to understudy the Human Resource
Department of the Germany Bank wh

ich would imply she was still needed. Surprisingly, upon her return she was handed a letter dated
21/8/2002 retiring her. No reason was assigned for this premature retirement nor was }
{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114

she given opportunity to be heard){\f2\fs28\cgrid0\insrsid5204195 before that retirement. The two
courts below correctly found that this amounted to summary unlawful dismissal.

\par){ {\f2\fs28\cgrid0\insrsid5204195\charrsid9243114

\par }{\f2\fs28\cgrid0\insrsid5204195 Apparently }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 the Governor of the appellant }{\f2\fs28\cgrid0\insrsid5204195 had earlier circulated a circular }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 w}{

\f2\fs28\cgrid0\insrsid5204195 arning that drunkards, }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 lazy}{\f2\fs28\cgrid0\insrsid5204195 , insubordinates, fraudsters and }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 incompetent employees would have

}{\f2\fs28\cgrid0\insrsid5204195 their }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 services terminated. In the absence of any reasons to explai}{\f2\fs28\cgrid0\insrsid5204195 n h}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 er dismissal}{

\f2\fs28\cgrid0\insrsid5204195 ,}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 it is }{\f2\fs28\cgrid0\insrsid5204195 not un}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 reasonable to infer that she was included among th}{

\f2\fs28\cgrid0\insrsid5204195 at }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 category }{\f2\fs28\cgrid0\insrsid5204195 of undesirable employees. }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 Her case is }{\f2\fs28\cgrid0\insrsid5204195

therefore }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 a special one and }{\f2\fs28\cgrid0\insrsid5204195 consequently }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 calls for an}{\f2\fs28\cgrid0\insrsid5204195 appropriate}{

\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 award of}{\f2\fs28\cgrid0\insrsid5204195 }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 damages}{\f2\fs28\cgrid0\insrsid5204195 and this is what the two courts below emphasised}{

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\par The principle govern}{\f2\fs28\cgrid0\insrsid5204195 ing such an award is well known. Among the cases cited to us, I find the}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 }{\f2\fs28\cgrid0\insrsid5204195 decision of the Supreme Court of Ghana in }

\b\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 Nortey \endash Tokoli & Others Vs. Volta Aluminium Co. Ltd.}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 (1990) LRC (Comm) pages 579,}{\f2\fs28\cgrid0\insrsid5204195 at}{

\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 }{\f2\fs28\cgrid0\insrsid5204195 P.}{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114 599}{\f2\fs28\cgrid0\insrsid5204195 apposite. It concerns assessment of }{\f2\fs28\cgrid0\insrsid5204195\charrsid9243114

damages in cases of wrongful termination of employment}{\f2\fs28\cgrid0\insrsid5204195 . It is unnecessary to go into the facts of that case except to say that because of the draught in 1982, the respondent company sto

pped some production, sent the 463 appellants and some other workers on leave under certain conditions which included an understanding that if electricity supply to the company were restored, they might be given back their jobs.

\par

\par There was an agreement whi

ch provided that, if they were not recalled by 1 January 1984, they were to be considered redundant and the sum due under the loans would be converted to redundancy payments calculated in accordance with the collective agreement which provided for 2 month

s\quote notice to be given of any dismissal or two months\quote

salary in lieu of notice. Eventually the appellants were not recalled and filed a suit and claimed in the High Court (i) damages for wrongful dismissal, (ii) a declaration that the purported termination

was null and void and of no effect and (iii) arrears of all salary, allowances and benefits due from their respective dates of wrongful termination to the date of judgment. Except for (ii) the High Court allowed, inter alia, the claim for damages for wr

ongful dismissal and awarded the equivalent of 28 months\quote salary comprising, in each case two months\quote salary in lieu of notice, 14 months\quote salary for the period 31 October 1982 to 1 January 1984, and 12 months\quote

salary in respect of a reasonable period during which the appellants were to look for other employment. On appeal the Court of Appeal upheld the decision of the High Court, except for substituting four months\quote

salary for the 12 months awarded by the High Court as compensation. The appellants and the company appealed to the Supreme Court of Ghana.

\par The majority on the court allowed the appeal and dismissed the cross appeal by the respondent company. The majority held that:

\par

\par The common law in respect of the relationship of master and servant could be applied in the present case to resolve the question of whether the declaration sought should be granted (see p 598, post). \85\85\85\85\85\85\85

the purported termination of the appellants\quote employment were null and void and of no effect and the appellants were entitled to a declaration accordingly and their appeal was allowed in that respect.

\par }{\f2\fs28\cgrid0\insrsid5204195\charrsid4868646 Two principles regarding the assessment of damages in a case of wrongful termination of employment, both derived from the United Kingdom, competed in Ghana for acceptance. The first was that set out in }

\b\i\fs28\cgrid0\insrsid5204195\charrsid4868646 Hadley v Baxendale}

{\f2\fs28\cgrid0\insrsid5204195\charrsid4868646

(1854) 9 Exch 341, [1843-60] All ER Rep 461, and the second was that which did not confine the award of damages to wages of the dismissed worker. However, in Ghana, the reasoning of the Court of Appeal in }

\b\i\fs28\cgrid0\insrsid5204195\charrsid4868646 Agbettah v Ghana Cocoa Marketing board}

{\f2\fs28\cgrid0\insrsid5204195\charrsid4868646

(1984-86) GLRD 16 should be followed so that the courts were able to award damages which reflected the courts\quote

disapproval of a wrongful dismissal and the sum was not confined to an amount equivalent to the worker\quote s wages. In the present case the trial judge had awarded, in the exercise of his discretion, a sum equivalent to 12 months\quote salary,

and that order should be restored (see p 604, post). }{\f2\fs28\cgrid0\insrsid5204195

\par }{\f2\fs28\cgrid0\insrsid5204195\charrsid4868646 Taylor, JSC., who wrote the lead judgement expressed his opinion at page 603 as follows:

\par }{\f2\fs28\cgrid0\insrsid5204195

\par And so we arrive at a situation where two principles for measuring damages compete for acceptance in

our jurisdiction. I think in the selection we must be guided by certain considerations. A Ghanaian who has suffered a wrong expects redress and our law of wrongful dismissal should reflect it.

\par

\par It seems to me that the Court of Appeal judges have already set the pace in a landmark decision and it will be a retrograde step to discourage and interfere with the progressive precedent they have set. I refer to }

\b\i\fs28\cgrid0\insrsid5204195\charrsid94034 Agbettah v Ghana Cocoa Marketing Board}

{\f2\fs28\cgrid0\insrsid5204195 (1984-86) GLRD 16. In that case Apaloo CJ, with whom Francois

and Abban, JJA, as they then were, concurred, held in a case in which the }

{\b\fs28\cgrid0\insrsid5204195\charrsid4868646 plaintiffs had been wrongly retired,}

{\f2\fs28\cgrid0\insrsid5204195 }{\b\fs28\cgrid0\insrsid5204195\charrsid5055131

that it would be just and proper for the court to mark its disapproval of the plaintiffs' unconstitutional retirement by ordering that the defendant board pay to each plaintiff an amount equal to two years' salary in addition to receiving their entitlements under their contract of employment.

\par

\par I respectfully find the above reasoning sound.

\par

\par I think that the respondent was entitled to fair and decent treatment by the appellant. She should not have been retired in the manner she was.

\par

\par In the result I agree that the appeal succeeds in part but the appellant will pay to the respondent one half of the cost of this appeal and of the two courts below.

\par

\par

\par Delivered at Mengo this 16th day of December 2008.

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\par

J. W. N. TSEKOOKO

JUSTICE OF THE SUPREME COURT.

\par

THE REPUBLIC OF UGANDA

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 {\b\i\lang2057\langfe1033\langnp2057\insrsid5204195\charrsid4142047 [An appeal from the
 decision of the Court of Appeal at Kampala (Mukasa-kik

onyogo, DCJ., Twinomujuni, and Kitumba JJ. A) in Civil Appeal No 49 of 2005 dated 25}
 {\b\i\lang2057\langfe1033\super\langnp2057\insrsid5204195\charrsid4142047 th}
 {\b\i\lang2057\langfe1033\langnp2057\insrsid5204195\charrsid4142047 April 2007].

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\par }{\f38\fs36\ul\lang2057\langfe1033\langnp2057\insrsid5204195\charrsid4142047 JUDGMENT
 OF KATUREEBE, JSC.

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I have the benefit of reading in draft the judgment prepared by learned brother, Kanyeihamba,
 JSC and I concur with his judgment and the orders he has proposed therein.

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\par Bart M. Katureebe

\par }{\b\fs28\lang2057\langfe1033\langnp2057\insrsid5204195\charrsid4142047 Justice of The
Supreme Court}{\b\fs28\lang2057\langfe1033\langnp2057\insrsid5204195

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ararsid5204195 {\b\i\fs28\insrsid5204195 KATUREEBE AND OKELLO, JJSC.)

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 (Mukasa-Ki

konyogo, DCJ, Twinomujuuni and Kitumba, JJA) dated 25}
 {\b\i\fs28\super\insrsid5204195\charrsid4218778 th}{\b\i\fs28\insrsid5204195 April 2007, at
 Kampala in Civil suit No. 49 of 2005].

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\par JUDGMENT OF G. M. OKELLO, JSC:

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 of my learned brother, Kanyeihamba, JSC, and I agree w

ith his reasoning and conclusion.

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I should add, for emphasis, that it is trite law that an appellate court will not interfere with an
 award of damages made by the trial court unless it has acted upon a wrong principle of law or
 that the amount awarded is s

o high or so low as to make it an entirely erroneous estimate of damages to which the plaintiff is
 entitled to. This principle was stated by the Court of Appeal for Eastern Africa in }
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Rambhai Mahjibhai Patel - vs - The Patidor Samaj and Anor (1944) 11 EACA 1.}
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\par

\par In the instant case, I accept Mr. Masembe-Kanyerezi's contention that for a case of this nature, a court is only limited to award of aggravated and not punitive damages. This view is supported by {\b\i\fs28\insrsid5204195

Esso Standard (U) Ltd. - vs - Semu Amanu Opio, Civil Appeal No. 3 of 1993, }
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where this Court (Platt, JSC, as he then was) stated that the principles of exemplary or punitive damages cannot be extended to breach of contract and that there is no precedent for that extension.

\par The Court of Appeal, there

fore, erred to confirm the award of Shs. 20,000,000= made by the trial judge as punitive damages. This was based on a wrong principle of the law. Even if the heading of the award were described as aggravated, the amount awarded,

was so low as to be an erroneous estimate of the damages to which the respondent is entitled to given the circumstances of this case.

\par I, therefore, concur with the award of Shs. 100,000,000= (one hundred million shillings) as aggravated damages proposed by

my learned brother, Kanyeihamba, JSC. I also concur with the proposal that the appellant pays one half of the costs of this appeal here and in the two courts below since the appeal succeeded only partially.

\par {\b\i\fs28\insrsid5204195 Dated at Mengo this 16}
 {\b\i\fs28\super\insrsid5204195\charrsid10575814 th}{\b\i\fs28\insrsid5204195 day of December 2008.

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 {\b\i\fs28\insrsid5204195 G. M. OKELLO

\par JUSTICE OF THE SUPREME COURT}{\fs28\insrsid5204195

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Prepared on 13 October 2026 · Esheria