**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE NO.181/2015**

**(ARISING FROM HC.C.S 15 0F 2015)**

**PROF. ISAIAH OMOLO NDIEGE …….. CLAIMANT**

**VERSUS**

**KYAMBOGO UNIVERSITY …….. RESPONDENT**

**BEFORE**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

1. **MR. JULIAN NYACHWO**
2. **MR.MAVUNWA EDSON HAN**
3. **MR. EBYAU FIDEL**

**AWARD**

**BRIEF FACTS**

The claimant was employed by the respondents as vice chancellor of Kyambogofor 5 years. His appointment letter dated 4/12//2008 was amended in two letters dated 22/12/2008 and 28/01/2009. The contract took effect on the 12/01/2009 when he assumed duty. The contract expired on the 12/01/2014 and was not renewed. The claimant contended that on expiry of the contract the respondents failed and or refused to pay him his terminal benefits hence this suit. He claimed for special damages of UGX. 494,907,994/-, exemplary

damages, General Damages, interest on special damages and the cost of medication and the costs of the suit.

**AGREED ISSUES:**

1. **Whether the Respondent breached the claimants contract of employment by not paying contractual emoluments as follows:**

i. **Gratuity immediately on expiry of the five year contract on the 12th January 2014.**

ii. **Repatriation costs on expiry of the five year contract on the 12 January 2014**

iii. **Leave allowance for 2013 immediately after leave was granted**

2. **Whether the claimant's gratuity is subject to taxation?**
3. **Whether the claimant was entitled to 30% salary enhancement for scientists from financial years 2012/13 to financial year 2013.2014?**
4. **Whether the claimant was underpaid for**

i. **Domestic servants Allowances for the 5 year contract**

ii. **Security Guards Allowance for the 5 year contract.**

iii. **Top-up Allowance for 2012/13 and 2013.14 financial year.**

5. **Whether the claimant was discriminated from receiving headship allowance between January 2009 and June 2011?**
6. **Whether the claimant was paid telephone allowance for the 5 year contract?**
7. **Whether the claimant was entitled to reimbursement of weekend newspapers?**
8. **What are the remedies available to the claimants under the circumstances?**

**RESOLUTION OF ISSUES:**

**1. Whether the Respondent breached the claimant's contract of employment by not paying contractual emoluments as follows:**

i. **Gratuity immediately on expiry of the five year contract on the 12th January 2014.**

ii. **Repatriation costs on expiry of the five year contract on the 12 January 2014**

iii. **Leave allowance for 2013 immediately after leave was granted**

It was submitted for the claimant thathis letter of appointment stipulated that he would receive his gratuity at the end of the contract. He had accordingly notified the respondents on the 16/12/2013and received a response in the affirmative on the 9/01/2015. It was contended that the respondents had however failed to pay the gratuity, accrued leave and baggage and passage allowances amounting to UGX. 347,311,656/= as had been agreed. He then filed Labour Dispute No. 15 of 2015 at KCCA Nakawa Division on 30/01/2015 which he believed compelled the Respondents to make a partial payment of UGX. 149,997,000/- on 3/03/2015 and another instalment of UGX. 87,660,159/- by compulsion of this Court. The claimant contended that to date an outstanding balance of UGX. 109,654,497/- of his gratuity remains unpaid. In addition to this balance the claimant had also demanded payment of repatriation costs amounting to UGX. 6,477,300/- which according to him should have been paid on the expiry of the contract on the 12/01/2014 or soon thereafter.

It was contended furtherthat reasons given by the respondents witness Mr. Madaya's RW1, regarding the respondents delay to pay were afterthoughts calculated to mislead Court. In Counsels opinion these were only intended to maliciously delay the claimant'spayment because the respondent had not proved theseassertions. Even then Counsel was of the view that by their letter dated 9/01/2014, the respondents had committed to pay because they were actually financially sound and therefore their excuses could not hold.

The respondents in reply neither disputed the fact that the claimant was entitled to payment of his gratuity at the expiry of his contract nor did they deny

theirconsenting to pay the gratuity at the expiry of the contract. They however refuted the claim that the payment wassupposed to be made on the actual day of expiry of the contract.

It was contended for the respondentthat in their letter dated 9/01/2014, they had agreed to process the gratuity and had no intention of deliberately denying it to shim ordelaying its payment by reason of malice.

It was argued further that the respondents had experienced some financial challenges which were not peculiar to the claimant alone but to nearly all Public Institutions,a fact they asserted had already been taken judicial notice of by the Courts in the case of **A.G VS GOODMAN AGENCIES, SCCA No. 5 of 2010.** It was their case that in addition to the financial constraints, the respondents had to reconcile the claimants several claims and hence the delay. They insisted that at all times it was their intention to pay the claimants gratuity and they did make part payment to him. They however disputed the claim that there was an outstanding balance of UGX. 109,654,497/- and left it to Court to resolve this.

The respondentalso admitted to consenting to the payment of the repatriation was in dispute was the amount. It was argued that the respondents had to verify the claim hence the delay to pay. It was further contended that whereas the claimant applied an exchange rate of USD. 2658.40 Per dollar, for claim of USD 649and 1750 for repatriation his sum total of UGX. 6,477,300/=, varied from Ugx.6, 377,501/- which the respondents believed was the correct amount.

The respondents also disputed the claim for delayed payment for leave allowance for the year 2013 and insisted that it had already been paid as per the payment schedule submitted to court on the 17/08/2016.

After evaluating the evidence on the record, the submissions of both counsel and the law, we found that it was not disputed that the claimant was entitled to

payment of gratuity after the expiry of his contract by his contract of service and section 43(6) of the Employment Act, 2006. It is also a fact that the respondents had not paid his gratuity on the actual date of the expiry of the contract or as stipulated by the law. Section 43(6) provides:

***" ….***

***(6) On the termination of his or her employment in whatever manner, an employee shall, within seven days from the date on which the employment terminates be paid his or her wages and any other remuneration and accrued benefits to which he or she is entitled."***

Wedid not find any evidence to indicate that the respondents were under any form of financial distress that could have caused a delay in paying the claimants gratuity as they claimed. That notwithstandingthis court in the case of **OCHEINGJOSEPHAT VS MONITOR PUBLICATIONS LTD LABOUR DISPUTE NO.206/2015** took judicial notice of the fact that it is it practically impossible to pay terminalbenefits such as gratuity within 7 days after the termination of an employee's contract of service. In that case the court held that:

"***It is an established best practice that prior to entering into or exiting a contract of employment there is a process that has to be undertaken. This process includes but is not limited to; in the case of entry; the assessment for suitability of the job, offer and acceptance of the contract of employment and terms and conditions of service etc., similarly in case of exit, disciplinary proceedings in case of misconduct, giving of notice period in case of termination or retirement or expiry of contract and the computation of terminal benefits including gratuity among others.***

***Our interpretation of section 43(6) therefore is that once an employee's contract terminates in whatever manner he or she should be paid 7 days after***

***the completion of the exit process. The process should be concluded within a reasonable time and in our considered opinion, where the duration of the exit process has not been expressly stipulated in a contract of employment, it should not exceed three months."***

In the instant case we are inclined to agree with the respondents that it was inconceivable that theclaimant's gratuity could have been paid within 7 days of the expiry of his contract of service. We however take exception of the time it took the respondents to fulfill their obligation to the claimant. Although the evidence showed that they were willing to pay the claimants benefits by the letter dated 9/01/2014, they did not prove the financial challenges they claimed were the cause of the delayed payments. We also found the argument that they had to reconcile the claimants many claims insubstantial. We believe that the respondents knew that the claimants contract was due to expire and by their letter of 9/01/2014, they had no intention of renewing it. The Accounting Officers was therefore expected to take the responsibility of ensuring that the exit process which included the reconciliations, verifications and investigations and allocation of funds for the payment of the claimants benefits was undertaken in time and as already decided in the case of **OCHIENG(supra)** within a three month period.

We are satisfied that by consenting to pay, the respondents had assumed responsibility and had at all times been willing to pay the claimant and although they state the delay to pay was not deliberate they had violated Section 43(6). The law is however silent on what remedy would accrue to the claimant for this violation of this provision. In the premises for the 14 months that the respondents unreasonably withheld the claimant'sgratuity we award him Ugx. 18,000,000/- as General damages.

**Repatriation Allowance**

With regard to the payment of repatriation allowance we find that the discrepancy between the claimants claim of UGX. 6,477,501 and the respondent's calculation of UGX. 6,377, 501/- had created a mathematical error of UGX. 100,000/=. This being Public money we agree with the respondents that the error had to be verified and corrected.We however think that the verification and correction needn't have taken 3 years.Although the mistake was occasioned by the claimant it could have been resolved without so much delay. In the premises the claimant should be paid repatriation Allowance of UGX. 6, 337, 501 /- which is the correct amount.

**Out standing balance of UGX. 109,654,497/=**

The claimant contended that the respondents still owed him an outstanding balance of UGX.109,654,497/- of his gratuity. According to the respondents computation of the claimants gratuity (sent to Court in a letter dated 28/04/2016), gratuity was computed at UGX 341, 011, 656/- less PAYE of UGX. 102, 303, 497/- giving a net of UGX. 237,658,159/- which was paid to the claimant. The claimant however insisted that his gratuity should not have been taxed. Which brings us to the second issue:

**2.Whether the claimant's gratuity is subject to taxation?**

The claimantcontended that it was trite law that that pension, gratuity and terminal benefits were tax exempted under Article 254(2) of the Constitution of Uganda 1995 and Section 8 of the Pensions Act, Cap 286 and therefore his gratuity was erroneously taxed. He relied on the cases of **SIRAJE HASSAN KAJURA VS DAIRY BOARD &URA, HCCS. NO. 117 OF 2009 AND PARTRICK NYBIRYO &1117 ORS VS URA, HCCS NO. 67 OF 2008**, which were to the effect that Section 8 of the Pensions Act would apply notwithstanding any provision in any written law to the contrary. Section 8 provides that:

***"Notwithstanding any provision of any written law to the contrary, no income tax shall be charged upon any Pension, Gratuity or other allowance granted under this Act".***

It was the claimants case that gratuity was intended to enable a former employee live a decent life after the termination ofemployment.According to him, this was the reason why the savings under the National Social security fund are exempted from taxes and deductions of any liabilities such as those under the Bankruptcy Act. It was further submitted for the claimant thatthe respondent's contravened Article 254(2) of the Constitution and Section 8 of the Pensions Act when they deducted UGX. 102,303,497/- from the claimants gratuity, as PAYE. They therefore prayed that it should be refunded to him.

The Respondents in reply arguedthat althoughArticle 254(2) and Section 8 of the Pensions Act exempted, pension, gratuity, and terminal benefits, it only applied to retiring Public Officers. According to them, the claimant was neither a Public Officer retiring from Permanent Service nor was his contract governed by the Pensions Act.

Counsel argued that under Section 19(1) (a) of the Income Tax Act, the Respondents Secretary /Accounting Officer was responsible for deducting and remitting all taxes from all income earned by employees including from gratuity. He also relied on the case of **KAJURA VS DAIRY CORPORATION& CIVIL SUIT No.117 OF 2009** in which it was observed that taxable income had to have been earned during the pendency of the employee's employment. According to Counsel the claimant's gratuity was computed against his consolidated Salary which he earned during the time of his employment and therefore it was subject to tax in the amount of **UGX. 102,303,497/-.**

He argued that in the alternative if court found that the gratuity was tax exempt then it should order that the claimant demands the refund from URA which is

the charging authority and not the respondents. He noted that in all the authorities that the claimant had relied on, the courts had found that the duty to refund taxes paid irregularly lay with the charging Authority and not the collecting authority and in any case the respondents had already remitted the UGX. 102,303,497/- tax to URA and were therefore not in position to refund it.

In rejoinder it was asserted for the claimantthat he was a public officer as provided under Article 175 of the Constitution of the Republic of Uganda as amended and the respondent was a government department in accordance with the Public Finance Management Act 2015. Counsel insisted therefore that the claimant'sgratuity was not governed by section 19 of the Income Tax Act.

We have considered both arguments and find that indeed Article 254(2) of the Constitution of Uganda and Section 8 of the Pensions Act provide for the exemption of tax on pension, gratuity and terminal benefits of Public Officers. The question however was whether the claimant was a Public Officer governed by the Constitution of the Republic of Uganda and the Pensions Act cap 286? To resolve this question weneed to establish the definition of the public service and a Public officer? The Constitution of the Republic of Uganda as amended under: Articles 175 (b) defines the **Public Service** as "…***service in a civil capacity of the Government the emoluments of which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament."***Article 257(w)defines Public Office to mean **"an *office in the Public service",*** Article 257(x) defines a Public Officer as ***"a person holding or acting in any public office."*** 257(y)defines ***"Public service means service in a civil capacity of the government or of a local government."***

It is an undisputed fact that the respondent is a Public Office, which draws its funds from the Consolidated Fund and therefore its staff including the claimant are Public Officers. We did not find any provision in the claimant's contract or

the Universities and Other Tertiary Institutions Act 2003 as Amended to the contrary. We respectfully disagree with the respondent's assertion that the claimant did not fall within the ambit of Article 254(2) and Section 8 of the Pensions Act. The claimant was employed as the Vice Chancellor of the respondent and his terms and conditions of services were derived from the Universities and Other Tertiary Institutions Act 2003 as Amended. There is no doubt therefore that he was a Public Officer governed by Article 175 and 254(2) of the Constitution of the Republic of Uganda as amended and Section 8 of the Pensions Act cap 286.

Having established that the claimant was a Public officer, his gratuity was therefore tax exempt as provided by Article 254(2) and Section 8 of the Pensions Act (Supra). The deduction of **UGX. 102,303,497/-** from the claimant'sgratuity as PAYE was therefore done in error and should therefore it should be paid to him.

**3.Whether the claimant was entitled to 30% salary enhancement for scientists from financial years 2012/13 to financial year 2013/2014?**

It is clear from the evidence on the record and the submissions of both parties, that Government made a 30% Salaryincrement for Scientists and 10% salary increment for non- scientist staff in Universities and other tertiary institutions. The claimant claims he was denied the 30% increasewhen he was paid a 10% instead, yet he was a scientist. He refuted the issuance of implementation guidelines which had excluded the consideration of scientists who were doing jobs for non- scientists from benefiting from the 30% increase. He further contended that the guidelines issued after Circular No.1 of 2012 were not a statutory instrument and because they had been issued by a one Jane Mwesiga for the Permanent Secretary and not the Permanent Secretary, and therefore

they had no legal effect. He therefore demanded the payment of remaining 20%.

The respondents on the other hand asserted that Circular No. 1 of 2012 wasnot a statutory Instrument as defined under Interpretation Act and therefore the issuance of itsimplementation guidelines by the Ministry of Public Servicehad not violated any legal provision. They contended that the Circular No. 1 of 2012, was a policy instrument for which the Permanent Secretary Ministry of Public Service had powers to issue implementation guidelines under Section 10 of the Public Service Act 2008. They insisted that aPermanent Secretary's delegate had authority and therefore the respondent was obliged to abide by Jane Mwesigas guidance. They relied on the case of **ROBERTSONVS MINISTER OF PENSIONS [1949] 1 KB 227.**

The guidelines were to the effect that:

> ***"scientist who were doing jobs that could be done by non-scientists should not be included in the computation for scientist. The determining question was whether the person specification for the job requires a science qualification and excludes non- science qualification."***

It was not disputed that the claimant was a Scientist by profession. However the contract of service that governed his employment relationship with the respondent stated that he was employed as Vice Chancellor of the respondent whose duties were well stipulated under Section 31 of the Universities and other Tertiary Institutions Act 2003 as amended. Section 31(1) provides:

31(1)

" ***…there shall be a Vice- chancellor for each Public university who shall***

> ***(a) Responsible for the academic , administrative and financial affairs of the University and***

***(b) In the absence of the chancellor, preside at ceremonial assemblies of the University and confer degrees and other academic titles and distinctions of the University…."***

There is no provision in the contractthat assigned him work of a scientist. His contract clearly stipulated that he was the head of the Respondent, playing an oversight role over academics, as an administrator and not teaching staff. Although he was a scientist by profession he was not employed to work as a scientist. According to the guidelines for implementing Circular No. 1 of 2012 therefore, the claimant did not qualify to receive the 30% salary increment, which was intended for teaching staff only.This issueis thereforedecided in the negative.

**4. Whether the claimant was underpaid for Domestic servants and Security Guards Allowances for the 5 year contract.**

Although the claimant asserted that his Domestic Servants and Security guards were not subject to the respondents terms and conditions of service he questioned the adequacy of the monetary benefits given to them in relation to the same categories provided for in the respondents approved policy and salary structure.It was submitted for the claimant that the domestic servants and security guards were supposed to be drawn from the existing pool of the respondent's staff under M15 scale whose salaries were higher than what had been stipulated in the claimant's contract. The claimant contended that under his contract of employment the domestic servants would earn UGX. 200,000/ each as opposed to UGX 368,000/- under the M15 scale of the respondents and UGX. 300,000/- each for the Security guards as opposed to 368,984/- under the respondents M15 scale, therefore hisservants were under paid.

The respondent in reply did not dispute the fact that the claimant was entitled to 3 domestic servants and 2 security guards at the rates of Ugx. 200,000/- and 300,000/- each per month respectively. They however refuted the allegation that these servants were to be drawn from their pool of workers under the M15 scaleor to be subjected to the respondent's recruitment process. They insisted that the respondent was only supposed to provide payment for the servants and body guards as stipulated under the claimant's contract. Their recruitment on the other had was the claimant's responsibility. It was further submitted for the respondents that the claimant's contract had no provision that could have created an impression that his servants would bedrawn from the respondent's list of servants or paid in accordance with the M15 Salary scale and therefore the claim that they had been underpaid had no basis. They relied on the case of **UNION OF INDIA & OTHERS VS HINDUSTAN DEVELOPMENTCORPORATION & OTHERS 1994 AIR 998.**

The respondents further argued that the servants and guards payment rates had been arrived at after an amendment of the claimant's contract of 4/12/2008 to that of the28/01/2009 and therefore it had not been done arbitrarily as hadbeen claimed. The respondent was of the opinion that the claimant should have undertaken to review the contract which he did not, therefore this claim was an afterthought which should be denied.

In rejoinder, counsel for the claimant insisted thatthe claimant did not expect his servants to be subjected to the respondent's terms and conditions of service of 2005. He contended that the issue was whether the monetization of the servants and guards benefits had been done in accordance with the respondent's salary structure and if so if they had been underpaid.

We have considered both submissions and the evidence on the record and found that in the claimant's initial appointment letter dated 4/12/2008, the

claimant had been given domestic servants and security guards in kind. On his request however the terms were reviewed and in the amended appointment letter dated 28/01/2009 these items were monetized. The letter of appointment did not provide for variation of the monetized items based on any changes nor did it statethat his staff would be drawn from the respondent's staff or that they would be subject to the respondent's terms and conditions of service. The claimant signed this contract and by so doing accepted the terms therein. Although the claimant made a complaint about the underpayment of his domestic servants and security guards on the 4th of April 2012, we did not see a correlation between the provisions regarding the domestic servants and security guards in the claimant's contract of service and the same category under the respondent's salary structure. The claimant should have insistedon reviewing his contract to address this issue. In the absence of an amendment to his contract regarding the domestic servants and security guards, think the claim had no basis. This claim is therefore denied.

**Top-up Allowance for 2012/13 and 2013.14 financial year.**

The claimant contended that the respondent had sought and received approval for the enhancement of staff allowances by 16% of the budget or 807, 019,184/-. If the increase was effected the claimant expected his allowance to increase by UGX. 100,000/-. However the record shows that the Ministry of Education & Sports rejected the proposal for this increase. It was further submittedfor the claimant that on appeal the respondent was advised by the Ministry to seek approval of the Respondent's Council, which was got on the 22/08/2012. According to the claimant the increment was to take effect from the 1st of July 2012 following a budget reallocation. It was the claimant's case that payment of this increment was effectedto other staff members excluding himand yet he had

a legitimate expectation to receive it. Counsel relied on the case of**REPUBLIC V COMMISSIONER OF DOMESTIC TAX & ANOR (exp. KENTON COLLEGE TRUST), NAIROBI HIGH COURT JUDICIAL REVIEW No.294 OF 2010.**

The respondents in reply admitted that the respondent's staff had requested for a top allowance which the ministry of Education and Sports refused to approve. According to them the Ministry advised them to first seek the approval of the University Council before reverting back to the Ministry. They argued that the claimant had not adduced any evidence to prove that the University Councils approval on page 122 of their trial bundle had been confirmed by the Ministry of Education and Sports nor did they prove that the other staff had actually been paid.

They further contended that that there was no basis for the claimant to assume a legitimate expectation to receive the top up Allowance when the Ministry had not approved it.In their opinion the expectation in the case of **REPUBLIC V COMMISSIONER OF DOMESTIC TAX & ANOR(supra)**was clear and unambiguous and devoid of relevant qualification, unlike the instant case and therefore the prayer should be denied.

We have considered both submissions and evidence on the record and found that therespondent's staff did request the Ministry of Education and Sports, for a top up Allowance by letter (response from the Ministry dated, 26/04/2012 and16/06/2012).There was no evidence of any approval of the Councils decision by the Ministry of Education and Sports, norany to show that the other staff had been paid top up allowance to the exclusion of the claimant. The claimant's letter of appointment was equally silent on the payment ofa top up allowance. In the absence of any evidence authorizing the payment of this allowance, the prayer for the payment of top up allowance is denied.

**5. Whether the claimant was discriminated from receiving headship allowance between January 2009 and June 2011?**

The claimant contended that as chief Executive, and Academics Officer/head of the Vice chancellors Office he was supposed to receive a headship Allowance which was an approved allowance of all heads of Divisions and Departments, Sections and units without them being specified in their letters of appointment.

He asserted that the Respondents Secretary was aware that the claimant had not received any headship Allowance and when he demanded for arrears ofthe same he was told it had not been included in his contract of service and yet other officers including his deputy were receiving the allowance. The allowance had been approved in 2011/2012.

It was further contendedfor the claimant that he was discriminated against when other heads of department were paid the head ship allowance and he was not. He asserted that in 2009 it was clear, unambiguous and devoid of any relevant qualifications that all heads were entitled to headship Allowance without it necessarily being included in their appointment letters. He argued that the payment of headship allowance had been approved between 2009 and 2011 in accordance with Sections 40(2), (a), 40(2) (b) and 41(g) of the Universities and Other Tertiary Institutions Act 2001(as amended). He therefore prayed that the respondent is ordered to pay him headship allowance for 30 months from January 2009 to June 2011.

The respondents through their witness a Mr. Patrick Madaya, contended that the claimant had not earned headship allowance for the period claimed (2009-2011) because as a policy, the claimant's office was not entitled to it. They refuted the claim that the claimant'sheadship allowance for this period had been budgeted for and approved. They argued that the claimants office had only been

considered for inclusion in 2011/2012 and not retrospectively. They made reference to a report dated August 2009 (page 95 of the claimants trial bundle) on the harmonization of allowances which was to the effect that headship allowance was not paid to all heads. They asserted that the claimant's contract which stipulated the claimant's entitlements had not included this allowance as one of his entitlements and besides it was only paid to heads of department which the claimant was not.

They also refuted the claimant's assertion that he had a legitimate expectation to receive head ship allowance yet it was never one of the entitlements in his contract of service. They relied on the case of **CIVIL SERVICE UNION &OTHERS VS MINISTER FOR CIVIL SERVICE[1955] 1 A.C 374** in which it was held that the legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. In their opinion the claimant had not adduced any evidence to prove that there was an express promise to earn headship allowance as Vice chancellor of the respondent and it was the unchallenged evidence of the respondent that there was no policy providing for the payment of the same to a Vice chancellor until 2011.

After carefully analysing the claimant's contract and the evidence on the record we found that the Vice chancellor and his deputy had not been included among the officers to receive headship allowance until 2011 (Page 98 of the claimants trial bundle). From our reading, it seems that headship allowance was only paid to heads of departments and units. The table on page 98 shows that the Vice chancellor and his deputy had been excluded from those receiving headship allowance. However there was a proposal to include them in a report dated August 2009. We also noted that the claimant only demanded for its payment in his letter to the respondent's secretary dated 9/03/2012.This letter did not

make reference to any promise by the respondent to pay the same nor was there any mention of the allowance in his contract of service. We therefore found no basis for the claimant to assert his expectation for the payment of this allowance prior to July 2011. We believe that there was no provision for the payment of the same prior to July 2011 and the claimant only demanded for it in 2012, when the office of Vice chancellor and the deputy were included. This issue is therefore decided in the negative.

**6.Whether the claimant was paid telephone allowance for the 5 year contract period?**

The claimant argued that by his appointment letter dated 4/12/2008 he was entitled to among others to telephone allowance of Ugx 500,000/-. According to him the amendment of this contract dated 28/01/2009, provision of Ugx. 500,000/ for "utility bills" included telephone bills. He claimed he had not been paid telephone allowance for the 5 years of his contract.

The claimant further refuted Madayas testimony that the claimant's benefits included the payment of Ugx. 500,000/-as utility allowance to cater for utility bills including telephone bills.

According to the claimant telephone is not a utility but a facility and should not have been considered as such.

In reply the respondent's insisted that the claimants terms of contract dated 4/12/2008 had been amended by the terms of contract dated 28/01/2009 and therefore do not apply. They contended that the new terms did not provide for the payment of water and electricity or telephone or any amount to be paid thereof. They insisted that the provision for special utilities catered for telephone allowance as provided in his contract and this had been duly paid to the claimant.

It is clear from that the record the claimants terms and conditions of service dated 4/12/2008 had been amended by a new appointment letter dated 28/01/2009. The terms applicable therefore were those of 28/01/2009. The new terms provided for the following salary and monetized benefits:

| | | |
|---|---|---|
| ***i.*** | ***The gross salary*** | ***Ugx. 7,500,000/=*** |
| ***ii.*** | ***House*** | ***Ugx.2,000,000/=*** |
| ***iii.*** | ***Entertainment(per month)*** | ***Ugx.1000,000/=*** |
| ***iv.*** | ***Domestic servants (3)*** | ***Ugx. 600,000/=*** |
| ***v.*** | ***Security Guards (2)*** | ***Ugx. 600,000/=*** |
| ***vi.*** | ***Leave allowance*** | ***Ugx. 600,000/=*** |
| ***vii.*** | ***Telephone*** | ***Ugx.500,000/=*** |
| ***viii.*** | ***Fuel*** | ***Ugx. 800,000/=*** |

The payroll record on page 9 of theclaimants bundle shows that the claimant received the following:

| | | |
|---|---|---|
| ***i.*** | ***Social Security*** | ***Ugx. 847,254/=*** |
| ***ii.*** | ***local service tax*** | ***Ugx.25,000/=*** |
| ***iii.*** | ***PAYE*** | ***Ugx. 5,680,036/=*** |
| ***iv.*** | ***Responsibility allowance*** | ***Ugx. 2,000,000/=*** |
| ***v.*** | ***Housing allowance*** | ***Ugx. 2,000,000/=*** |
| ***vi.*** | ***Entertainment allowance*** | ***Ugx. 1,000,000/-*** |
| ***vii.*** | ***Domestic servants*** | ***Ugx. 600,000/=*** |
| ***viii.*** | ***Detective /plain clothes*** | ***Ugx. 600,000/=*** |
| ***ix.*** | ***Utilities/special allowance*** | ***Ugx. 500,000/=*** |

It is clear from the pay roll that the items that were paid for tallied with what had been provided in the new terms save for the nomenclature-“utilities/ special allowances” and the addition of payment of “responsibility allowances.” Whereas the terms dated 4/12/2008 had clearly stipulated utilities as (water and

electricity), the new terms did not include them. We did not find any evidence to prove that the "utilities/special allowance" had been provided for as a separate allowance. We did not believe the claimant's assertion that he only realized that telephone allowance had not been paid to him at the expiry of his 5 year contract with the respondent. In the absence of any evidence to the contrary we have no doubt in our minds that the "utilities/special allowance catered for telephone allowance and was paid to the claimant. In the premises this issue is determined in the negative.

**7.Whether the claimant was entitled to reimbursement of weekend newspapers?**

It was the claimant's case that the respondent provided senior staff with 2 daily papers and advanced Senior Officer's funds to purchase 4 weekend papers. He claimed he received funds to purchase 4 newspapers every weekend between 12/01/2009 to 30/06/2012. He claims he did not receive funds from 1/07/2012 to January 2014, but continued to purchase the same using his own money. He claimed he had demanded for the disbursement of funds for newspapers for this period but the respondent denied that it was a policy to disburse fundsfor weekend papersto senior officers. He insisted that the respondents RW1. Mr. Madaya was dishonest when he testified to the contrary that it was not a policy to disburse money to senior staff. According to him the money was supposed to be advanced to the staff and not paid on the presentation of cash sale receipts as RW1 had testified. He relied on the case of **CIVIL SERVICE UNION &OTHERS VS MINISTER FOR CIVIL SERVICE[1955] 1 A.C 374 (supra),** which defined legitimate expectation as:

***" …where a person claiming some benefit or privilege has no legal right to it ,as a matter of private law, he may have a legitimate expectation of receiving***

***the benefits or privilege and if so, the courts will protect his expectation by judicial review as a matter of public law***"

According to them, Lord Diplock in the case of ***O' REILLY VS MACKMAN [1983]2 AC 237,*** had explained legitimate expectation as:

***"Legitimate expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue"***

In reply the respondents argued that the claimant had failed to prove that he was entitled to weekend newspapers as a monetary benefit given to him by the respondent. They insisted that the claimant had not produced evidence that he had spent his own money on weekend newspapers to warrant a refund. They prayed that the court finds that there was no legitimate expectation for refund of monies which he could not prove he had spent.

After carefully analysis of the record it was not disputed that some senior officers were entitled to weekend newspapers. We also found that the money to purchase the same was requisitioned for by one, Kigonya John, the records officer(General Duties) for disbursement to the said officers. There is evidence that the claimant was included on the list of officers to receive this money although it was not clear he had received the money. The claimant however did not prove to this court that he had actually spent his own money on the purchase of newspapers. He neither produced cash sale receipts or any acknowledgment

of payment. Although he proved he had a legitimate expectation to receive this money he should have proved that he had not received it or he had expended his own money. He did not do so. This issue is therefore determined in the negative.

**8.What are the remedies available to the claimants under the circumstances?**

The claimants prayed for theaward the following:

1. Ugx. 109,654,497/= unpaid gratuity retained as income tax /PAYE.
2. Ugx. 6,477,497/- unpaid repatriation costs.
3. Ugx. 600,000/- unpaid leave allowance for calendar year 2013.
4. Ugx, 32,657,808/- unpaid balance of 20% out of 30% increase in salary of scientists in Public Universities
5. Ug.57,192,640/- underpayment for domestic servants and 2 security guards for 60 months.
6. Ugx 1,800,000/- unpaid top up allowance from 1/07/2012 to 12/12/ 2014
7. Ugx. 60,000,000/= unpaid allowance from January 2009 to June 2011
8. Ugx.30,000,000/= unpaid telephone allowance for 60 months
9. Ugx 500,000/= weekend newspapers between 1/07/2012 and 12/01/2014.

   Plus compound interest of Ugx. 880,240,874/- and 30% per annum on the total general damages above.
10. General damages f Ugx. 900,000,000/=
11. Aggravated damages of Ugx. 200,000,000/=
12. Exemplary damages of 100,000,000/=
13. Annual compound interest of 12% on general, aggravated, exemplary damages from the date of judgment till full and final payment and Costs of the suit

The respondents in reply argued that although the claimant's gratuity was always due and they had undertaken to pay it but funds were not available to pay it. According to them whereas damages ordinarily arise out of the respondents wrong

doing, in the instant case, they had not committed any wrong doing which resulted into loss and suffering of the claimant. They contended that damages of Ugx. 900,000,000/- were excessive and inappropriate especially in view of the fact that these were public funds of which court had to exercise restraint when considering this prayer.

**Aggravated damages**

The respondents contended that the claimants demand for Ugx. 200,000,000/=as aggravated damages had not been backed by any evidence of malice and arrogance to warrant award of aggravated damages. They relied on the case of **OBONGO VS KISUMU MUNICIPAL COUNCIL 1971 EA.91.** According to them at all times they had afforded the claimant explanations to his demands and therefore there was no basis to grant aggravated damages as was envisaged in the famous case of **ROOKES VS BERNARD** which was referred to by Mr. Justice Bart Katureebe JSC as he then was in his Paper on "**Principles Governing the award of damages in Civil cases."**

**Exemplary damages**

They further argued that the claimants demand for Ugx. 100,000,000/= could not be sustained because there was no proof that the respondents acted arbitrarily and oppressively in addressing the claimants demands and there was no evidence adduced to show that there was any calculated move from them to make profit off the claimants dues to warrant the payment of these damages. They relied on the cases of **OBONGO VS KISUMU MUNICIPAL COUNCIL 1971 EA.91**and**ROOKES VS BERNARD(supra)** and **W M KYAMBADDE VS MPIGI DISTRICT ADINISTRATION [1983] HCB 44.**

They prayed that Court finds the award of general, aggravated and exemplary damages erroneous and inappropriate.

**30% Compound interest**

On the 30%compound interest, on various claims based on the claimant'spurported lost opportunity to invest his emoluments and depreciation of currency, the respondents argued that its award would amount to double compensation over and above the claimant's prayer for general, aggravated and exemplary damages. In their opinion the 30% compound interest demanded was high and unacceptable. They prayed for rational consideration of the respondent which was a public institution and prayed that the court finds the claim for the 30% compound interest inappropriate in the circumstances. They relied on the case of **ATTORNEY GENERL VS GOODMAN AGENCIES SCCA No.5 OF 2010.**

1. **General Damages**

General damages are generally compensatory in nature and the injured party must always be awarded such sums of money as may put him or her as near as possible to the position he or she was in before the wrong complained of had been occasioned. General damages are damages suffered by a claimant at the instance of the respondent. In the instant case the respondents had committed to paying the claimants gratuity but they delayed to do so by 14 months. We believe that award of Ugx. 18,000,000/- is sufficient as general damages for this delay.

2. **Aggravated and Exemplary Damages**

Exemplary or punitive damages are punitive in nature and are intended to give relief to the claimant for the humiliation and embarrassment the respondents may have intended the claimant to suffer.They are cautionary, deterrent and represent a sum of money of a penal nature in addition to compensatory damages given for wrong suffered by the claimant. They are intended to punish a respondent's high handed malicious, vindictive oppressive and or malicious conduct and not the injury suffered as a result of the malicious conduct.

Aggravated damages on the other hand are intended to appease the victim, and to act as a caution against repetition of similar conduct or to prevent unjust richness.

Although the respondents delayed to pay the claimant his gratuity and erroneously taxed it. The claimant did not adduced any evidence to prove that they had been high handed, vindictive and or oppressive to him. We did not find any evidence to prove the claimants had any intentions to profit off the claimant's dues. In the premises the prayer for Aggravated and Exemplary damages is denied.

3. **30% compound Interest.**

The claimant did not succeed on most of the heads under which he claimed 30% compound interest. However where he succeeded we have already given awards with attendant interest rates. In the premises we think that the claim for 30% compound interest is not applicable under the circumstances and it is denied.

Both parties prayed for costs of the suit. The circumstances of this case warrant that each party bears their own costs. Each party should bear their own costs.

Delivered and signed by:

**CONCLUSION:**

1. We have already decided that the claimant's gratuity was erroneously taxed and retained. He should be refunded UGX**. 102,303,497/-.**
2. The claimant is awarded general damages of **Ugx. 18,000,000/-** for the delayed payment of gratuity.

3. The claimant is awarded payment of **Ugx. 6,377, 501/=** as repatriation allowance.
4. Ugx. 600,000/- for unpaid leave allowance for calendar year 2013 is denied.
5. Ugx, 32,657,808/- unpaid balance of 20% out of 30% increase in salary of scientists in Public Universities is denied.
6. Ugx. 57,192,640/- underpayment for domestic servants and 2 security guards for 60 months is denied.
7. Ugx 1,800,000/- unpaid top up allowance from 1/07/2012 to 12/12/ 2014 is denied
8. Ugx. 60,000,000/= unpaid allowance headship from January 2009 to June 2011 denied.
9. Ugx.30, 000,000/= unpaid telephone allowance for 60 months is denied.
10. Ugx 500,000/= weekend newspapers between 1/07/2012 and 12/01/2014 is denied.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE ……**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA …….**

**PANELISTS**

**3.MS. JULIAN NYACHWO ……**

**4. MR.MAVUNWA EDSON HAN ……**

**5. MR. EBYAU FIDEL …….**

**DATE 22/02/2017**