

**THE REPUBLIC OF UGANDA  
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA  
LABOUR DISPUTE CLAIM. NO. 54 OF 2015  
(ARISING FROM HCT-CS-276 of 2015)**

**BETWEEN**

**WASWA POLYCARP & 12 ORS.....CLAIMANT**

**AND**

**ATTORNEY GENERAL.....RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Mr. Baguma Filbert Bates

**AWARD**

This is a labour dispute claim involving 13 claimants most of whom were employees of the government of Uganda through the Internal Security Organisation. They brought the claim praying orders of this court to grant them gratuity, medical allowance, leave allowance, exgratia, transport allowance and payment in lieu of notice. The undisputed facts as spelt out in the Joint Scheduling memo (signed by counsel for the claimant) are: that 12 of the claimants are former employees of the internal security organisation who worked for various years depending on their recruitment and exit dates. 7 of the claimants were terminated in 2003 while six of them voluntarily retired from the service. Although some of those terminated were given letters of termination on 28/01/2004 the letters of termination indicated termination was effective 31/12/2003.

The contention of the claimants (as we understand it) is that they were paid part of their terminal benefits and despite several demands their employer failed to pay the rest of the benefits and other entitlements.

On the other hand the employer, the respondent, contends the claimants except 2 were paid all their terminal benefits in accordance with the prevailing regulations of the security organisation.

When the claim was called for hearing, the respondent failed to appear and the court having been satisfied that there was no sufficient reason given for the respondent's absence, allowed hearing to proceed *ex parte*. 12 of the claimants took oath and confirmed their written statements all of which were to the effect that they had been employed by the respondent and were earning various salaries and therefore they were entitled to various sums of money in retirement. Each of them claimed amounts between over 46,000,000 and over 185,000,000 as having been the amounts of terminal benefits each of them ought to have received. 9 of the claimants claimed to have been entitled to over 100,000,000/=.

The claimants claimed (in submissions) that the amounts the respondent claimed to have paid them as per the table attached to the reply to the memorandum of claim was challengeable as there was no basis for the said payments given the small amounts awarded to senior staff as compared to junior staff.

The table referred to showed payments of 15,748,000 as the highest and 6,161,651 as the lowest. The lowest according to the claimants should have been paid over 61,000,000/=.

In his submissions counsel for the claimants attached 3 tables showing how much each of the claimants were entitled to in terms of gratuity, leave allowance, *ex gratia*, medical allowance, transport allowance and in lieu of notice. He submitted that the claimants never got their gratuity as provided for under regulation 32(5) and strongly argued that given the inflation ratio,

gratuity ought to be calculated on the basis of the claimant's last salaries before termination.

Although the respondent was not represented at the hearing, she filed submission on 28/09/2016. Ordinarily this court would not be obliged to bear in mind such submissions but we have decided in the interest of justice to peruse them and where necessary apply them to the facts before us.

Counsel for the respondent in submissions reiterated that the law applicable was the security organisation (Terms and conditions of Service) regulations s1 305-1 which repealed the security organisations (terms and conditions of service) regulations No. 80/2000. This fact was not disputed by the claimants and in fact in submissions they attached the same law – S1 305-1 in support of their case. The issue for this court therefore is whether under the said law, the claimants were paid their entitlements since there is no dispute as to their termination.

It seems to us that the claimants acknowledge having received the amounts that the respondents alleges to have paid them as full and final settlement of their benefits despite the inconsistencies in the amounts as pegged to seniority in the rank and file of the respective officers. It seems to us that the quarrel of the claimants is that the said payments did not itemize which amount was for which entitlement. We shall look at the law in respect to each of the entitlements and find if the payments were done in accordance with the cited regulations.

(a) **Gratuity:**

Regulation 37 of the said law provides

**“(1) An officer shall, after every three years of service be paid a gratuity of 30 percent of his or her gross salary earnings for every completed year of service.**

**(2) For the avoidance of doubt, gratuity accruing before**

**the commencement of these regulations shall be calculated at 30 percent of salary earnings for the period served.”**

Counsel for the claimant submitted.

**“The framers of the said regulations in requiring the gratuity to be paid after every three years of service, were very much alive to the fact that money loses value after a passage of time. It is on this basis that the claimants claim gratuity to be calculated on the basis of their last respectively salaries.....”.**

The law specifically provides for payment of gratuity after every 3 years. It does not provide for an alternative method should such payment not be effected in the prescribed period of 3 years. The legislature intended that within the 3 years gratuity be calculated at 30% of the salary earned each year for a period of 3 years.

There is scanty information as to when each of the claimants was paid so as to gauge the inflation ratio. Even then, the mandate of this court would not go to the extent of calculating the gratuity basing on the last payment slips as this would be contrary to regulation 37 cited above. We have perused carefully the decision in

**HENRY WAIBALE & 500 OTHERS VS A.G.** Although we have not had the benefit of looking at and perusing the security organizations (terms and conditions of service/regulations No. 80/2000), the decision in the above case clearly entered judgement for the claimants basing on the provisions of the said regulations. It is not disputed that by the time of the termination of the claimants in this case, the said regulations had been repealed and instead a new law S I 305-1 was instituted and it clearly stipulated under Reg. 2 that:

**“An employee or officer serving in a security organisation immediately before the commencement of these regulations shall be deemed to have been duly appointed under these regulations.”**

Consequently the claimants cannot run away from the fact that they were governed by S1-305-1.

As a result of the above analysis we find and hold that the claimants are entitled to gratuity calculated as follows:

30% of salary earnings of each 3 year period served.

**(b)Transport and exgratia**

The claimants claimed  $\frac{1}{3}$  of their gross earnings as transport. Counsel in his submissions admitted that this formula had no statutory justification and this being the case this court cannot rely on it.

On the contrary regulation 32(5) provides:

**"Upon retirement, an officer shall be provided with transport for self and family to his or her home village and with an exgratia payment equivalent to 5% percent of the officer's gross earnings for the period ....."**

It is our view that the claimants would be entitled to allowance sufficient for transporting the officer to the his or her village. How much each of the officers would be entitled to, would depend on the distance from the village to his/her area of operation at the time of retirement. In addition the officers would be entitled to 5% of gross earnings for the total period served by the time of the retirement as provided for under the above stated regulation.

**(c) Medical allowance**

In his submission, counsel for the claimant sought medical allowance at 30% of annual gross earnings of each of the claimants. Just as in the above transport claim, counsel conceded that this formula is not supported by any law.

Regulation 26 for medical treatment provides:

- “(1) Every officer and his or her family is entitled to free medical and dental treatment at a health unit approved by the security organisation.**
- (2) Where dental treatment is involved as repair of vulcanic or acrylic dentures, the officer affected shall seek the consent of the Director General before the treatment is undertaken.”**

It is our understanding that the above provision of medical service to the claimants was subject to certain conditions. The regulation does not provide for cash payable to the claimants to enable them access medical services. It provides for an officer to visit a health unit approved by the employer in order to access medical services.

The claimants would be entitled to an allowance in reimbursement but only after visiting a health unit approved by the employer.

The claimants have failed to prove that they were entitled to any allowance in medical service and therefore this item is not allowed.

#### **(d) Leave allowance**

It was not disputed by the respondent that the claimants were entitled to leave allowance. The respondent submitted that each of the claimants received their leave allowance except one Juma Jane (the wife of the deceased Juma Alex) because of an error. The respondent also conceded to an outstanding claim of 7,018,384/- being leave allowance for the 8<sup>th</sup> claimant.

Regulation 28 provides

**“(2) An officer or employee proceeding on annual leave shall be paid 10% of his/her annual salary as leave allowance; and where an officer or employee’s leave is not approved, he or she is entitled to the leave allowance.”**

It is our position that the above regulation provides for leave for each of the employees who either proceed on leave or applies for it and it is rejected. We do not think that the provision covers those who do not show their intention to go on leave. Whereas going on leave is an entitlement to an employee, it is our position that every employee ought to apply for leave so as to enable the employer manage the gap while such employee is on leave. Should the employee decide not to take his/her leave by failing to apply for it, even when such employee is aware of such entitlement, it will only be at the discretion of the employer to compensate an employee for such leave days. **“An officer or employer proceeding on annual leave .....**” presupposes that an officer will have applied for and will have been granted permission to proceed on leave. Therefore the mere fact that an employee throughout his career never took leave, even when he or she knew of such entitlement, would not by itself entitle the employee as a matter of right to compensation for any period he/she never took leave.

Consequently we hold that the claimants who went on leave in a given year were entitled to 10% of their annual salary in that year. The same applies to those claimants who applied for leave in a given year but the said application was denied or ignored.

#### **(e) Payment in lieu of notice**

It was the case for the claimants that they were terminated without notice and therefore they were entitled to payment in lieu of such notice.

Counsel for the respondent argued that since claimants had not made such claim in their pleadings, such claim was an afterthought and it out to be rejected.

It is our position that notice before termination is a question of law which is provided for under section 65 of the Employment Act. Employees who are not dismissed for misconduct or poor performance in accordance with section 66 of the Employment Act are entitled to notice or payment in lieu of notice. Therefore

in the absence of any explanation as to why such notice was not offered to the claimants, it is our holding that the claimants were each entitled to 3 months salaries worth of notice.

**General damages:**

The submission of counsel for the claimants, as we understand it was that general damages accrued because the claimants were denied use of their full benefits by paying in bits, the last payment having been made in 2012. We are not convinced that the mere delay of payment of benefits alone would call for general damages. We therefore reject this prayer.

**Interest**

We consider this a genuine prayer. If after calculating the benefits accruing to the claimants in accordance with this Award it is found that the claimants were paid less than the awarded amounts, the balance payable shall attract interest at 21% from the year 2012, the date the claimants received their last payment, until payment in full.

Consequently an Award is entered for the claimants in the above terms with no order as to costs since the claim succeeded but with some of the prayers unsuccessful.

**Signed:**

- 1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
- 2. Hon. Lady Justice Linda TumusiimeMugisha .....

**Panelists:**

- 1. Mr. Ebyau Fidel .....
- 2. Mr. Micheal Matovu .....
- 3. Mr. Baguma Filbert Bates .....

**Date: 08/11/2016**