**THE REPUBLIC OF UGANDA**

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

**MISC.APPLN. No.006 OF 2021**

**[ARISING FROM LABOUR DISPUTE APPEAL No.038/2018 & KCCA/LC/22/2017]**

**BETWEEN**

1. **NAKYEWA MARY**
2. **MAGARA BENNET**
3. **KALEMA JOSEPH**
4. **BAGUMA THOMAS WILLIAM**
5. **TURYAMUREEBA GEORGE & 92 OTHERS ……………………………..APPLICANT**

**VERSUS**

**MAKERERE UNIVERSITY …………………………………….......……….…….RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. FX Mubuuke
3. Ms. Harriet Mugambwa

**RULING**

This application is brought to this court under **Section 17 of the Labour** **Disputes (Arbitration and settlement) Act 2006 and order 52 rule 1 of Civil** **Procedure Rule**. It seeks orders of review of the decision of the Court in Labour **Dispute Appeal No. 038/2018** and costs of application.

An affidavit in support of the application sworn by one Magara Bennet is to the effect that enforcement of the decree in Labour Dispute Appeal No. 038/2018 was not being effected because both the Respondent and the Applicant were interpreting the same differently.

According to the affidavit the interpretation by the Respondent was affecting retirement benefits of the Applicants.

An affidavit in reply sworn by one Yusuf Kiranda is to the effect that the Award of this Court in Labour Dispute Appeal No. 038/2018 was that M6.1 and M6.2 scales would commence in the F/year 2015/2016 and that salary arrears due to the Applicants had been computed. According to the affidavit, the interpretation of the Applicants that changes effected beginning 2015/2016 Financial Year do not apply to them is misconceived since it would mean maintaining Scale M6 which was scrapped.

**SUBMISSIONS**

It was the submission of counsel for the Applicants that subjecting the Applicants to M6.2 scale from M6 amounted to a demotion which was illegal. According to counsel, as a result of the ***“Unfair allocation of salary scales, the Applicant’s retirement benefits and NSSF were greatly affected to their detriment.”***

In reply to the above submissions, counsel for the respondent contended that after increase of salaries by government, the first instalment of the increase was distributed under the M6 scale with equal distribution while the second instalment came after a new salary structure of M6.1 and M6.2 had been developed and it was distributed according to the new structure which led to disagreements by the Applicants. According to counsel the salary scale M6 was abolished and replaced with scales M6.1 and M6.2 according to which government releases salaries and it would be an illegality if the Respondent was to use M6 scale for the applicants only and another scale for those after 2015/2016 F/Y which could call for litigation on claims of discrimination.

**Decision of Court**

We have carefully perused the application together with the affidavit in its support as well as the affidavit in reply. We have also internalised the submissions.

The Applicants were represented by Mr. Vincent Mugisha of Kesiime & Co. Advocates while the Respondent was represented by Mr Hudson Musoke of Makerere University Directorate of legal affairs.

The background of this application as it is described in Labour Dispute Appeal 038/2018 is as follows:

***“The respondents were employees of the Appellant under Contracts of Service that revealed an M6 salary scale.***

***It was clear on the record that employees under M6 scale were not getting exactly the same salary. There were variations in the actual salary of the various employees.***

***Subsequently, after a series of negotiations and strikes, the Government increased salary of all employees at the appellant’s institution. Earlier on, only salaries of academic staff had been considered for an increment. Government released funds into phases the first of which had no controversies. At the release of the second phase, the Appellant thought it necessary to take into account the dichotomy between the science and non-science staff and the academic qualifications of the concerned staff thereby changing from the old payment system of M6 scale to the new payment system of M6.1 and M6.2 scales.”***

The Applicants contested the introduction of the new payment system before the labour officer and the labour officer agreed with them and held that the salary scales used to compute the arrears were unfairly, irregularly and unlawfully imposed on the respondent. The Respondent herein appealed to this court which held (inter alia) that;

1. ***“The respondent shall re-compute the salary enhancement arrears of the 76 verified employees pursuant to salary scale M6 as directed by the Vice Chancellor and pay to them all unpaid balances.”***
2. ***“Salary scale M6.1 and M6.2 shall be applicable beginning with the financial year 2015 and 2016. In the event that salary arrears earned before 2015/2016 FY accrue in future, calculation of such arrears shall be as in 1) above.”***

On perusal of the affidavit and submission of the applicants, we understand their Complaint to be that the application of M6.1 and M6.2 to them tantamount to demotion and affects their terminal benefits including NSSF contributions to their detriment. In effect the Applicants seek an order of this court reversing its own decision that M6. 1 and M6.2 scales will be implemented in the Financial year 2015/2016 and thereafter.

This court took a lot of time to consider the Appeal from the Labour officer and ruled as it did. It cannot sit in appeal of its own decision. Although the instant application on the face of it seeks an interpretation of the Award, all the submissions of counsel for the Applicant show that the court made a wrong decision and therefore it should reverse it. Whereas we appreciate the fact that a person’s salary or terminal benefits should not be reduced by subsequent adjustment without the consent of an employee, the applicants have not shown this court how the M6.1 and M6.2 would reduce on their emoluments.

We expected the Applicants to show this court that even an addition of the increment in salary arrears calculated at M6 scale as directed by this court, the M6.1 and M6.2 scales would fall less than before. In other words, that the salary arrears would not be reflected as an increment on their salary at all.

We understand the complaint of the applicants to be that they will not be at par with their colleagues whose salaries were the same as theirs before. The applicants have not shown that their own salaries and benefits would be lesser than what they earned before M6.1 and M6.2 after salary arrears were added to their pay. The submission of counsel for the applicants that ***“This alteration resulted into a situation where M6.1 salary scale replaced the original M6 in terms of remuneration and M6.2 which created a huge difference of 1,733,232/= (Ugandan Shillings One Million Seven Hundred Thirty-Three Thousand Two Hundred Thirty-Two) per month with M6.”*** does notshow that the salaries of the applicants were thereby reduced to below what was prevailing before the salary increment.

In the same way the submission that

***“Some of the applicants such as Muhumuza, Kagamba Tonny Kemigisha Agnes, Obora Edward Peace, Mulamila Didas among others have since retired and their retirement benefits have been affected by the change of scales.”*** does not help this court to determine whether the changes reduced their salaries to below what prevailed before the increase of salaries.

The applicant’s comparison of the earnings of those in M6.1 and M6.2 as opposed to the original M6 scale in our view, misses the point that government increased salaries of the University staff and that as our judgement states at page 13

***“…………. It is the duty of an employer to provide clear terms of employment especially the salary scale that need not be subjected to interpretation resulting in favour of the parties or in favour of any class of employees in the same organisation. This however does not stop the employer to categorise staff according to qualification and specific roles played and subsequently increase their salaries accordingly.”***

In other words, as we wrote the Award in Labour Dispute Appeal 038/2018 we were of the opinion, of which we still are, that the introduction of M6.1 and M6.2 was a categorization of staff according to qualification and specific roles allocated. The disparity of salaries therefore is only an obvious result of the categorisation.

In the absence of clearly showing this court how the above categorisation reduced salaries of the Applicants even after increase of the salaries, we agree with the submission of counsel for the Respondent that salary scale M6.1 and M6.2 were **“depending on each one’s duties and qualifications.”**

It is therefore our finding that the Applicants, due to application of scales M6.1 and M6.2 will be paid less than they were in M6 scale, but even then their salary enhancement will be reflected in the scale M6.2 though not at the same magnitude with those in M6.1.

Consequently, their retirement benefits will be higher than before the increase of their salaries but will be lower compared to benefits of those in M6.1. This is the effect and purpose of Labour Dispute Appeal 38/2018 and we have no reason to review it with the result that the application fails and is dismissed with no orders as to costs.

**Delivered & Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye ………………………….
2. Hon. Lady Justice Linda Tumusiime Mugisha …………………………..

**PANELISTS**

1. Mr. Ebyau Fidel ………..………………
2. Mr. Fx Mubuuke ………………………..
3. Ms. Harriet Mugambwa ………………………..

Dated: 12/03/2021