

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**CORAM: OWINY-DOLLO, CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE &
CHIBITA, JJSC**

CIVIL APPEAL NO. 11 OF 2020

SURGIPHARM UGANDA APPELLANT
VERSUS

ANATOLI BATABANE RESPONDENT

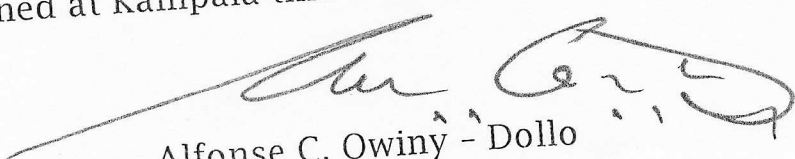
*(Arising from the decision of the Court of Appeal in Civil Appeal No. 218 of
2013)*

JUDGMENT OF OWINY - DOLLO; CJ

I have had the benefit of reading in draft the judgment of my learned
sister Tibatemwa-Ekirikubinza, JSC. I concur with the reasoning,
conclusions, and orders proposed therein.

Since Mwendha, Tuhaise, Chibita, JJSC, also agree, orders are hereby
issued in the terms proposed by Tibatemwa-Ekirikubinza JSC in her
judgment.

Dated, and signed at Kampala this 13th day of October 2023


Alfonse C. Owiny - Dollo
Chief Justice

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: OWINY-DOLLO, MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA JSC)

CIVIL APPEAL NO. 11 OF 2020

SURGIPHARM UGANDA LTD APPELLANT

Versus

ANATOLI BATABANE RESPONDENT

(Appeal against the judgment of the Court of Appeal, Civil Appeal No 218 of 2013 at Kampala, before Kiryabwire, Muhanguzi, Madrama JJA dated 7th June, 2019)

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading the draft judgment of my learned sister Prof. Justice Tibatemwa Ekirikubinza JSC, I concur with her analysis and decision and the orders proposed

Dated at Kampala this 13th day of October 2023.



Mwendha

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, CJ, Mwendha, Tibatemwa-Ekirikubinza,
Tuhaise, Chibita, JJ.S.C)

CIVIL APPEAL NO. 11 OF 2020

BETWEEN

SURGIPHAM UGANDA LTD :::::::::::::::::::::::::::::: APPELLANT

AND

ANATOLI BATABANE :::::::::::::::::::::::::::::: RESPONDENT

[Appeal from the Judgment of the Court of Appeal of Uganda delivered by Hon. Mr. Justice Geoffrey Kiryabwire, JA, Hon. Mr. Justice Ezekiel Muhanguzi, JA and Hon. Mr. Justice Christopher Madrama Izama, JA on 7th June in Civil Appeal No. 218 of 2013]

JUDGMENT OF PERCY NIGHT TUHAISE, JSC.

I have had the benefit of reading the Judgment of Hon. Lady Justice Prof. Tibatemwa-Ekirikubinza, JSC.

I agree with the decision, and the orders therein.

Date at Kampala, this 13th day of October 2023.



Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

*(CORAM: Owinyi-Dollo, C.J; Mwendha, Tibatemwa-Ekirikubinza, Tuhaise,
Chibita; JJSC)*

CIVIL APPEAL NO. 11 OF 2020

BETWEEN

SURGIPHARM UGANDA LTD:.....APPELLANT

AND

ANATOLI BATABANE:.....RESPONDENT

*{Appeal from the decision of the Court of Appeal at Kampala (Kiryabwire,
Muhanguzi, Madrama; JJA). Dated 7th June, 2019 in Civil Appeal No. 218 of
2013}*

JUDGMENT OF MIKE J. CHIBITA, JSC.

I have had the benefit of reading in draft, the Judgment of my learned sister Hon. Justice. Prof. Lillian Tibatemwa-Ekirikubinza, JSC. I agree with her reasoning that this Appeal should fail save for partial success on ground 4. I also agree with the Orders she has proposed.

Dated at Kampala this ^{13th}.....day of.....^{October}.....2023

..........

MIKE J. CHIBITA
JUSTICE OF THE SUPREME COURT

5
THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

**[CORAM: OWINY-DOLLO, C.J; MWONDHA; TIBATEMWA-
EKIRIKUBINZA; TUHAISE; CHIBITA, JJSC].**

10
CIVIL APPEAL No.11 OF 2020

BETWEEN

15 **SURGIPHARM UGANDA LTD :::::::::::::::::::: APPELLANT**

AND

ANATOLI BATABANE :::::::::::::::::::: RESPONDENT

20 *[An appeal from the decision of the Court of Appeal at Kampala before:
(Hon. Justices: Kiryabwirwe; Muhanguzi and Madrama, JJA) in Civil
Appeal No.218 of 2013 dated 7th June 2019.]*

25 **Representation:** *The Appellant company was represented by
Counsel Ernest Sembatya.*

*The Respondent was represented by Counsel
Lawrence Tumwesigye.*

30 *There was no official from the appellant company
present in Court and likewise the Respondent was
not physically present.*

5 **Summary: Employment law-** *repudiation vis-à-vis termination of an employment contract.*

10 **Repudiation-** *repudiation is a type of breach of contract which happens before breach of a contract actually occurs or before performance of particular obligations under the contract are due.*

15 **General damages-** *under a repudiated contract, the court, in determining an appropriate award of general damages is guided by the value of the contract at the time for its performance.*

20 **Interest-** *interest on special damages is awarded from the date of filing of the suit until payment in full. In contrast, interest on general damages is awarded from the date of judgment until payment in full.*

JUDGMENT OF PROF. TIBATEMWA—EKIRIKUBINZA, JSC.

Facts

25 The facts as accepted by the lower courts were that the Respondent was gainfully employed at ZK Advertising (U) Ltd as the Head of Finance and Administration on an open ended contract.

30 On 11/2/2008, the Appellant company made a job offer to the Respondent. The Respondent was approached by an individual named Narvin Popat, to take up employment with the Appellant company as a Commercial Finance Manager.

35 The Respondent duly submitted his Curriculum Vitae, undertook interviews and he emerged successful. Subsequently, he was offered employment in the Appellant company and was to be paid a salary of Uganda shillings 6,500,000/= per month together with other benefits. This compelled him to resign from his employment at ZK Advertising (U) Ltd while awaiting deployment in the new appointment.

5 On 15th February 2008, the Respondent signed an employment contract with the Appellant company and it was indicated that he was to commence employment on 25th March, 2008. Clause 4 of the said contract also indicated that the appellant would initially be on probation for a period of six months before confirmation to a permanent employee position. The contract further gave either party
10 the option to terminate the contract after a week's notice or one week's pay in lieu of notice.

The appellant alleged that it was orally agreed that before taking up the new employment, the Respondent would make familiarization visits to the appellant's office premises. However, there was no agreed
15 schedule of when those visits were to be undertaken.

After signing the contract on 15th February 2008, the Respondent went upcountry to his home village in Buwenge, Jinja district as he prepared to take on the new employment the following month.

20 When the Respondent returned from his upcountry travel on 15th March 2008, he reported to the Appellant's office premises to familiarize himself with the operations of the appellant company. It is at this point that he was informed of the cancellation of his employment contract which had occurred on 25th February, 2008.

25 In defence, the Appellant company stated that, it had been orally agreed that prior to the commencement date, the Respondent would undertake familiarization visits with the appellant's operations but he did not. That it was for this reason that the Respondent's contract was cancelled.

30 Following the cancellation of the contract, the Respondent filed a suit against the Appellant company in the High Court for damages arising from the repudiation of his employment contract. The Appellant contented in its written statement of defence that the Respondent could not have accrued any rights under a contract which had not
35 yet been commenced or performed.

The High Court Judge held that there was no agreement written or oral that had been presented to the effect that a date had been agreed

5 upon for the familiarization by the Appellant. The High Court further held that the contract was frustrated and both parties were to take the blame.

10 Being dissatisfied with the decision of the High Court, the Respondent appealed to the Court of Appeal. Just like the High Court held, the Court of Appeal found that there was no clear agreement as to the time and schedule for the familiarization of the Respondent with the operations of the Appellant company. The Court of Appeal held in favour of the Respondent and found that the Appellant company wrongly repudiated the Respondent's contract

15 Consequently, the Court of Appeal awarded the Respondent special and general damages together with interest and costs.

20 Dissatisfied with the Court of Appeal decision, the Appellant company appealed to this Court on four grounds. Each ground will be set out at the relevant place in the judgment and will be followed by the relevant discussion.

Prayers

The Appellant prayed that the appeal is allowed and the judgment of the Court of Appeal be set aside. The Appellant also prayed for costs of the appeal as well as those in the courts below.

25

Ground 1

That the learned Justices of the Court of Appeal erred in law in holding that the repudiation of the Respondent's contract of employment was wrongful.

30

Appellant's submissions

Counsel submitted that according to clause 4 of the employment contract concluded between the parties, the Respondent was to serve for a probationary period of six (6) months. That it therefore followed

5 the Respondent's employment could only be confirmed upon successful completion of his probation.

Counsel further submitted that the Respondent's employment contract was lawfully repudiated in accordance with **Section 67 (4)** of the **Employment Act, 2006** which provides that:

10 **A contract for a probationary period may be terminated by either party by giving not less than fourteen days' notice of termination, or by payment, by the employer to the employee, of seven days' wages in lieu of notice.**

15 In support of the foregoing submission, counsel relied on this Court's decision in the case of **Doreen Rugundu v. International Law Institute**¹ wherein it was held among other things that:

20 *"The Respondent as an employer had a right under the provisions of Section 24(1) of the Employment Act to terminate the contract by giving the Appellant seven (7) days' notice or pay her seven (7) days wages in lieu of notice ... the Respondent gave the Appellant a notice of over four (4) months which was over and above the period prescribed by the act or a reasonable period stipulated under common law rule.*
25 *Therefore, the Respondent rightly terminated the Appellant's contract of employment."*

Counsel contended that the Respondent's contract was repudiated 1 (one) month prior to its commencement and thus the termination was within the prescribed minimum threshold period of 14 days' notice. Thus, counsel faulted the Court of Appeal for holding that the repudiation of the Respondent's contract of employment prior to its commencement was wrongful.

35 **Respondent's reply**

Counsel submitted that repudiation may be lawful or unlawful and it is the unlawful or wrongful repudiation of a contract that amounts to breach.

¹ SCCA 08 of 2005

5 Counsel contended that the Appellant's reason for repudiating the
contract on the premise that the Respondent had failed to turn up at
the Appellant's premises to familiarize himself with its operations
was not a valid one. This is because according to the evidence and
10 according to the findings of both lower courts, there was no clear
agreement as to the time and schedule for the familiarization visits
of the Respondent with the operations of the Appellant Company. In
support of this submission, counsel referred to the last paragraph of
page 19 of the Court of Appeal judgment. That actually when the
Respondent turned up on 11 March 2008 at the Appellant's
15 premises, he had gone to undertake the familiarization of the
Company's operations but found when his contract had been
terminated.

Counsel also referred to the finding of fact made by the trial Judge at
20 page 3 of his Judgment where he stated that:

*"The parties however, did not specify the dates of the familiarization
visits. This very crucial aspect of the engagement between the parties
was not documented and was ambiguous. There was no consensus
25 ad idem, that is, meeting of the minds on this issue at all in respect of
the date or time or duration of the program."*

Counsel contended that the Justices of the Court of Appeal having
evaluated and scrutinized the evidence found that the trial Judge was
30 correct to find as he did above. However, they were right to criticize
the trial Judge to find that failure to provide for the intended
familiarization visits by the parties frustrated the contract. Counsel
submitted that the doctrine of frustration of contract does not apply
in the circumstances of this case. Counsel further submitted that the
35 repudiation of the contract was unlawful because it was premised on
reasons that did not form part the contract. That the alleged
familiarization visits were not mentioned at all and therefore they did
not form part of the terms of the contract. They were oral and such
evidence is excluded by the parole evidence rule which is to the effect
40 that, *where the terms of any contract have been reduced in writing, no
oral evidence can be given in proof of the terms of the contract except
the document itself.*

5 Counsel further submitted that the Appellant having wrongfully repudiated the contract, the Respondent had to accept the repudiation by rescission of the contract, and claim damages. Therefore, the Justices of Appeal rightly held that the repudiation of the Respondent's contract prior to its commencement was wrongful.

10

Court's consideration of ground 1

According to Furmston², repudiation occurs where a party intimates by words or conduct that he does not intend to honour his obligations when they fall due in future.

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In the text "*Words and Phrases legally defined*"³, repudiation of a contract means that, *having admittedly made the contract, you decide to break it and break it in such a way that you intend not to proceed with it.*

20

In essence, repudiation happens even before breach of a contract actually occurs or before performance of particular obligations under the contract are due. This is also known as anticipatory breach.⁴ Thus, repudiation is a type of breach of contract.

25

On 15th February 2008, the Respondent signed an employment contract with the Appellant company and it was indicated that he was to commence employment on 25th March, 2008. From the record, I note that the Appellant, on 23 February 2008, sent an email to the Respondent informing him that attempts to reach him by mobile using the office landline were in vain and threatened to cancel the job offer. On 25th February 2008, the Appellant sent another e-mail to the Respondent informing him that his job was cancelled.

30

The Respondent on the other hand stated in his defence that he had gone to the village and had not seen the emails sent by the Appellant given the fact that he had resigned from his former employment and was taking off time to prepare to come and take up the new employment with the Appellant scheduled to start on 25th March

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²M.P. Furmston, Cheshire, Fifoot and Furmston's Law of Contract 340 (16th ed. Oxford University Press 2012).

³Third Edition, Volume 4

⁴Oxford Dictionary of Law 5th Edition.

5 2008. It is on record that upon the Respondent's return from the village, on 10th March 2008, he visited the Appellant's office and was informed of the cancellation of his job.

10 It is thus clear that before performance of any obligations which were due under the contract, the Appellant, the would be employer, cancelled the contract. The Appellant communicated its intention not to proceed with the contract. The Appellant as a potential employer repudiated the employment contract prior to its commencement.

15 The question which arises is: *Did the Appellant have a right to repudiate the contract? and if so, what legal consequences flow from a repudiated contract?*

20 In **Hilda Musinguzi v Stanbic Bank (u) Ltd**⁵ this Court held that, the right of an employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employee's contract is terminated at the whims of an employer and if it were to happen, the employee would be entitled to compensation. (My emphasis)

25 The Appellant cited **Section 67 (4)** of the **Employment Act** as the legal provision which governed the termination of the Respondent's employment contract. The Section provides for termination of a probationary contract by either party giving not less than 14 days' notice.

30 I find that the said provision of law is not applicable to the circumstances of the present case because the unfolding events had not yet brought the Appellant within the ambit of a probationary contract since employment had not yet commenced.

35 An employer who repudiates a contract of employment can be held liable for damages for breach of contract.⁶ It is trite law that the general remedy for breach of contract is damages.

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⁵ SCCA 5/2016.

⁶ Damages Upon Repudiation of a Contract, *Joseph H. Beale Jr*, Yale Law Journal, Volume 17. NO.6 (Apr.,1908) pp 443-456.

5 In answer to the question – what legal consequences flow from a repudiated contract – I hold that the circumstances of this case where the would-be employer repudiated the contract, gives the employee a right to pursue an action for compensation by way of damages from the employer.

10 The Court of Appeal at page 25, paragraphs 30-37 of its judgment held that, “... where the party by words or conduct evinces an intention no longer to be bound and the other party accepts the repudiation and rescinds the contract ... in such a case, if repudiation is wrongful and the recession is rightful, the contract is ended by the recession but only as far as concerns future performance. It remains alive for the awarding of damages either for previous breaches or the breach which constitutes the repudiation ...” (My emphasis)

20 The Appellant submitted that the reason for repudiating the contract was because the Respondent had failed to turn up at the Appellant's premises to familiarize himself with its operations was not a valid one. It was the finding of both the Trial Court and the Court of Appeal that there was no clear agreement as to the time and schedule for the familiarization visits. Therefore, I find no fault with the Court of Appeal's holding that the repudiation of the Respondent's contract of employment was wrongful.

25
30 *Thus, ground 1 fails.*

Ground 2

35 **That the learned Justices of the Court of Appeal erred in law in awarding the Respondent General damages of Ushs: 25,000,000 beyond what he would be entitled to upon a correct finding of unlawful termination being made, which award was in any event manifestly excessive.**

Appellant's submissions

40 Counsel submitted that in the **Doreen Rugundu case (supra)**, this Court found that the Appellant had no accrued rights under the contract of employment which was terminated before it was

5 operationalized, and that the Appellant had suffered no loss or
damage that would attract damages. Based on this authority, counsel
submitted that the award of general damages in favour of the
Respondent was erroneous.

10 That in any case, this Court has in a number of decisions held that
upon a finding of unlawful termination, the measure of damages
would be what the employee would have earned during the notice
period. Counsel supported his contention with the decision of this
Court in **Betty Tinkamanyire v BOU**⁷, where Justice George
15 Kanyeihamba JSC) held that:

*"... in my opinion, where any contract of employment, like the present,
stipulates that a party may terminate it by giving notice to a specified
period, such contract can be terminated by giving the stipulated notice
20 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 awarded for reasonable notice which
25 should have been given, depending on the nature and duration of
employment. Thus, in the case of Lees vs Arthus Greaves Ltd, (1974)
1.C. R. 501 it was held that payment in lieu of notice can be viewed as
ordinary giving of notice ... The right of the employer to terminate the
contract of service, whether by giving notice or incurring a penalty of
30 paying compensation in lieu of notice for the duration stipulated or
implied by the contract cannot be fettered by the Courts. An employee
is entitled to full compensation only in those cases where the period of
service is fixed without provision for giving notice.*

35 *The contention that an employee whose contract of employment is
terminated prematurely or illegally should be compensated for the
remainder of the years 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
40 had the dismissal not occurred are merely speculative and cannot be
justified in law.*

⁷ SCCA No. 12 of 2007.

5

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."

15 Counsel submitted that in the unlikely event that this Court upholds the finding of the Court of Appeal that the termination of the Respondent's employment was wrongful, then the measure of damages to be awarded to him would be the equivalent of what he would have earned during the notice period. And given the fact that the Respondent was required to serve a probationary period of six (6) months, it follows that the measure of damages would be what he would have earned during the probation period.

25 Counsel also submitted that based on the provision of **Section 67 (4) of the Employment Act**, the Respondent would on a finding of unlawful termination, be entitled to (7) seven days' wages in lieu of notice i.e. a sum of Ushs. 1,516,667/= (Uganda shillings one million five hundred thousand sixteen thousand six hundred sixty-seven) being seven (7) days wages, or notice of fourteen (14) days. Counsel referred to the Respondent's cross-examination at page 66 of the Record where he stated that:

30 *"I did understand the importance of this clause: upon commencement of my employment with the Defendant with the probation period of six (6) months they would be in a position to terminate within one (1) weeks- notice."*

35

Premised on the above arguments, counsel submitted that the award of Ushs. 25,000,000/= by the Court of Appeal has no basis in law and ought to be set aside.

40 **Respondent's reply**

Counsel submitted that general damages are awardable in all contracts including employment contracts. They are awarded arising

5 out of the injured feelings, inconvenience and embarrassment
suffered by the employee due to unlawful termination. In support of
the argument, counsel relied on the case of **Dunk v George Waller &
Son**⁸, where damages were awarded to the plaintiff in addition to the
10 compensation of loss of earnings, training and diminution of his
future prospects of acquiring a new job.

Counsel also relied on the case of **Cox vs Phillips Industries**⁹, where
the plaintiff, did not recover damages for wrongful dismissal as the
15 defendants had paid him appropriate compensation for the unlawful
dismissal, but was awarded damages for depression, anxiety,
frustration and illness.

Counsel further argued that in Uganda, Courts have always awarded
20 general damages for breach of employment contracts. Counsel cited
the case of **Betty Tinkamanyire v Bank of Uganda (supra)**, which
involved a case of wrongful dismissal. Kanyeihamba JSC (as he then
was) who wrote the lead Judgment, with whom the rest of the Coram
concurred, enhanced the award of Ushs: 50,000,000/= previously
awarded as general damages to Ushs: 100,000,000/= and
25 commented:

*"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."*

30 Counsel also pointed out that the case of **Barclays Bank v Godfrey
Mubiru**¹⁰ relied upon by the Appellant's counsel was cited out of
context as it dealt with special damages which would constitute only
payment in lieu of notice of termination as opposed to the present
35 case in which general damages were claimed and successfully
awarded.

Counsel explained that in **Barclays Bank v Godfrey (supra)**, the case
was based on the common law principles which gave an employer the
40 right to terminate an employee for any reason or none as long as he

⁸ [1970] 2 QB 163.

⁹ [1976], WLR 638.

¹⁰ C.A No. 1 of 1998.

5 paid him money in lieu of Notice. Counsel for the Appellant cited that
case for the proposition that the Respondent was only entitled to
what he would have earned during the notice period. That on the
other hand, the Respondent in the instant case seeks damages for
wrongful repudiation. The Notice periods do not apply to him because
10 employment had not commenced.

In respect of the authority of **Doreen Rugundu v International Law
Institute(supra)** relied upon by the Appellant, counsel submitted
that the respondent's contract at that stage (before commencement)
15 is governed by the general principles of contract law and not
employment law. That in fact, the Justices in that case maintained
that in order to get any damages for breach, Doreen Rugundu had to
adduce evidence of damages she suffered as a result of the alleged
breach. In other words, she could not claim what she would have
20 earned if she had worked for the employer but what she suffered or
lost as a result of the alleged breach. Counsel argued that in
principle, the Justices agreed that there was breach of contract, but
the prospective employee could not prove damages.

25 Counsel further submitted that what distinguishes **Doreen
Rugundu's case** from the instant one is that in the Doreen case, the
claim was "*what she would have earned if the contract had been
performed, which is not claimable for a person who had not started
work.*"

30 That on the other hand, the Respondent in the instant case is
claiming damages equivalent to what he lost as a result of resigning
from his former employer to take up new employment with the
Appellant company but which was subsequently terminated before it
ever took off. Therefore, the Court of Appeal could not consider the
35 notice period since employment had not commenced and no
employment rights had accrued to the Respondent.

Court's consideration of ground 2

40 The issue raised by the Appellant under this ground is the method
the Court of Appeal used to calculate the damages awarded to the
Respondent.

5 The appellant argued that the general damages awarded to the
Respondent were excessive and should have been limited to what he
would have earned in the one week's notice period stipulated in the
contract. That therefore, the wages which the Respondent would have
10 earned following the termination period stipulated in the contract
would amount to Ushs.1, 516, 667/-. The appellant's
counsel therefore argued that the Court of Appeal erred by awarding
the Respondent an excessive amount of Ushs. 25,000,000 as general
damages. In support of this argument, counsel relied on the authority
of **Betty Tinkamanyire v BOU (supra)** where this Court held that:

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**where any contract of employment stipulates that a party
may, terminate it by giving notice to a specified period,
such contract can be terminated by giving the stipulated
notice period. In default of such notice by the employer,
the employee is entitled to receive payment in lieu of
notice ...**

On the other hand, the Respondent argued that the method for
calculating general damages as argued by the appellant is not
25 correct. The Respondent argued that the Notice periods do not apply
in the instant case because employment had not commenced.

I must point out that the authorities cited by both counsel such as
Betty Tinkamanyire v BOU (supra); **Barclays Bank v Godfrey**
30 **Mubiru (supra)** are irrelevant to the present appeal because they all
talk about how to arrive at a quantum of damages when an employer
has unlawfully terminated an employment contract which had
commenced as opposed to a repudiated contract.

35 However, I am in agreement with the Respondent's submission
regarding the authority of **Doreen Rugundu v International Law**
Institute (supra). Although the said authority bears similar facts as
those in the instant appeal in that in both matters, the employees'
contracts were repudiated, the two cases are distinguishable.

40 In the **Doreen Rugundu case**, the respondent institution
interviewed the appellant for the post of Special Assistant to the
Executive Director/Assistant Marketing Manager. She was

5 successful. The respondent offered the post to the appellant in a
letter dated 28th July, 2000 but whose commencement date was
3rd January, 2001. The appellant accepted the job and a contract of
employment was executed between the parties. The appellant was
to spend 4 days at the respondent's office familiarizing herself with
10 its operations. Furthermore, the contract of employment between
the appellant and the respondent was for a fixed period of 12
months and included an initial 6 months' probation period.

However, on 29th August, 2000, before the appellant commenced
her service of the probationary period, the respondent wrote to the
15 appellant indicating that her services were no longer required. She
tried to seek an explanation for this turnaround of events and
received no response.

On 11th January 2001, the appellant through her lawyers, wrote to
the respondent demanding payment of damages and costs for
20 breach of contract.

In reply, the respondent institution on 16th January 2001, through
its lawyers, wrote to the appellant's lawyers re-offering the appellant
the job on the terms that had been stipulated in the contract.
However, the appellant rejected the offer and filed a suit in the High
25 Court, claiming salary for the period from January to December,
2001, health Insurance, performance related bond, general
damages for disappointment, embarrassment and inconvenience,
general damages for breach of contract, interest at the rate of 24%
p.a. from the date of judgment till payment in full and costs of the
30 suit.

The Trial Court found in favour of the appellant (Doreen Rugundu)
and held that the respondent institution had breached the
employment contract. Dissatisfied with the judgment, the
respondent appealed to the Court of Appeal which reversed the
35 judgment of the Trial Court.

Dissatisfied with the Court of Appeal decision, the appellant
(Doreen Rugundu) appealed to the Supreme Court and one of the

5 issues for determination was *whether or not she was entitled to any award of damages.*

The Supreme Court, among other things held that, *since the appellant had not commenced work of the 6 months' probationary period under the contract and rendered any services for which*
10 *remuneration would be payable, she did not accrue any rights to entitle her to damages under the repudiated contract.*

Furthermore, the Supreme Court agreed with the opinion of the Court of Appeal that, *no right had accrued to Doreen Rugundu as an employee of the Institution and in order to get any damages for*
15 *breach, she had to adduce evidence of damages she suffered as a result of the alleged breach. At the trial she gave evidence and stated what she wanted from the Institution was the salary she would have earned if she had worked with it, damages she would have received under the Health Insurance, damages for embarrassment and*
20 *anguish which made her return to her mother's home.*

In declining to award the general damages and salary claimed, the Court reasoned that Doreen Rugundu was not entitled to remuneration of salary because she had not commenced her work with the Institution. In respect of the claim of general damages, the
25 Court declined to grant the award on the premise that Doreen Rugundu had not adduced evidence of damages she had suffered as a result of the alleged breach.

However, in the present appeal, the Respondent's claim for damages was premised **not** on the rights accruing under the
30 repudiated contract but on the fact that the Appellant company made him to resign his former employment where he was gainfully employed in order to take up the job offered by the company but later, repudiated the employment contract. The two cases are therefore distinguishable.

35 Without prejudice to the foregoing, it is a well-known principle of law that general damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain,

5 suffering, inconvenience and anticipated future loss. (See: **Storms vs. Hutchinson**¹¹ and **Betty Kizito vs. David Kizito & 7 others**¹²).

It is trite law, the amount of general damages which a plaintiff may be awarded is a matter of exercise of judicial discretion.

10 It is also trite law that an appellate Court will not interfere with an award of damages by a trial Court unless the trial court has acted upon a wrong principle of law or that the amount is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled.¹³

15 General damages in a breach of contract are what a court may award when the Court cannot point out any measure by which they are to be assessed except the opinion and judgment of a reasonable man.¹⁴

20 In **Kibimba Rice Limited vs. Umar Salim**¹⁵, this Court held that, *in assessing the quantum of damages, courts are guided by the value of the subject matter and the economic inconvenience that a party may have been put through.* (My emphasis)

25 The principle in the above authority is applicable to a repudiated contract. In determining an appropriate award of general damages the court is guided by the value of the contract at the time of its performance.

30 In the present matter, I note that the Respondent was supposed to earn Ushs. 6, 500,000/- per month (less statutory deductions) under the repudiated contract.

35 I further note that after the period of probation, the Respondent was to be employed on a permanent basis save for the fact that the contract was terminated prior to its commencement.

¹¹ [1905] AC 515.

¹² SCCA No.8 of 2018.

¹³ Robert Coussens vs. Attorney General SCCA No. 8 of 1999; Crown Beverages Ltd vs. Sendu Edward SCCA No.1 of 2005.

¹⁴ Asuman Mutekanga v Equator Growers (U) Ltd SCCA No.7 of 1995.

¹⁵ SCCA No.17 of 1992.

5 In arriving at the impugned quantum of general damages, the Court of Appeal based its decision on the fact that the Respondent had lost his job and had to look for alternative employment. The Court of Appeal noted that the Respondent was inconvenienced and never got another alternative employment until three years later.

10 In the case of **Betty Kizito vs. David Kizito & 7 others (Supra)**, I held that when a court is making a general award, it may take into account factors such as malice and the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress.

15 In the matter before us, the Respondent was inconvenienced by searching for a new job for 3 years after the Appellant had repudiated his contract.

20 In such circumstances, I find the award of general damages made by the Court of Appeal reasonable and does not warrant this Court's intervention.

I find no fault with the reasoning of the Court of Appeal.

25 *Ground 2 fails.*

Ground 3

30 **That the learned Justices of the Court of Appeal erred in law in awarding the Respondent special damages of Ushs: 89,900,000 in loss of earnings from his previous employer, which award was speculative and in any event manifestly excessive.**

Appellant's submissions

35 Counsel submitted that the Court in awarding the Respondent Ushs. 89,900,000/= (Uganda shillings eighty-nine million nine hundred thousand) in lost earnings from his previous employer amounted to a double compensation and was erroneous. Counsel argued that the Court of Appeal could only make an award in respect of one contract
40 or the other, but not both.

5 Counsel explained that the Appellant was not a party to the ZK Advertising contract and Respondent had by his own admission resigned from ZK Advertising thereby forfeiting all benefits that would have accrued to him under the said ZK Advertising contract. Counsel therefore argued that the Appellant having been a non-party to the
10 ZK Advertising contract, cannot under the law be made liable in respect of that contract.

In support of the foregoing submission, counsel relied on **Halsbury's Laws of England**¹⁶ wherein it is stated that:

15 *"The doctrine of privity of contract is that, as a general rule, at common law, a contract cannot confer rights or impose obligations on strangers to it, that is, persons who are not parties to it. The parties to a contract are those persons who reach agreement and, whilst it may be clear in
20 a simple case who those parties are, it may not be so obvious where there are several contracts, or several parties, or both, for example in the case of multilateral contracts, collateral contracts, irrevocable credits, contracts made on the basis of the memorandum and articles of a company, collective agreements, contracts with unincorporated
25 associations, and mortgage surveys and valuations"*

Counsel also submitted that the court in awarding the Respondent a sum of Ushs. 89,900,000/= (Uganda shillings eighty-nine million nine hundred thousand) presupposed, albeit erroneously, that it was
30 certain that he would have served his previous employer for thirty-six (36) months.

Counsel argued that the Respondent's contract with ZK Advertising was executed on 10th July 2007. On 25th February 2008, he
35 executed a contract with the Appellant. The contract with the Appellant was executed just seven (7) months after signing with ZK Advertising. The Respondent having resigned from ZK Advertising just seven (7) months after signing with them is clear evidence that it was highly probable that he would not have stayed with them for
40 36 (thirty-six) months as he alleged. Counsel referred to paragraph 19 of the Respondent's witness statement where he stated that:

¹⁶ 4th edition Reissue Volume 9 (1), paragraph 748 page 492.

5

"I believe my employment with ZK Advertising Uganda Limited was to last for at least 36 months/3 years as my said employer had guaranteed my loan repayment to DFCU Bank for the same period."

10 Counsel contended that the said "guarantee" did not in any way confirm that the Respondent would be employed for 36 months, but was merely a recommendation for advancement of a loan.

15 Furthermore, counsel contended that the Respondent's contract of employment with ZK Advertising Uganda Limited Clause 13 stated that:

" the contract of employment may be by termination by either party or 1 (one) months' notice or payment of one (1) month's salary in lieu of notice."

20

25 That according to the above clause, the Respondent's contract with the advertising agency was terminable with notice, and upon being terminated and on a finding of unlawful termination being made, he would have been entitled to a month's pay in lieu of notice. It follows that the measure of damages the Respondent would have been entitled to under this contract would be limited to Ushs. 5,800,000/= which was his monthly pay under the ZK Advertising contract.

30 Premised on the above interpretation, counsel submitted that there was no basis for awarding the Respondent damages for loss of earnings and in any event, even if a basis had been made out, the damages he would have been entitled to was Ushs. 5,800,000/=.

Respondent's reply

35 Counsel submitted that the Respondent claimed special damages of Ushs. 179,800,000/= being the equivalent of the total salary of 36 months which he would have earned from his previous employer if the Appellant had not wrongly made him to resign. Counsel contended that the Respondent's salary from the previous employer was Ushs. 5,800,000/- per month. However, the Justices of the Court of Appeal reduced the Respondent's claim by 50% and awarded him Ushs: 89,900,000/= on the ground that this amount would be paid in lump sum.

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Counsel explained that the reason for claiming the amount of salary for 36 months is because the Respondent had anticipated to work for his previous employer for a minimum period of 3 years. He could have even worked for a longer period because his contract was open ended. 10 His anticipation of working for 3 years was based on his former employer's undertaking when it guaranteed his loan with DFCU Bank for a period of 3 years. All this was proved in evidence.

15 Counsel also submitted that the special damages awarded to the Respondent represent his loss of earnings which were a direct result of the Appellant's breach of the contract and that counsel for the Appellant misdirected himself when he advanced the doctrine of privity of contract to argue that since the Appellant was not a party to the contract between the Respondent and his former employer, he 20 was not supposed to claim the lost earnings from the previous employer.

25 Furthermore, counsel argued that had the Appellant not made a false promise to the Respondent, he would not have lost the earnings from his previous job. The resignation of the Respondent from his former employer is what led him to forfeit his employment benefits and that this was caused by the Appellant's action of wrongfully repudiating the Respondent's contract.

30 In conclusion, counsel submitted that the Justices of the Court of Appeal were justified to award the Respondent Ushs. 89,900,000/= as special damages as loss of earnings.

Court's consideration of ground 3

35 It is trite law that special damages and loss of profit must be specifically pleaded and proved. [See: **Haji Asuman Mutekanga v Equator Growers (U) Ltd**¹⁷]

40 Special damages relate to past pecuniary loss calculable at the date of trial. They are awarded to cover financial loss that can be actually ascertained in terms of monetary cost. It is compensation

¹⁷ SCCA No. 7 of 1995.

5 to cover financial losses incurred.

I note that the Respondent in paragraph 8 (a) of his plaint averred particulars of special damages as follows:

10 "*Lost earnings at ZK advertising of gross monthly salary of Ug. Shs. 5, 800,000 for 31 months Ushs. 179, 800, 000/- [calculated based on the guaranteed three years of employment with ZK advertising Ltd, the plaintiff had served only 5 months].*"

15 In addressing the issue of special damages, the Court of Appeal held as follows:

20 "*The appellant pleaded Special damages of Uganda shillings 179, 800,000/=. The particulars of special damages were loss of earnings at ZK Advertising Ltd. The defendant denied any knowledge of the plaintiff's /applicants previous employment. The matter proceeded by way of witness statements. In cross-examination, the Plaintiff testified that it was an open ended contract. He relied on exhibit P2 that the period of 36 months was granted by his employers. He had applied for a loan which his former employer guaranteed. DW1, testified in cross-examination that they had obtained information from the Plaintiff about his previous position and the remuneration. They did not cross-check with the plaintiff's previous employers, the job terms. The respondent was therefore aware that the plaintiff was gainfully employed elsewhere. The plaintiff did not get alternative employment for about three years according to his testimony which was not discredited. The Plaintiff proved that he was earning Uganda shillings 5,800,000 per month as salary. However, the plaintiff had a duty to mitigate his loss upon repudiation of his new employment contract. He testified that he tried to get alternative employment and did not succeed. In the circumstances, I would allow the claim for special damages claimed and discount 50% thereof because he would be paid in a lump sum. The plaintiff is awarded Uganda shillings 89, 900, 000/- as special damages for loss of earnings. (My emphasis)*

40 I am in agreement with the method adopted by the Court of Appeal in arriving at the amount awarded. I find no reason to interfere with the award of special damages to the tune of Ug. Shs. 89,900,000/=.

5

Arising from the above analysis, *ground 3 fails*.

Ground 4

10 **That the learned Justices of the Court of Appeal erred in law in awarding interest on the special damages on the award from 27th March, 2013 until payment in full.**

Appellant's submission

15 Under this ground, counsel faulted the learned Justices for awarding interest on special and general damages equated to money in a fixed deposit account with the rate of 14% per annum from 27th March 2013 till payment in full.

20 Counsel submitted that there was no evidence tendered at the trial for the interest rate of 14% being the rate applicable for fixed deposits. That what Court could have awarded is interest at Court rate, for which no evidence would be required. That therefore, the Court erred in awarding interest at a rate of 14%.

25

Respondent's reply

On the other hand, the Respondent's counsel argued that according to **Section 26 (2) of the Civil Procedure Act Cap 71**, Court has discretion to award interest that it deems reasonable on the principal sum of the Decree either from the date of the suit or the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as Court deems reasonable on the aggregate sum so adjudged from the date of Decree to the date of payment or to such earlier date as the Court thinks fit.

35

Counsel therefore argued that the Justices of the Court of Appeal did not err when they awarded interest at a rate of 14% per annum from 27th March 2013 (date on which High Court delivered its judgment) till payment in full. Counsel emphasized that the 14% interest rate per annum is what the Justices deemed reasonable.

40

5 Counsel explained that the date of 27th March, 2013 was captured
as the date when the 36 months on which the special damages which
were computed had ended. Therefore, the sum of Ug. Shs:
89,900,000/= is deemed to have accrued to the Respondent at the
said date and thereafter it started accruing interest at a rate of 14%
10 per annum as if it was fixed. That the words 'fixed deposit account'
used by the Court of Appeal meant that there would be no
withdrawals and interest at any particular point on the aggregate
sum. That the reasoning behind such an award of interest was that
the Respondent was not going to have the money paid in installments
15 but as a lump sum. Therefore, the Justices of Appeal were not setting
an interest rate that is paid by Commercial Banks on fixed deposits
accounts. The 14% is what they found reasonable and it was not
excessive. Counsel cited the following cases to show the different
interest rates a court can award:

20 i. **Uganda Revenue Authority v Stephen Mabosi**¹⁸ where the
Supreme Court awarded 30% interest as the most reasonable.

ii. **SIETCO v Noble Builders (U) Ltd**¹⁹ wherein it was held that:
where a person is entitled to a liquidated claim, he should be awarded
25 *interest from the date of filing the suit.*

*That in the instant case, the suit was filed in the year 2008 but the
Court awarded interest to run from 2013 which is five years later.*

30 Based on the above authorities, counsel submitted that the Justices
of the Court of Appeal were justified to award interest at a rate of 14%
from the date of 27th March 2013.

In conclusion, counsel prayed that the appeal be dismissed with
costs to the Respondent.

35

Court's consideration of ground 4

The appellant faulted the Court of Appeal for awarding interest on
special damages.

¹⁸ SCCA No. 26 of 1995.

¹⁹ SCCA No. 31 of 1995.

5 In coming to a decision whether or not the Court of Appeal came to a correct award of interest, I will be guided by **Section 26 (2)** of the **Civil Procedure Act** which provides for the award of interest as follows:

10 **Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on**
15 **such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit. (My emphasis)**

20 A reading of the above provision reveals that interest can be awarded at the court's discretion. In **Premchandra Shenoï & Anor v Maximor**²⁰ this Court stated the principle on the award of interest on damages as follows:

25 *In considering what rate of interest the respondent should have been awarded in the instant case, I agree that the principle applied by this court in Sietco's case to the effect that it is a matter of the court's discretion is applicable... (My emphasis)*

30 Case law has expounded on the discretion of court and differentiated between the date when interest on special damages starts to run on the one hand and when interest on general damages starts to run on the other hand.

In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**²¹ Spry V.P held that interest on special damages is awarded from the date of filing of the suit until payment. In contrast, interest on

²⁰ SCCA No.31 of 2003.

²¹ (No.2) [1970] EA 469 at page 475.

5 general damages is awarded from the date of judgment until payment in full. The Court stated that:

10 **... where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing suit. Where, however, damages have been assessed by the court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of judgment.**
[See also: **Hirji v Modessa**²²]

15 It is on record that the present case was instituted in the High Court on 30th May 2008. It therefore follows that the amount of Ug. Shs. 89,900,000/= awarded as special damages will start running on the said date when the suit was instituted in the High Court.

20 On the other hand, interest on general damages will start running on 7th June 2019 in light of the fact that it is the Court of Appeal which first granted the award.

25 Following the above principles, I find that the terms in which the Court of Appeal couched the award of interest was erroneous. The award of interest was stated in general terms and it covered both the general and special damages. The Court of Appeal in awarding interest stated as follows:

" The above awards would attract reasonable interest as if the plaintiff deposited the money at a bank on a fixed deposit account at the rate of 14% per annum from 27th March 2013 till payment in full."

30 Regarding the rate of interest, the Appellant contended that there was no evidence upon which the Court of Appeal based itself to award interest at a rate of 14%.

35 Although it is trite law that the award of interest is a matter of discretion, that discretion must be exercised judiciously. One of the ways in which discretion can be said to have been exercised

²² [1967] EA 724 (CA).

5 judiciously is by giving reasons for the award made and an assessment of supporting evidence presented before it.

In the instant appeal, the lower court neither gave reasons for awarding interest at the rate of 14 % per annum nor supported its discretion to award a rate of 14 % with any evidence. The court only
10 equated the rate of interest to be awarded to that of a fixed deposit bank account without showing how it arrived at such a rate. It is for this reason that the Appellant contested the said rate.

Section 26 (3) of the **Civil Procedure Act** provides that:

15 **Where ... a decree is silent with respect to the payment of further interest on the aggregate sum specified in subsection (2) from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 percent per year.**

The above provision sets the rate of interest awarded by court at 6%.
20 Following the said provision and the reasons given above, I would interfere with the rate of interest awarded by the lower court and reduce it to 6%.

From the above, I hold that *ground 4 partly succeeds*.

Conclusion and orders.

- 25 1. On the whole, I hold that the appeal fails save for partial success of ground 4.
- 30 2. I would award Ug. Shs. 25,000,000/= to the Respondent as general damages. The amount will attract interest of 6% from 7th June 2019 (the date when the Court of Appeal granted the award) until payment in full.
- 35 3. I would award Ug. Shs. 89,900,000/= to the Respondent as special damages. The amount will attract interest of 6 % from 30th May 2008 (the date when the suit was instituted in the High Court) until payment in full.

