

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

CIVIL APPEAL NO. 0029/2010

(From Mbale Chief Magistrate's Court Civil Suit No. 29/2010)

YUNIA NAMBAFU.....APPELLANT

VERSUS

GRACE NAMAROME.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The appellant **Yunia Nambafu** represented by M/s Musiiho & Co. Advocates filed this appeal against the respondent **Grace Namarome** who appears in person.

The background to this appeal is that the respondent sued the appellant in the Magistrate Grade I's court of Mbale claiming special damages for non-payment of her salary for 13 months running from 1st November 2000 to 31st December 2001. The respondent averred that on 1st November 2000, the appellant employed her to serve in her drinking place where she was selling liquor and soft drinks. That it was agreed that the respondent would be paid shs.45,000/= per month as salary. According to the respondent, she rendered service continuously from 2nd November 2000 to 31st December 2001 but was not paid her dues although the appellant promised to pay her. Further that on 31st December 2001, the appellant summarily dismissed the respondent without pay. The respondent therefore

claimed shs.585,000/= as salary owing for the 13 months she worked unpaid. On the other hand the appellant denied owing the plaintiff any money and alleged that the respondent had overdrawn her salary by shs.100,000/= and by the time she left duty on 9.12.2001 she had not accounted for shs.100,000/=.

After evaluating the evidence before her the learned trial magistrate entered judgment for the respondent for the unpaid 585,000/= as special damages to carry interest of 8% from the date of judgment till payment in full. The respondent was awarded costs as well.

The appellant was dissatisfied with the judgment and orders of the learned trial Magistrate hence this appeal.

In the memorandum of appeal, the appellant complained that;

1. The learned trial Magistrate erred both in law and fact in holding that the respondent had proved that she was employed without earning salary for 13 months.
2. That the proceedings are incomplete.
3. That the learned trial magistrate erred both in law and fact in holding that the appellant departed from her pleadings when testifying in court.
4. That the learned trial Magistrate erred both in law and fact in awarding interest of 8% on special damages which was not pleaded in the plaint; and,
5. That the decision of the learned Trial Magistrate has occasioned a miscarriage of justice.

As a first appellate court it is the duty of this court to re-evaluate the evidence adduced at the trial and make a finding if on the available evidence, the decision of

the learned trial Magistrate can be upheld. In order to properly execute this duty, I will outline the brief evidence adduced at the trial on both sides.

The respondent testified as PW.1 and emphasized that she was never paid any money as salary which had been agreed at 45,000/= per month. That when she got the job, she was not given any appointment letter and therefore no agreement of employment was written. That she is owed shs.585,000/= and costs of the suit. That she was employed as a barmaid from 2nd November 2000 to 31st December 2001 when she was chased by the appellant.

PW.2 was **Jalilu Mugoya** the chairperson LC.I Lwakakha Cell. He said he knew the parties to this appeal because they worked in his cell. That at one time he received a complaint from the respondent that she worked for the appellant but had not been paid her salary for 13 months at the rate of 45,000/= per month. That the two agreed on the rate of payment and time worked and the appellant agreed to pay the respondent less by 100,000/= which the respondent owed the office. However the respondent disagreed with the proposal to deduct 100,000/=. The dispute was not resolved. This was the respondent's case.

In her defence, the appellant testified alone as DW.1. She told the trial court that she knew the respondent who worked in her bar in 2001 for eight months earning 1000 per day. That she never paid the respondent a monthly salary and by the time the respondent left the job, the appellant did not owe her any money. She acknowledged meeting PW.2 but denied owing the respondent any money.

Basing on the above evidence the learned trial Magistrate entered judgment for the respondent herein hence this appeal.

Each party filed written submissions.

As a first appellate court, I have re-evaluated the evidence adduced at the trial. I have taken into account the submissions by respective parties.

I am in total agreement with **Mr. Musiiho** that on the available evidence, the respondent did not prove her claim on a balance of probabilities. The lower court evidence was basically from two witnesses, i.e. the appellant and respondent one asserting her claim and the other denying it. There was no documentary evidence to show that the respondent was employed by the appellant and at what rate of salary and for how long. The respondent was not issued with any appointment letter as required by law to show her terms and conditions of service.

She claims to have worked without pay for over a year.

S.9 of the Employment Act prohibits employment of another except in accordance with the law.

Under S.11 (1) of the Employment Act, a contract of service for six months or more, or for a number of days totaling six months or more must be made in writing. Any employer who defaults in this commits an offence.

Employer means any person that has entered into a contract of service to employ any other person.

By the appellant employing the respondent which she accepts, for over six months without a written agreement or contract, she breached the law. The respondent thereby entered an illegal relationship with the appellant which this court cannot enforce. The respondent therefore engaged in an illegality from which she cannot recover.

Regarding the record, I have made use of the certified typed record which appears complete. I do not think the appellant has been prejudiced thereby.

Regarding the award of interest I agree with the submission by the respondent that court has discretion to award interest and when to award it regardless of whether it was pleaded for or not. The award of interest would have been proper if this claim was proved.

It is my considered view therefore that without following the law, the respondent had no cause of action to enable her recover damages from the appellant.

Consequently I will allow this appeal, and set aside the judgment and orders of the lower court. The appellant shall get ½ the costs of this appeal only.

Stephen Musota

JUDGE

28.02.2013