

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
HCT-00-CV-CS-0084 -2009

BUBOLO FRED
(Suing as a Representative of 296 former
employees of Uganda Railways Corporation) ::::::: PLAINTIFFS

VERSUS

UGANDA RAILWAYS CORPORATION ::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Bubolo Fred suing as a representative of 296 former employees of Uganda Railways Corporation instituted this suit against the defendant for recovery of Shs.2,851,619,035.20/= being terminal benefits of the 297 former employees of the defendant and an order of repatriation of the plaintiffs to their respective home areas as well as general damages for inconvenience arising from non-payment of the terminal benefits, interest and costs of the suit.

The facts constituting the plaintiffs' cause of action are that;

1. By oral contract of service the defendant employed the plaintiffs sometime in 1994 in various capacities;

2. The defendant then housed the plaintiffs at its quarters, paid them monthly salaries, issued them identity cards and transferred them to various duty stations all over Uganda at will;
3. The plaintiffs were in the defendant's employment for as many as 10 years or more in some cases;
4. Sometimes in the year 2006 the defendant terminated the plaintiffs' employment and never paid them terminal benefits. That despite the plaintiffs' demands for payment the defendant paid no heed and instead informed the plaintiffs that they are casual employees who are not entitled to terminal benefits.
5. The plaintiffs contended that they were rendered permanent employees by the conduct of the defendant therefore entitled to terminal benefits.

The defendant in its written statement of defence denied having entered into any oral contracts with the plaintiffs as alleged. She further contended that all the employees were employed under written terms which were in form of either appointment letters or formal contracts and subject to the defendant's Rules of 1994.

The defendant further contended that upon expiry of any of the employee's contracts or duration of appointment the same would either expressly get renewed/extended in writing or in case of

continued service upon remuneration of an employee by the defendant without express written extensions/renewal of the engagement by virtue of both parties conduct. That none of the plaintiffs were engaged on permanent terms of employment as envisaged under the defendant's staff Rules of 1997.

The defendant further contended that if any of the plaintiffs was being accommodated in the defendant's houses during his or her employment with the defendant, which is denied, he or she did so without the knowledge of the defendant or in the event that he/she was allocated such accommodation, the same was done on the basis of tenant/landlord relationship or ex gratia with no intention of creating legal relationship whatsoever. That the alleged provision of accommodation to the plaintiffs, issuance of identity cards, payment of their salaries on a monthly basis and transfers from one station to another do not accord the plaintiff the status of permanent employment.

During the hearing of this suit, the following issues were agreed upon;

- 1) Whether the plaintiffs are entitled to terminal benefits.
- 2) Whether they are entitled to the reliefs sought.

The plaintiffs led evidence through two witnesses. The first witness was Oundo Robert a former employee of Uganda Railways Corporation as a casual gang man. He testified that initially his employers had

arranged to pay him shs.2,500/= per day but later it changed and he found himself earning shs.5,000/=. The amount was payable at the end of the month. He stated that to him the casual terms of engagement entitled him to payment at the end of every day worked and that he accepted the appointment which entitled him to being paid at every month end instead of everyday. That he is not versed with the rules of Uganda Railways Corporation but was aware of their existence and was also aware there was a category of staff known as casual staff to which he belonged.

PW2 was Obwoye Frazier who testified that he was employed by the defendant on contract terms from 1st August 1996 up to 31st July 2006. In cross-examination he testified that his contract was termination on 31st July 2006. That the contracts were annual from 31st August of every year to 31st July of the following year. He agreed that he was not entitled to notice since the contract ended on 31st July 2006. That he served for ten years and there should be terminal benefits. He stated that he worked for 10 years but was called a casual worker yet casual should be from three months to 6 months.

The defendant led evidence through DW1 George Eilasi Omute the Human Resource and Administration Officer of Uganda Railways Corporation. He testified that this case is about ex-workers of Uganda Railways Corporation claiming terminal benefits of about 2.8 Billion. That he knew the categories of employees that are permanent, those on contract and the casual employees. That the plaintiffs herein were casual employees who were paid on daily basis. That those on

contract could be on yearly contract basis while the permanent employees were on permanent and pensionable terms including terminal benefits,. He further testified that the casual and contract staff were not graded and only permanent staff had salary Grades from RG1 to RG20. The highest Grade was RG1.

In cross-examination, DW1 stated that the appointment letters issued would clearly describe the nature of engagement of the different categories of employees.

In his final submissions, Mr. Odokel learned counsel for the plaintiffs submitted that section 2 of the Employment Act defines a contract of service to mean any contract whether oral or in writing, whether express or implied when a person agrees in return for remuneration to work for any employer and includes a contract of apprenticeship. That notwithstanding the above provision of the law, it was not in doubt that the plaintiffs were in the employment of the defendant Corporation but what is in contention is the nature of employment that the plaintiffs had with the defendant.

Mr. Odokel further submitted that under section 2 of the Employment Act, a casual worker is defined as a person who works on a daily basis or hourly basis where payment of wages is due at the completion of a days work.

Learned counsel relied on the case of **Wilson Wanyama Vs Development and Management Consultants International HCCS No. 332 of 2004** wherein Justice Yorokamu Bamwine stated inter alia that:

“There are two main factors which identify a casual employee. First, he is not employed for more than twenty four hours at a time, and secondly, his contract provides for payment at the end of each day.”

That Regulation 39(1) and 39(2) of the Employment Regulations SI 61 of 2011 provides as follows:

“A person shall not be employed as a casual employee for a period exceeding 4 months.”

Learned counsel for the plaintiff contended that a casual employee engaged continuously for four months shall be entitled to a written contract and shall cease to be a casual employee and all rights and benefits by all other employees shall apply to him or her.

Learned counsel argued further that despite the wording of the respective letters given to the plaintiffs during appointment stating that they are casual employees and contractors, they were not treated as such during the course of employment. He further submitted that some of the plaintiffs were accorded the privileges which according to the defendant were only accorded to permanent employees such as

housing and medical care. This was clearly brought out by PW1 when he testified to the fact that he was being housed at Nsambya Railway quarters and that they were accessing medical care and this applied not only to employees but to their families too. That the said treatment of the plaintiffs excluded them from the definition of casual employees as provided under section 2 of the Employment Act and by the provisions of Regulations 39 (1)(i) and (2) of the Employment Regulations they ceased to be casual employees and are therefore entitled to all the benefits guaranteed to them by the Employment Act as other employees.

In reply, Mr. Muhangi Noel learned counsel for the defendant submitted that it is not in contention that the plaintiffs were employees of the defendant and also not in contention that they were collectively terminated on 31st July 2006. That the terms and provisions in exhibit P2 and P3 (sample appointment letters) in regard to terminal benefits are express and specific to the effect that none of the plaintiffs in either category of employment was entitled to terminal benefits or other remuneration other than those stated therein.

Learned counsel submitted that the plaintiffs have no cause of action and their claim for terminal benefits is misconceived and has no legal basis as the plaintiffs were engaged on specific/express terms of employment as set out in Exhibit P2 and P3 respectively. That the said terms of engagement for both categories of employees expressly excluded payment of terminal benefits.

Learned counsel submitted further that the plaintiffs' allegations that regardless of their express terms of engagement the defendant's conduct qualifies them to be categorized as permanent and pensionable employees and therefore gives them ground to claim terminal benefits is to say the least baseless and misconceived. That the plaintiffs are in essence asking this court to reconstruct and vary or amend their express written terms of engagement. That the law prohibits one to adduce oral evidence to vary or contradict a written agreement on court record. See Ss 29 and 92 of the Evidence Act.

Learned counsel for the defendant further submitted that the plaintiffs cannot run away from the express terms of their employment agreements which they willingly executed and have no legal basis to claim other terms of engagement outside their agreements. That there is no law that prohibited the defendant from engaging the said staff for the period they purported to serve.

I have considered the evidence adduced by both sides and the submissions by respective counsel. It is not in contention the plaintiffs' services with the defendant were collectively terminated on 31st July 2006 and as at the said date, the Employment Act Cap. 219 was the law in force relating to labour matters until 7th August 2006 when the Employment Act 2006 commenced pursuant to the Employment Commencement Instrument No. 33 of 2006 which effectively repealed

Cap. 219. Therefore the latest Employment Act does not apply to the plaintiffs' Employment with the defendant.

It is an agreed fact that the plaintiffs were employees of Uganda Railways Corporation. However whereas the plaintiffs claim that they were permanent and pensionable employees, the defendant does not agree and argues that they were on casual and contractual basis and thus not entitled to terminal benefits.

It was the plaintiffs' case that much as the letters of appointment and contracts indicated that they were casual employees, it is not what was actually on the ground since the conduct of the defendant was far from categorizing the plaintiff as casual or contractual employees. They cited having worked for many years, accessing medical treatment, housing and possession of identity cards among others.

Learned counsel for the plaintiffs labored to define a contract of service and a casual employee as defined in S.2 of the Employment Act 2006 to suit his clients' claim. However, I do agree with learned counsel for the defendant's submissions that the Employment Act 2006 and rules made there under do not apply retrospectively.

Exhibit P3 was picked as a sample for the plaintiffs who were appointed on contract basis in 1999 and exhibit P2 as a sample for employees on casual basis appointed in 2002. The terms of

engagement of the plaintiffs are well spelt out in Exhibit P2 and P3 respectively. The plaintiffs accepted the clear term outlined therein and cannot turn around and assume otherwise.

In cross-examination, PW1 Oundo Robert stated that he was not aware of Rule C14 but acknowledged that he was aware there was a category of staff known as casual staff and he was one of them. That he was not entitled to medical care. When pressed further he kept quiet since he had already disassociated himself from the rule in the staff rules.

This clearly showed that much as the witness denied knowledge of the rules and what C14 contained, in actual sense he knew under what terms and conditions he was working. He at one time denied the rules and at the time relied on the rules to build his case. This court cannot allow the plaintiffs to orally vary the clear terms of their engagement. The plaintiffs cannot run away from the express terms in their respective employment agreements which they willingly executed. They have no legal basis to claim benefits outside their terms of engagements. The fact that the defendants afforded them medical care, housing among other things cannot be taken as an implied agreement to alter the clear terms of engagement which are contained in the agreement the plaintiffs signed voluntarily.

The plaintiffs have failed to prove on a balance of probabilities that they were entitled to terminal benefits under the terms and conditions

of Uganda Railways Corporation. In the result this suit is dismissed with costs.

I so order.

Stephen Musota

J U D G E

26.04.2016.

26.4.2016:-

Muhangi Noel for the defendant.

Odokel for the plaintiff.

Defendant's representative absent.

Some plaintiffs present.

Milton for Clerk.

Muhangi:-

We are ready to receive the judgment.

Court:-

Judgment delivered.

**Ajji Alex Mackay
DEPUTY REGISTRAR/CIVIL DIVISION
20.4.2016.**