

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 139 OF 2011

1. BYABAGAMBI DEOGRATIOUS

2. JAMES PETER ETWO

3. BYAMUGISHA HENRY

4. NKUBUGE DAUDI

5. MPOZA ANNISSET

6. NSUBAGA RONALD

=====

PLAINTIFFS

7. AGGREY LUBWAMA

8. KANANURA OBAR

9. KYAMANYI JAMES

10. MATOVU BLASSY

11. KIIZA GERALD

12. ANTHONY MUDEKETE

13. SUUDA JACOB

VERSUS

UGANDA TRANSPORT

COOPERATIVE UNION LIMITED =====

DEFENDANT

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

JUDGMENT

SUMMARY OF PLAINTIFFS' CASE

The plaintiffs' were employees of Uganda Transport Cooperative Limited who were force to retire by the union. Upon retirement the plaintiffs realized that the defendant did not pay various benefits to which they were entitled under the law. The defendant calculated both gratuity and terminal benefit of all the plaintiffs but the defendant has refused and/or failed to pay the balance of terminal benefits to some plaintiffs to date despite several reminders. The paid terminal and gratuity benefits have been made in very small installments which has rendered it impossible for the plaintiffs to plan for their Retirement money. The plaintiffs have grossly been inconvenienced by the defendant's conduct for which they seek for special, general damages and costs of the suit.

SUMMARY OF DEFENDANT'S CASE

The plaintiffs are former employees of the defendant who ceased employment on 31st January 2010. The defendant issued a General Retirement Notice which affected all the staff and the retirement was to take place three months after the notice. The defendant has not refused/neglected to pay the outstanding balances on the plaintiffs' terminal benefits.

ISSUES FOR DETERMINATION

At the joint scheduling conference the following issues were raised:

1. *Whether the Plaintiffs are entitled to the benefits claimed?*
2. *Whether the defendant is liable for breach of any contractual and/ or any statutory duty?*
3. *What are the remedies available to the parties?*

DETERMINATION

Whether the Plaintiffs are entitled to the benefits claimed? / Whether the defendant is liable for breach of any contractual and/ or any statutory duty?

The relationship between plaintiffs and the defendant is defined under **Section 2 of the Employment Act 2006** and is that of employer- employee under a contract of service to which if terminated, entitles the plaintiffs to a number of benefits under the same contract. This therefore creates an employer- employee relationship that comes along with a number of contractual obligations. Under such an arrangement the employee and employer enjoy a number of benefits as detailed in the **Employment Act 2006**.

Section 54 of the **Employment Act 2006**, provides for annual leave and public holidays to which an employee is entitled to a holiday from work with full pay at a rate of seven days every calendar year upon mutual agreement between the employer and employee. And **section 87** of the same Act entitles the employee to severance pay after being in continuous service for the employer for a period of six month and above and **Section 87(d)** particularly provides for instances where the employer terminates the employment on his own peril or insolvency. The same of which is meant to be paid in the event of termination of employment as

per section 91 of the Employment Act. In the case of *Othieno vs UBC C.S 07/2013* it was held that for a claim of compensation to be upheld the employee must prove that she or he requested for leave and was asked not to take it. Further in the case *Kangaho Silver vs Attorney General D.L.C. 276/2014*, it was held that whereas going on leave is an employee's right, such right can only be exercised by application to the employer who may approve it or postpone the same to a given date. It is only then when the employer refuses to grant the same that the employee is entitled to payment in lieu of leave.

In regards to repatriation, **section 39 of the Employment Act** provides that;

“(1) An employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases –

- a. On the expiry of the period of service stipulated in the contract;*
- b. On the termination of the contract by reason of the employee's sickness or accident.*
- c. On the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and*
- d. On the termination of the contract by order of the labour office, the Industrial Court or any other court.*

(2) Where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the expense of the employer, in the event of the employee's repatriation or death.

(3) Where an employee has been in employment for at least ten years he or she shall be repatriated at the expense of the employer irrespective of his or her place of recruitment.

(4) A labour officer may, notwithstanding anything in this section, exempt an employer from the obligation to repatriate in circumstances where the labour officer is satisfied that it is just and equitable to do so, having regard to any agreement between the parties or in the case of the summary dismissal of an employee for serious misconduct.”

According to **section 90** of the **Employment Act 2006**, envisions any benefits or money owed by the employer to the employee and it is to the effect that;

- a) Any gratuity, bonus or pay that is not provided for by the Act but paid by the employer to employee on cessation of employment shall be taken into account in the calculations of severance allowance and the same shall be deducted from the severance.
- b) The right to severance allowance shall be in addition to any other right enjoyed by the employee against an employer and it shall be subject to set off, compensation or counterclaim as any wage or remuneration due under a contract of service.

This in essence addresses repatriation as a benefit among others that the employer is meant to take into consideration and consequently remit the same among benefits owed to the employee.

Section 46 of the **Employment Act** provides for permitted deductions on an employee's remuneration which encompasses money remitted to the National Social Security Fund, and is to the effect that;

- a. Any amount in respect of tax, rate, subscription or contribution imposed by law is permitted from an employee's wages.
- b. Where an employee has expressly given his consent to a deduction being made in respect of a contribution, which contribution represents a contribution to any provident or pension scheme or Fund established by the employer or any other person.

Section 13 of the **Occupational Safety and Health Act 2006**, imposes a duty on the employer to protect his workers as far as reasonably practical especially due course of work while operating any form of machinery. Furthermore **Section 19** of the same obligates the employer to provide protective gear to the employee at all times upon recommendation of an occupational hygienist. And it is the duty of the employer to make sure the gear is used at all material times while handling any of his/her undertaking by the employee. In regards injuries sustained by employees, **section 3** of the **Workers Compensation Act Cap 225** imposes employer's liability and is to the effect that if personal injury arises out of or in due course of a worker's employment, the injured worker's employer is liable to compensate the worker in accordance to the Act.

In the instant case the plaintiffs adduced evidence that contained appointment letters, retirement letters, calculated gratuity and terminal benefits.

The plaintiffs were all paid the specified amounts as; Retirement payment, Gratuity and transport. They contended that the pay was not enough since they came from different locations. They have contended that the amounts paid were not adequate or that they were entitled to other benefits arising out of breach of the law. The 11th plaintiff also demanded for workmen's compensation since his eye was operated on allegedly due to work related accident.

It can be deduced from all the documents exhibited in this court and through the defence witness that the plaintiffs received their severance pay. DW1 stated that " we paid severance pay and it was accordance with the terms and conditions of service. The severance pay included retirement benefits" DE-1 Article 21

provided for Forced retirement of the employees and the payments were computed in accordance with this Article.

The plaintiffs had contended that they were denied any salary increment for the period they worked in accordance with their collective agreement negotiated by the labour union. The defence witness testified that they received a salary increment of 60% in 2004 and 15% in 2007. The collective agreement DE-1 provided for salary increase by a reasonable percentage under Article 2 and further under Article 19 provided for annual increment of 15% depending on Government gazette salary increments and Article 42 provided that workers remuneration shall be reviewed subject to the performance of the Union.

It can be deduced from the above articles that the increment payment was subject to the financial performance of the Union in order to consider the increments. It is not disputed that the Union was not performing well and this led to reduction of staff. The defendant was not obliged in such circumstances to increase the salary.

The plaintiffs also sought compensation for the failure to provide them with working wear and boots. It is true that the plaintiffs raised the said issue in one of their meetings. They requested for new overalls and shoes in 2006 since what they had was worn out.

However, the failure to provide could have been a breach of the law but this should not mean that after the termination of their contract of employment, they should be paid in lieu of the unprovided overalls or boots or soap. They ought to have protested at the moment when they were not provided or worked below

par since they missed working gear. It does not become an entitlement to demand for the payment in lieu thereof. In simple terms they acquiesced and they are not entitled to any payment in lieu.

The 11th plaintiff's claim for workers compensation did not follow the laid out procedure and the same ought to have been proved before the Magistrates court and could not be bundled with other claims. It is a special claim which involves special proof through medical examination of the person affected and assessment of the medical incapacity. The 11th plaintiff merely attached documents of medical treatment from Mengo Hospital Eye clinic. The same did not prove any entitlement in absence of a medical report explaining the possible cause and assessment of the level of incapacity.

The NSSF contributions are contested as not having been remitted in accordance with the months of payment. It would appear they were paid differently and not in the order for the payment of the salary. It the duty of the NSSF to pursue every employer who fails to collect the contributions in accordance with the National Social Security Act. It would be a big burden to place on the employees to pursue their employers to remit the contributions.

If the employees believe that their contributions were not collected from the defendant, it would be a failure in exercise of their duty and would therefore be liable to make good any loss occasioned to the employees. They can pursue the claims against National Social Security Fund.

The plaintiffs also claimed for payment in lieu of leave not taken. They contended that they were denied leave or never took their leave as provided.

The terms and conditions of service under the collective agreement provided for taking leave. The plaintiffs were required to make an application for leave one month prior to the commencement of taking the leave.

If the management requests an employee not to go on leave, she/he will be paid 50% of annual basic pay as leave. Leave is not accumulable UNLESS with management approval. The plaintiffs have not proved that they applied for leave and the same was denied. The claim for the accumulated leave cannot be sustained in the circumstances of the case.

What are the remedies available to the parties?

The plaintiffs have not proved entitlement to any of the benefits claimed. This suit is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

18th September 2020