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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT JINJA

LABOUR DISPUTE REFERENCE No. 168 OF 2017

ARISING OUT OF KCCA/KWP/LC/001/2017

AVAKO DOREENCLAIMANT

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VERSUS

UGANDA NURSES AND MIDWIVES UNION RESPONDENT

BEFORE:

1. THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

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1. MR. FX MUBUKE

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. EBYAU FIDEL

AWARD

BACKGROUND

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The Claimant’s claim against the Respondent is for special, general and aggravated damages for wrongful dismissal and breach of her employment contract, costs to the suit and interest.

FACTS:

25 She was employed as an Administrative Assistant at the Respondent's Project, known as the wellness Centre for Health care workers, from 15/03/2011 until the termination of her contract on 20/12/2016. According to her, on 2/11/2016 the Respondent's General Secretary arbitrarily originated an internal memo addressed to all staff to reapply for their positions within two days. On 20/12/2016 her employment was terminated by the Respondent without according her a hearing and without any reason. She contended that
30 she was supposed to be paid a consolidated annual salary of USD 8640, but the Respondent paid her in Ugandan Shillings, without taking into consideration the prevailing Dollar/shilling rate thus creating a shortfall in her salary payment over the years and her NSSF was never remitted to the Fund. She contends that her termination was unlawful.

ISSUES:

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- 1. Whether the Claimant was employed by the Respondent?**
 - 2. Whether the Claimants contract was wrongfully or unlawfully terminated?**
 - 3. Whether the Claimant is entitled to the Remedies sought?**

REPRESENTATION

40 The Claimant were represented by Mr. Nyakahuma Allan of Liberties Advocates, Kampala and the Respondent, by Mr. Rwabwogo Richard of M/S Rwabowogo &Co. Advocates, Kampala.

1. Whether the Claimant was employed by the Respondent.

Although Mr. Rwabogo, Counsel for the Respondent asserted that the Claimant was not an employee of the Respondent but rather that, of the Wellness Centre for Health Care workers Ltd by Guarantee, evidence on the record indicates that on 1/03/2011, she entered into a contract of employment with UNMU, the Respondent as an Administrative assistant, at its project known as the Wellness center for Health care workers. The Contract was open ended. It was also not in dispute that on 27/11/2015, the Wellness Centre for Health workers was registered as a Company limited by Guarantee with, Janat obuni, Cliff Aliga and Enid Mwebaza as its Directors therefore as submitted by Counsel, the Centre became an independent entity. This notwithstanding, we found nothing on the record to suggest that, the status of the Claimant's contract of employment changed after the center was registered as a Company limited by Guarantee or that her employment was transferred to the registered Company. In fact RW1 Cherop Justus Liplangat testified that, the Claimant's appointment indicated that "*UNMU wrote projects wellness centre was under the project... Doreen would be paid by the Union...we are not in the company as UNMU but as project we had a role* " Therefore, even if the center became a company limited by Guarantee, no evidence was adduced to show that the Claimant's employment was transferred from UNMU to the new Company, as provided under section 28 of the Employment Act. We are further fortified by the General Secretary to UNMU's letter dated 20/12/2016, which notified the Claimant about the non-renewal of her contract, which was confirmation that, the termination of her contract was done by the Union and not the Company Limited by guarantee. This therefore left no doubt in our minds that, the Claimant remained staff of the Union even after the Wellness centre was registered as a Company limited by Guarantee. The issue is therefore resolved in the affirmative.

2. Whether the Claimants Contract was wrongfully of unlawfully terminated.

The Claimant submitted that, her contract was open ended and as such there was no need for her to reapply for a job whose contract was still running. It was her testimony that, the Respondent started the Wellness Centre for the benefit of all the Health Workers. We have
70 already established that, the Respondent called for all its employees to reapply for their jobs, but the Claimant did not do reapply as directed, on the grounds that, the nature of her contract was open ended and as such there was no need for her to reapply.

The Claimant admitted that, on 20/10/2016, the Respondent held a staff meeting and requested all of staff including those of the wellness center, requiring them to reapply for
75 their jobs if they were interested in continuing to work with it. We have already established that the Claimant did not deny, that a written reminder was issued to them on 2/11/2016, and for was not denied by the Claimant. RW1 testified that, the funding from the centre
“... was going to stop hence we asked the staff to reapply...we did not sack Doreen ... we were going to revert to Uganda shillings She was asked to reapply because the money
80 was going to be stopped...” The Claimant on the other hand testified that, she found no reason to reapply because she had an open-ended contract. The Internal Memo from the General Secretary to the staff of the wellness Center, dated 2/11/2016, titled “*All staff, All staff (wellness centre)*” stated in part as follows:

“...in reference to my communication during the staff meeting of UNMU and wellness
85 Centre held on 20/10/2016 all the above-mentioned staff were advised to **Re-Apply for their respective positions**, that they are holding currently

Deadline for submission of your job application is 4pm, 4th November 2016.

The file has been opened with the Secretary UNMU.

Thank you

90 *Joyce Lucy Atim,*

General Secretary UNMU.”

According to this memo all categories of staff were required to reapply and there was nothing to indicate that, the staff of the wellness centre had been excluded. We are convinced that, this was prompted by the impending withdrawal of donor support following
95 the registration of the centre as a company, because RW1 Cherop Justus Kiplangat testified that, *around 2016, the donors that had been hoodwinked by the guarantors got concerned of misuse of the money that was extended to help health workers and halted their support... the support from Donors was ending that's why every staff was called to renew...*

” this evidence was not refuted by the Claimant, nor did she dispute the fact that, the
100 wellness centre was indeed sponsored by the International Council for Nurses (ICN) who were withdrawing funding from it. In the circumstances, it would not be far fetched to conclude that, the donors having withdrawn their support to the centre, UNMU had to take responsibility of financing its activities including the Wellness centre or close the centre hence the requirement to reorganize it self.

105 Although Counsel for the Claimant contended that it was illogical for UNMU to require her employees to reapply under the disguise of expiry of contract on the one hand and restructuring on the other, this court's holding in many cases are to the effect that , the

requirements of any business are determined by the employer/owner of the business, who reserves the right to decide its nature and scope and the number of employees, how to
110 execute the work and what roles they should and the Courts of law cannot fetter this prerogative. Therefore, termination as a result of restructuring is lawful as long as the employer follows the correct procedure before effecting the termination. In **ZTE Uganda Limited vs Sseyiga Hermenegild & 6 Others LDA No. 24 of 2019**, established that;
115 “...It is a settled position of the Law that, termination as a result of restructuring or reorganization is acceptable and is in conformity with the Termination of Employment Convention No. 158 of 1992, which Uganda ratified and domesticated in the Employment Act 2006. The Convention under Article 13 provides that:

“...when the employer contemplates termination for reasons of an economic, technological, structural or similar nature, the employer shall:

- 120 a) provide the workers representatives concerned in good time, with relevant information including reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- 125 b) give, in accordance with national law and practice, the workers’ representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment....”

The Court further established that even if Section 81 of the Employment Act, which is to
130 the same effect only lays emphasis on collective termination, it still makes it mandatory
for the employer, before terminating an employee as a result of restructuring, to give such
an employee or employees notice about the impending restructuring to enable them prepare
for their exit.

Having already established that, the Respondent in the instant case met all the staff
135 including the staff of the wellness centre and requested them to reapply on account of the
donors withdrawal of funding even in the absence of the proceedings of the said meeting,
the follow up memo to all the staff on the same subject dated 2/11/2016, was sufficient for
us to conclude that the staff were effectively notified and the issue was discussed leading
to the requirement for all the staff to reapply as an expression of interest in continuing to
140 work with the Respondent, inspite of the funding situation, following the undisputed fact
that, the funding to the centre was being stopped by the Donors. To this extent the
Respondent complied with the requirement to notify staff about an impending restructuring
and as already discussed the Claimant admitted that she was aware of the same, in her
understanding, it was not necessary for her to reapply because she had an open ended
145 contract.

In our considered opinion, employees are expected to obey their employers' lawful orders
and or seek clarification where they are not sure. In this case, it was a requirement for all
staff to reapply and as already discussed none was excluded. Therefore, like any other staff,
the Claimant was obliged to comply with the Respondent's directive to reapply as an
150 indication that she was still interested in working with, as indicated in the memorandum to

the staff, the Respondent, notwithstanding that, she had an open-ended contract, but she did not do so.

155 We reiterate and for emphasis state that, the requirements of any business are determined by the employer/owner of the business, who reserves the right to decide its nature and scope and the number of employees and their roles in the organisation, therefore they have the right to restructure the organisation as they find necessary as long as it is done in accordance with the law.(see **ZTE Uganda Limited vs Sseyiga Hermenegild & 6 Others LDA No. 24 of 2019(supra), Dr. Elizabeth Kiwalabye vs Mutesa 1 Royal University, LDR 005/2017**and **Ngobi Hassan & 2 Others Vs Mayuge Sugar Works LDR No. 233 of**
160 **2019.**)

Therefore having failed and or refused to reapply as an expression of her interest to continuing working with the Respondent, as directed by the General Secretary, yet she had been notified about an impending reorganization given that, Donors were withdrawing funding from the centre, she cannot turn around now and claim that the Respondent
165 terminated her.

It is therefore, our finding that, by her conduct she terminated her own employment and the Respondent cannot be faulted for this. Her termination was not unlawful. This issue is resolved in the negative.

ISSUE 3

170 **Whether the Claimant is entitled to the remedies sought.**

The Claimants claimed for special damages, salary for 60 months, and Monthly NSSF contribution of 15% per month for 129 months (from 1/03/2011 – January 2022). She however did not adduce evidence to prove this claim. It is trite that special damages must be pleaded and proved. The form she relied on as evidence of non-remittance of NSSF, 175 in our view lacked unauthenticity because it bore no certification that it was generated by the Fund. We therefore found that it was not sufficient as a basis on which we could make a finding on this claim.

In conclusion, it is our finding that, having failed and or refused to reapply for her job as directed by the Respondent, the Claimant terminated her own employment; therefore she 180 was not unlawfully terminated and the claim for special damages fails. Accordingly, the Claim fails, it is dismissed with no Order as to costs.

Delivered and signed by:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

- 185 **1. MR. FX MUBUKE**
- 2. MS. HARRIET MUGAMBWA NGANZI**
- 3. MR. EBYAU FIDEL**

DATE: 20/10/2022