

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA

LABOUR DISPUTE NO: 112/2014

(ORIGINAL HCCS 0776/2011)

PAUL MICHEAL BUKENYA.....

CLAIMANT

VS

GLOBAL TRUST BANK.....

RESPONDENT.

BEFORE:

1. The Hon. Chief Judge Asaph Ruhinda Ntengye
2. The Hon. Lady justice Linda Tumusiime Mugisha
3. Mr. Habiyalemye Dominic
4. Mr. Ebyau Fidel
5. Mrs. Mugambwa Harriet.

PROCEEDINGS AS RECORDED BY THE CHIEF JUDGE.

CASE 112/2014.

4 /11/2014, M/s Baale Faridah brief for Titus kanya for claimant. Claimant absent. Mr. kamwesi for Respondent.

Mr. kamwesi; we are not sure if we still have instructions from the respondent which was taken over by DFCU.

We wrote to DFCU seeking to know if we still have instructions.They have not replied. We pray for the Judgment.

Court 9:30 am 04/12/2014.

11/12/2014, M/s Rebecca Nakabanda for Respondent. Mr. Titus for kanya for claimant, not present.

M/s Rebecca: the claimant is in court. I need 1.5 hours to peruse the file and proceed.

Court: Adjourned to 11:20 am.

11:25 am. Court as before.

Mr. Titus kanya in court.

Mr. Kanya (leads the witness) Christian S/S: I am called Bukenya Paul Micheal 41 years. I made a witness statement. This is the statement I made. It is signed on 06/11/2013 by me.

Mr. Kanya: I pray the statement be admitted as evidence in Chief.

Court: Granted.

M/S Rebecca, I have no Objection to Annexure A, B, C, D, H, E.

Court: marked as WDX1, 2, 3,4,5,6 respectively.

M/S Rebecca: I object to AP1, 1P2, ST, R, F, CRB which has various documents.

Mr. Kanya: For AP1 and AP2. They can be marked ID1 and AD2. As for ST, it is a statement from defendant's bank. It is the AC/NO. of the witness.

M/S Rebecca: there is no stamp certifying that it is from the bank belonging to the account holder. It can be admitted as evidence after conceding that there is no contrary document from the bank.

Mr. Bukenya (witness): R is a document that relates to the current rates.

Mr. Kanya: the Author prepared the document. It should be admitted as the exhibit.

M/S Rebecca: the document is not signed by him. There is nothing to prove that he is the author of the document otherwise it is not prejudicial.

Court: marked PEXb8

PW1: Group F document was prepared by me. The intended recipient was the executive committee of the bank.

M/S Rebecca, it can be admitted.

Court: marked ExbP9

PW1: CV is a document. It is a calculation I did on the salary variance. I used the rates from the bank of Uganda contrary to the unilateral rates used by the Respondent.

M/S Rebecca: No Objection Court: marked as ExbP10

PW1: CRB is a set of documents that are printed out from the BOU website. They are exchange rates from BOU.

Counsel: I pray the set be exhibited.

Rebecca: No Objection.

Court: marked as ExbP11

Mr. kanya: I close the examination in chief.

XXM: - I reside in Buwate, kira Sub County. This is not where I stayed when I worked with the Bank. I was staying in kalerwe. I signed my first contract with the bank willingly. The bank salary agreed was 65,000 USD per anum or its equivalent. The sum could be paid in Uganda shillings.

Paragraph 7 of the contract (EXP1) there is no provision that BOU rates would be used. I have worked with different banks. I am not aware that different banks have different rates. All the banks have the same exchange rates. They all apply to B.O.U rates to their rates. All banks are under obligations to apply B.O.U rates.

It would not be a surprise if we found out that the banks use different rates. It is an offence to use rates not aligned to central bank rates. I did not report the bank when it used rates lower than the BOU rates. I raised a complaint with the management not in writing while I worked as I was paid salary monthly.

We agreed transport would be physical transport (in kind). The car was a benefit. There was no demarcation as to whether the car would be personal car or a car to run company duties. I was required to travel around branches of the bank. I frequently travelled across the upcountry branches. In many of the cases I used personal vehicle since the vehicles of the company were not readily available. Sometimes the company would not avail transport to me. The contract does not mention fuel. The car was meant to ease my work. The car I used was in my names. I did not hire any vehicle, I owned it.

I used my personal car in place of the company car. The fuel used was never under discussion. No monetary value was attached to the company car.

PEXb8 rates to daily rates. I asked a couple of people who ran Tour companies. One of them is called Bob Mukooza. I verbally discussed with him. I informed the bank about using the personal vehicle. I talked to one chief Elesami Fabode, (EXbP1).

I did not put reasons in writing. Management of the bank, I am aware tend to overtime. I came up with an estimate change.

I took a mortgage before I joined the bank. The mortgage was not interest free. I spent 12 months without paying interest but it was recovered by the bank. The bank did not collect interest because it had not given me the vehicle. It was not part of the contract that in lieu. The car, the bank would not charge the interest. When I got engaged in the bank, my obligation to pay the mortgage was not waived.

On 30th-/09/2009. I signed another employment contract. There was no benefit of the car. There is no email showing that if I had not signed the 2nd- contract, I would be terminated. I did not object to the terms of the new contract. I did not mention that I was coerced. I did not take the benefit of the new contract willingly. This was because of the circumstances. There is no letter or email about the circumstances. Documentation was necessary since I worked with a company. I received the letter of termination of my employment. My employment was terminated as opposed to dismissal. This is the letter I received.

M/S Rebecca: I pray to tender D3 as defence exhibits.

Court: marked DEXb1.

XXM continues: The termination period was provided from the contract of employment. I was paid 3 months in lieu of the notice. I was paid for the unutilized leave days. I gave the bank to plans to how I would manage the loan after termination of employment. D4 is the plan I gave the bank. I asked the bank to recover from my terminal benefits. The balance was to be credited on my account.

M/S Rebecca: I pray to tender the document.

Mr. Kanya: no Objection.

Court: marked DEXb2.

XXM: I later provided another plan. I recall D5.

Rebecca: I tender it,

Kamya: No Objection.

Court: marked DEXb3.

XXM: this letter dated 23rd-/07/2010 is my letter, I signed it.

M/S Rebecca: I tender it.

Kamya: No objection.

Court: marked DEXb4.

XXM: I never objected to pay the loan on account of termination of the contract of employment.

ExhP2 is a statement of my account. There was no mismanagement of the account except the entry highlighted was passed before we had agreed how to treat the accrued interest and how to pay. There was no term in the mortgage relating as to when the interest would accrue.

PEXh9 was one of the events that preceded my termination. It was not mentioned in the termination letter as a reason for termination. Parties can agree to particular exchange rates. I objected when I was paid this rate (1700) I did not raise the objection in writing. I continued receiving salary without any formal or written protest. After termination, somebody else was employed in my place. I don't know if whoever was employed in my place was paid a lower salary.

From AP2 the person who replaced me was paid 7 million. I was earning 9.2 million. I would have agreed to earn less than I was earning to continue in employment of the bank.

RE: Exm:-

The Annexure does not specify the exchange rate. The practice is that banks use the mid-rate where the exchange rate is not agreed. It is not fair to pay less than the mid-rate. When I

calculated, the rate should have been 1,700 Ug.shs against the USD. The dollar rate was never static. I was not consulted on the exchange on the exchange rate used by the bank to pay my salary. I raised with the chief Fabode who held the position of MD. I raised the same a year later in the new MD, Mr. BYARUGABA a week before the new contract.

They did not raise my complaint.

In my discussion with the bank, we agreed I would have a vehicle allocated to me and not a pool vehicle. The initial contract had no limitation period. I was not served with a termination letter before the 2nd- contract was signed.

I did not willingly sign the new contract because of the discussion surrounding the mortgage. I met with the MD and talked about the benefits under the old contract that had not been honored yet. He said he would sort out the issue I told him that Chief Fabode had told me that the reason they were not debiting my loans was because they were aware that our benefits had not honoured including the car benefits. I talked about the dollar rate. It is a week after the discussion that I received the new contract through the messenger.

I signed the contract so as to be able to serve the loan. If I resisted the contract, my employment would be terminated. The new contract did not address the concerns I raised with the MD. When I saw the entry of interest (PEXh7) I objected and made references to my contract. They stopped and renewed debiting after 2 months. We had a meeting with the executive committee of the bank who wanted certain changes implemented. I disagreed with them because it was a breach of governance expectations. After the meeting I prepared this document (PEXhb9).

I did not sign it. The head of Risk signed it.

Mr. Sali declined to sign, saying he needed many people including myself to approve. I said I did not agree and could not therefore sign. This became a reason to process. This led to my being terminated three weeks later.

At the time of being terminated, a number of employees had been terminated. In my case they claimed the position had ceased to exist which was not the case. Immediately I handed over to somebody to do the same work. This somebody also handed over to another to do

the same role. This led me to think that the reasons were something else and not restructuring. The reason was continuous deteriorating relationship with some members of the senior management over poor governance; it was more of a cover up to get me out of the way. The 2nd- contract was on lesser favorable terms than the initial contract.

There was no hearing before termination. Immediately I handed over to Mr. Elijah Kitaka who handed over to Mr. Ronald Egonda.

Mr. Kanya: The second witness is short.

Court: Adjourned to 3:45pm.

4:10 pm: court as before...

PW2: sworn and S/S: I am called R.Egonda 38 years. I made a statement. This is the statement; I made it on 06/11/2013. This is my signature. All contained therein is true.

Mr. Kanya: I pray the statement be admitted.

Court: granted

Mr. Kanya: Two Annexure attached to the statement, I pray be admitted as exhibits.

Court: granted

M/S Rebecca: No Objection.

Court: marked as PEXhb12 and PEXhb13 respectively.

XXM: As my supervisor PW1 was the Chief Information officer (CIO). When PW1 was appointed as head, he continued being my supervisor. PW1 was terminated on 29/10/2009. Four months later I was appointed as head. There is a difference between acting head and a substantive post in the same position. This is when I ceased to act and became the head. The position of head was vacant when I became the substantive head of the department of technology.

REEX: from the time PW1 was terminated and time I became acting head, his role was taken over by one Kitaka. Elijah at the time had tendered in his resignation. I later took over from

Kitaka the acting role. The roles and responsibilities remained in the structure of the bank and that is where I was appointed.

Mr. kanya: That is the closure of the claimant's case.

M/S Rebecca: we shall file witness statements by 23rd-/12/2014.

Court: xxm on 12/01/2015 at 9:30 am.

12/01/2015 M/S Rebecca Nakabanda for defendant

Mr. Kanya for claimant

Mr. kanya: I have not been served with the witness statements. If counsel has them, then I apply for them.

40 minutes to study them and cross examine the witness statements.

M/S Rebecca: we have not yet filed the witness statement. We failed to get the relevant witness. Our main witnesses were laid off since the closure of the bank. We therefore pray that the hearing be closed and we file submission.

Court: Hearing closed.

Claimant to file submission on 20th-/01/2015.

Reply 27th/01/2015.

Rejoinder 29th-/01/2015 9:30 am quorum meeting,

12th-/02/2015 judgement/award.

12th-/02/1015 Mr. Kanya for claimant.

M/S Rebecca for respondent.

Claimant present.

Court: Award delivered in open court.