

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM. NO. 044 OF 2015
(ARISING FROM MGLSD 274. OF 2015)

BETWEEN

MUSHO MULUGA..... CLAIMANT

AND

TORORO DISTRICT LOCAL GOVERNMENT..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
- 2.Hon.Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Ms. Julian Nyachwo
- 2.Mr. Filbert Baguma Bates
- 3.MR. Ebyau Fidel

AWARD

BACKGROUND

The Claimant, originally employed as Senior Finance Officer/Municipal Treasurer in Tororo Municipal Council, was by letter dated 12.08.2005 informed by Chief Administrative Officer, Tororo District Local Government, that the Tororo District Service Commission had appointed him, the claimant, to act as Chief Finance Officer and deployed him to Butaleja District effective 11.08.2005. Butaleja District had just been carved out of Tororo District and it had no staff or District Service Commission to recruit staff. On 12.10.2005 (at the request of the claimant) the Chief Administrative Officer of the respondent wrote to the District Service Commission of the same respondent, recommending rescission of the acting appointment so that the claimant would retain his previous appointment as Municipal Treasurer, Tororo Municipal Council. On 18.10.2005 the Town Clerk, Tororo Municipal Council wrote to the claimant to handover office within 48 hours since he had been appointed Ag. Chief Finance Officer Butaleja.

On 10.11.2005, the Solicitor General advised the Chief Administrative Officer of Tororo to reinstate or re-engage some four officers who had under the same circumstances been recruited and sent to Butaleja District and indeed those officers were reinstated.

Earlier, on 29.01.2005, a Commissioner of Labour on behalf of the Permanent Secretary Ministry of Gender, Labour and Social Development had written to the Chief Administrative Officer, the respondent requesting him to reinstate the claimant and pay him salary arrears which was rejected by letter dated 13.2.2015 on the grounds that the claimant had been appointed on transfer of service to Butaleja District and indeed Butaleja District had formally appointed him as Senior Finance Officer scale U3 (upper).

On 24.01.2006, the claimant was formerly retained as Senior Finance Officer Scale U3 with effect from the 24.01.2006. The Commissioner for Labour, Industrial Relations and Productivity having failed to resolve the dispute, referred the same to this court by letter dated 04.03.2015.

ISSUES.

By a Joint Scheduling Memorandum, both counsel agreed on issues:

1. Whether the alleged disappointment of the client was unlawful.
2. Whether the claimant is entitled to the remedies claimed
3. What remedies are available to the parties

We are of the considered opinion that “disappointment” is not a legal issue for this court or any court to determine and we think it was erroneous for both legal counsel to append their signatures to a memorandum identifying “disappointment” as a legal issue.

We are therefore constrained to re-frame the legal issues as:

- 1. Whether the respondent was responsible for the initial and continuous employment of the claimant.**
- 2. What remedies are available to the claimant**

EVIDENCE:

In an attempt to resolve the above legal issues the claimant in a written statement on oath testified that having been a senior Finance Officer of Tororo District since 1997, he sat for and passed restructuring interviews by Tororo District Service Commission and was deployed to Butaleja as Ag. Chief Finance Officer by the Chief Administrative Officer, Tororo.

He also testified that the same Chief Administrative Officer, having recommended rescission of the appointment so as for him to retain his previous appointment, he at the same time directed and forced him to handover the office of the Municipal Treasurer within 48 hours and refused to pay his salary for some months.

In cross examination, the claimant insisted that his employer remained Tororo Municipal Council.

He also testified that Butaleja District council upheld the decision of LC5 Chairman to reject him. He also told court that he earned salary up to June 2014. In re-examination he informed court that he was not comfortable earning salary while not working.

The first witness for the defence one Owino, Chief Administrative Officer Tororo, in examination in chief told court that the claimant was employed by Tororo Municipal Council, a separate corporate body from Tororo District Local Government. He was later deployed to work in Butaleja District where he earned salary till 2014.

He told court that the request for re-deployment for the claimant should have been addressed to the Town Clerk of Tororo.

The second and last witness was one Francis Odat, the Chief Administrative Officer of Butaleja. He informed court that the claimant had been working in Butaleja Town Council on transfer of service from Tororo Municipal Council until 2014 when he, the claimant requested to go back to Tororo. He earned salary from Butaleja since 2006.

In cross examination the witness told court that the decision to deploy the claimant to Butaleja by Tororo would only be binding on the former if it was formally requested for. The witness, confirmed that he had wrote to stop the salary of the claimant.

RESOLVING THE ISSUES:

Having summarised the evidence we now, address our minds to the legal issues.

The first issue **is whether the respondent was responsible for the initial and continuous employment of the claimant.**

In his submission, counsel for the respondent laboured to argue that the matter was barred by limitation under section 3 of the Civil Procedure and Limitation (miscellaneous Provision) Act cap. 72. We shall not dwell much on this submission because it is obviously misplaced since employment matters are founded on Contract Law and not on the law of Torts as the submission seems to labour to explain.

Counsel should have distinguished employment/labour matters from tortious matters. It seems to us that counsel for the respondent on the issue of limitation was dreaming about land since land was never an issue in the proceedings before the court.

The submission of the claimant was to the effect that the appointment on transfer and retention of the claimant as Senior Finance Officer dated 24.01.2006 was invalid because it was purportedly done by the District Service Commission of Butaleja quoting a minute of Tororo District service 139/2005. In the absence of a formal appointment for Butaleja Local Government according to the claimant and his counsel, the claimant was still an employee of Tororo Municipal Council which was under Tororo District Local Government. He argued that the position of Ag. Chief Finance Officer being temporary his client was meant to revert to his substantive appointment (which was not done).

He argued that it was unlawful for the employer of the claimant to strike him off the pay roll as this violated Article 173 of the Constitution.

Counsel for the respondent submitted that the claimant had been and still was an employee of Butaleja Local Government. He relied on section 185 of the Local Government Act; and the Ministry of Local Government Guidelines to interim councils for establishment of new Districts. We have carefully listened to the evidence of both parties in cross examination. We have also carefully perused the written statements of the witnesses in examination in chief and the submissions of both counsel.

It is our considered opinion that the creation of a new District imposed a duty on the mother District to identify and in the absence of a District Service Commission of the new District to

recruit staff for the new District. Therefore it was proper for the Chief Administrative Officer of the respondent to communicate the decision of the respondent's District Service commission to appoint the claimant and deploy him to Butaleja District, the new District carved off the respondent.

It is our considered opinion that whether or not the new District solicited for staff from the mother District would not deter the latter from recruiting staff for the former. This question in our view would not affect the legal duty of the mother District to identify the personnel for the new District. However, in the event that the new District had issues with personnel recruited in the above manner, proper and legal channels of dealing with staff under the Public Service Act and other relevant laws would have to be invoked.

Therefore we do not accept the contention that mere non solicitation by Butaleja Local Government for Tororo Local Government to recruit the claimant made such recruitment null and void.

It was submitted on behalf of the claimant that his name was not on the list posted to Butaleja from Tororo and that the appointment on transfer dated 24.01.2006 was null and void since it quoted a minute of Tororo District Service Commission.

As already pointed out above, the Tororo District Local Government was under legal obligation to identify and (possibly recruit) personnel for the new Butaleja District Local Government.

It is our considered opinion that the said appointment on transfer and retention of the claimant by Butaleja District Local Government was an attempt to regularise the recruitment of the claimant. Through this appointment, the District Local Government of Butaleja, in our view, formally adopted minute 139/2005 of Tororo District service commission, bringing the claimant into the Local Government Service of Butaleja District. We think that the fact that the claimant requested to have his appointment as Ag. Chief Finance Officer rescinded and the Chief Administrative Officer recommended him to return to Tororo District Service would not by itself terminate the appointment dated 24.01.2006. Neither would the fact that such appointment quoted the above minute of Tororo District Service Commission.

We are fortified in the above reasoning by the provisions of section 185 of the Local Government Act which provides:

“Any person being an officer or employee of the original Local Government Council immediately before the coming into effect of the new Local Government and deployed or assigned responsibility in the new Local Government shall be deemed to have been appointed under this Act and shall hold office in the new Local Government until removed from office under this Act”.

Consequently we agree with the submission of counsel for the respondent that the claimant was an employee of the “new” District of Butaleja effective from the date he was deployed to the said District and therefore the respondent was not responsible as from that date. The answer to the first legal question is therefore in the negative.

The second and last question relates to remedies.

The claimant prayed for various orders against the respondent. Having decided that the respondent was not responsible, this court cannot make such orders or any other order against the respondent. The option available to the claimant is to seek audience with Butaleja District Local Government/Butaleja Municipal Council since in our view that is where the claimant belongs.

In the result the claim against the respondent fails. No order as to costs is made.

SIGNED

1. Hon. Chief Judge Ruhinda Asaph Ntengye.....
- 2.Hon. Lady Justice Lilian Linda Mugisha Tumusiime.....

PANELISTS

1. Ms. Jane Nyachwo.....
2. Mr. Filbert Baguma Bates.....
3. Mr Fidel Ebyau.....

Delivered on 4th day of November 2015