

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 219 OF 2015
(Arising from Labour Dispute L.O. NO. 118/07/2015)

BETWEEN

YIGA FRANCIS CLAIMANT

AND

KAKUUTO SMALL BUSINESS DEV'T.

C-OOP. SAVINGS & CREDIT SOCIETY LTD..... RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Rose Gidongo
3. Mr. Wanyama Anthony

AWARD

This is a labour dispute claim arising from alleged unlawful termination of employment. The claimant alleged in the memorandum of claim on record that having been employed by the respondent 28/7/2014 and having worked diligently he was on 15/7/2015 terminated effective 1st August 2015.

The respondent was served but did not file a reply and consequently the Registrar entered a default judgement on 9/5/19. After entering this default judgement, the respondent was served for hearing on

22/08/2016 but neither them nor their lawyer turned up. This court therefore decided to grant the claimant to proceed and file witness statements as well as submissions. The issue for this court therefore is assessment of damages.

The claimant in a sworn written statement stated that after termination he relocated to Kampala from Kibaale and incurred costs of 750,000/-. He also claimed entitlement of severance allowance in the sum of 2,000,000/=.

He claimed that he suffered losing income, inconvenience and mental anguish when his job was terminated and prayed for general damages of 20,000,000/=. In his submissions, counsel for the claimant laboured to argue the issue whether the claimant was unfairly terminated.

We are of the considered opinion that the issue of illegal termination was determined when the court entered a default judgement and as already alluded to, we shall only deal with the issue of damages. Under paragraph 13, 14, 15, 16, of the claimants witness statement, he testified he was not granted leave despite having applied for it. Counsel submitted that grant of 15 days leave to the claimant after being terminated was not proper and was contrary to section 4 and 54(1) (a) which provides

“An employee shall, once in every calendar year be entitled to a holiday with full pay at the rate of seven days in respect of a continuous four month’s service, to be taken at such time during such calendar year as may be agreed between the parties.....”

We agree with counsel in his submission that the policy guidelines as cited in the termination letter were inconsistent with the above provision to the extent that they provided for 15 days leave and they were therefore null and void to that inconsistency. Section 54 1(b) provides a day’s holiday with full pay on every public holiday. Accordingly, it is our position that since Saturdays and Sundays are public holiday in Uganda, the claimant would be entitled to such days during the leave enshrined in section 54 1(a).

Accordingly we hold that the claimant was entitled to 16 working days in a year in addition to the four weekend days in the 16 days. Since he was granted 15 days we allow 5 days’ pay in lieu of leave.

Counsel also argued that although the claimant had prayed for 20,000,000/- as general damages for loss of income and mental anguish, this court could award more than this. He submitted that the claimant should be awarded 40,000,000/=.

With due respect to counsel, it is inconceivable that a party claims to have suffered injury and torture worth a certain amount and the court, as if it suffered the same, decides to award more.

As was held by this court in **FLORENCE MUFUMBA VS UDB, LDC NO. 138/2014**. **“Damages are generally compensatory in nature and the injured party must always be awarded such sums of money as may run him/her in the same position if the wrong complained of had not been**”

The claimant in this case earned 350,000/- per month. The appointment letter did not stipulate whether he was on contract or not. There is nothing on the record to suggest how old the claimant was when he was terminated. He had worked for one year having been employed in June 2014 and terminated in July 2015.

We, in the circumstances, do not see any evidence or the record to suggest that the claimant was on contract and that he incurred a loss of 4,200,000/- as one year’s salary.

We are of the opinion that 5,000,000/= as general damages will be sufficient and so we order.

We agree with counsel for the claimant as to the submissions on repatriation. In accordance with section 39 of the Employment Act, the claimant is entitled to be repatriated on termination of employment to a place where he was recruited from. Without evidence to the contrary, we accept that the claimant covered a distance of 100 km or more as provided for under the said section of the law. We grant him 750,000/- as reimbursement for transport costs as shown by the receipt on the record.

This court not being a labour court envisaged under section 78 of the Employment Act which provides for compensation, we decline to make any orders under the said provision.

In our considered opinion, this being a court of record, and as such having awarded general damages, it is not necessary to award compensation under the said section since general damages constitute compensation.

An award is therefore entered for the claimant in the above terms. No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye

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2. Hon. Lady Justice Linda Tumusiime Mugisha

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PANELISTS

1. Mr. Ebyau Fidel

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2. Ms. Rose Gidongo

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3. Mr. Wanyama Anthony

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Dated:21st/10/2016