THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA

LABOURDISPUTE NO. 196/2014

(Arising from HCCS No. 387of 2013)

BETWEEN

IRENE KHARONO..... CLAIMANT

AND

ACTION AID INTERNATIONAL..... RESPONDENT

AWARD

BEFORE

1. The Hon. Chief Judge, Asaph RuhindaNtengye
2. The Hon. Judge, Linda Lillian TumusiimeMugisha

Panelists

1. Mr. Fidel Ebyau
2. Mr. Anthony Wanyama
3. Mr. Micheal Matovu

BRIEF FACTS OF THE CASE

By letter dated 1/8/2011 the claimant was employed by the respondent effective 5/10/2011. The executed contract of employment provided for termination of employment by each of the parties giving notice of one month or payment in lieu thereof and also referred to the Human Resource policy.

The claimant's services were by letter dated 18/10/2013 terminated. The claimant was aggrieved and hence the matter was filed in court.

The agreed issues before court arising from the above facts are:

1. Whether the claimant's termination was wrongful and unfair
2. Whether the claimant is entitled to damages.

The evidence of the claimant was to the effect that despite the provision of section 9 of the contract of Employment, under clause 21 of the Human Resource policy her contract could only be compulsorily terminated only due to dismissal, redundancy, incapacity/prolonged illness, death and imprisonment. she also testified that prior to her termination, she had been urged to resign her job which she objected to and asked for reasons as to why she should resign. She had never been issued with any warnings related to disciplinary issues. No reason was given for the termination.

On the other hand the respondent through the Human Resource and organizational

effective director, testified that the contract of employment was terminated in accordance with article 9 of the stipulated contract terms of termination and which the claimant had accepted to be bound on signing the contract.

She also testified that there was no requirement to terminate the contract under the redundancy policy since the principle document of the employment was the letter of employment accepted by the claimant. She also testified that it was not necessary to give any reason for the termination of the contract provided 30 days' notice or payment in lieu was offered.

SUBMISSIONS

Counsel for the claimant submitted that in addition to section 9 of the employment contract between the claimant and the respondent, the employment relationship was governed by the Human Resource Policy, exhibit **"C"** which was in his submission, part and parcel of the claimants' terms of employment.

He submitted that the said policy contained and elaborate process of managing termination and that an offer of notice or payment in lieu was the last step in the process.

He relied on clause 21.1 (a) (b) and (C) of the Human Resource Policy.

He strongly submitted that the termination of the claimant was under clause 21.1 (b) which would only be by dismissal or redundancy. He submitted that since the claimant was not dismissed, her termination fell under the category of redundancy. He submitted that since the respondent did not follow the redundancy procedure under clause 21.4 and 21.5 of the Human Resource Policy, the claimant's termination was rendered unlawful. He further submitted that clause 21.9 of the Human Resource Policy for notice or payment in lieu of notice was not an independent mode of termination but just part of the process of termination under clause 21.

Counsel for the respondent could not agree. He submitted that immediately the claimant executed the contract which was not illegal, she under took to be bound by the same. He submitted that pursuant to section 9 of the contract the respondent terminated the claimant's contract and offered payment in lieu of notice. In his submission, counsel for the appellant misled court by asking court to consider clause 21 of the Human Resource Policy as the governing provision in the termination of contract when it is clearly, according to him, merely supplementary to the contract agreement and not mandatory.

He argued that a contract of service gives rise to reliance on the Human Resource Policy and as such the terms specifically in the contract must be strictly enforced (though they may not be in the human Resource Policy).

Finally he submitted that the termination was in accordance with the contract of employment (section 9) and in line with section 58(5) and 65(a) of the employment Act.

He relied on this court's decision in **PAUL MICHEAL BUKENYA VS GLOBAL TRUST BANK, LABOUR CLAIM DISPUTE NO. 112/2014.**

RESOLUTION OF ISSUE NO. 1

Section 9 of the contract of employment between the claimant and the respondent provided that

"Within 4 years, either party may terminate this contract giving not less than one month's notice in advance of termination or one month's salary and allowances in lieu

of notice. Notwithstanding any provision in this contract that expressly remains binding upon either party after the expiration, all contractual obligations will cease upon termination. The employee will only be entitled to reasonable compensation as may be stipulated in the Action aid International Resources Policy."

Clause 21 of the Human Resource Policy of the respondent provides for a detailed account of how staff may exit from employment:

"21.1 Types of termination

(a) Termination by employee

(b) Termination by employer

(c) Mandatory termination (death, expiry of contract and incapacitation)

"21.2 Termination by employee

…….

…….

"21.3 Termination by employer

21.3.1 Dismissal through the disciplinary procedure

21.3.2 Redundancy"

Under redundancy the Human Resource Manual provides for a detailed procedure on how to identify and even handle staff that are terminated.

The contention of the respondent, as we understand it, is that, the parties having signed specific terms in the contract that is not by any standards illegal, and having signed it willingly, should be bound strictly by the terms in the contract. According to them, the importation of any other term from outside the contract even if it were from the Human Resource Policy, would not be acceptable.

With due respect, we do not agree with this view. We strongly believe that the Human Resource Policy of any employer should be taken seriously. Breach of provisions in the Human Resource Policy by either party especially when the policy is well known to both

parties, in our view, affects the contractual relationship between the employer and the employee.

We are of the considererd opinion that the Human resource policy always forms the basis of the contract as opposed to counsel for the respondent's assertion that "**the contract of service is the one that gives rise to reliance on the Human Resource Policy ….**" This means that the contract of service ordinarily is drafted bearing in mind the Human Resource Policy. It is therefore our view that once a provision in the contract of service is not in conformity with the Human Resource Policy, such provision has no basis.

In the same way, as counsel for the respondent correctly pointed out, such a provision will be of no legal effect if it is not in conformity with the provisions of the employment Act or any other written law.

Therefore we are of the opinion that in interpreting the provisions of the contract of Employment regard must be had to the Human Resource Policy. We agree with the claimant's submission that in the instant case the claimant's employment and its termination were subject to both the contract of service signed by both parties and the Human Resource Policy.

Whereas the respondent would legally terminate the claimant by applying article 9 of the contract of service signed by both parties, the Human Resource Policy provided for types of termination. The relevant one in this case is under 21.1 b, termination by employer.

The respondent seemed to have relied entirely on section 9 of the contract of service. Yet section 68 of the Employment Act provides for reason as to why the employee is terminated. The said section provides:

"**68 Proof of reason for termination.**

i. **In any claim arising out of termination, the Employer shall prove the reason or reasons for the dismissal, and where the employer fails to do, the dismissal shall be deemed to have been unfair within the meaning of section 71"**.

Section 71 provides for who may make a complaint about unfair termination and to who it may be made and which remedies may be available.

At first glance it may seem as if section 68 is about **"dismissal"** as opposedto **"termination".**

But as this court elaborately discussed in **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT BANK LABOUR DISPUTE CLAIM 138/2014** and as the court pointed out.

"Whether the employer choose to "terminate" or "dismiss" an employee, such employee is entitled to reasons for the dismissal or termination. In employing the employees, we strongly believe that the employer had reason to employ him/her. In the same way, in terminating or dismissing the employee there ought to be reason for the decision"

The above reasoning was (and still is) premised on the definition of "**dismissal from employment"** as provided in section 2 of the employment Act. The former arises when an employee has committed **"verifiable misconduct"** while the letter arises "**for justifiable reasons other than misconduct.**

It is our position that under common law, an employer could dismiss an employee for as long as he offered such employee notice in accordance with the contract of service or as long as he/she paid such employee money equivalent to the total salary of the months such employee was entitled to as notice.

However, as already noted, under the Employment Act, 2006, this is no longer the positon as pronounced in the case of **FLORENCE MUFUMBA (**supra).

With due respect to counsel for the respondent, the case of **PAUL MICHEAL BUKENYA VS GLOBAL TRUST BANK, LABOUR CLAIM DISPUTE NO. 112/2014** has no bearing on the facts in this case. Whereas in the instant case there was no reason whatsoever assigned to the termination of employment, in the **GLOBAL TRUST BANK** case this court upheld restructuring as reason for termination and that is why the termination was held as lawful . The reason the court held as it did was not because the claimant had been paid all his benefits but because the termination was effected for a reason of restructuring.

In spite of the above analysis, we do not think that the none inclusion of termination by notice as a method of termination in the Human Resource Policy would prohibit the respondent, or any other employer to terminate the services of an employee by giving the required notice or payment in lieu thereof, since section 65 of the Employment act provides for ending employment with notice.

It seems to us that termination under the Human Resource policy of the respondent would require just as the Employment Act requires, reason for termination, especially once termination was by the Employer, for this could only be done under clauses 21.3.1. or 21.3.2 which require either elaborate processes of either disciplinary hearings or redundancy procedure. Both of these in our view constitute reason for termination.

Clause 21.9. of the Human Resource Policy provides

"Whenever a contract is terminated for any of the reasons mentioned above, unless otherwise inapplicable, the requisite notice stipulated in the Employees contract of service shall be applied".

We associate ourselves with the submission of counsel for the claimant that the application of the above clause could only be applicable after identification of reason and mode of termination in accordance with clauses 21.1, 21.2, 21.3, 21.4, 21.6, 21.7 and 21.8.

This gives credence to the submission of counsel for the respondent that giving notice or payment in lieu of notice is part of the termination process under clause 21 and not an independent mode of termination.

In the final analysis we find that the respondent's action of terminating the claimant without due regard to the Human resource Policy and without any reason as to either her misconduct or other justifiable reason as provided for in section 2 of the Employment Act, constituted unlawful and unfair termination. The first issue is answered in the affirmative.

The second issue relates to damages.

The claimant in her memorandum of claim prayed for aggrevated and general damages, interest and costs.

The respondent argued at length that the claimant's complaint was not before the labour officer within three months as prescribed by section 71 and therefore it was out of time and the claimant was not entitled to any remedy

On perusal of the file we find that the matter was formerly filed in the High court as civil suit no 387/2013. This was before this court was constituted and before it began operations. We take judicial notice of the fact that all civil actions including labour related suits were at the time filed and dispose of by the High court. And obviously the High court had Jurisdiction to entertain those matters. Therefore it was not necessary at the time for the claimant to comply with the three months under section 71 of the Employment Act. Like many other labour disputes this dispute was reffered to this court by the High court and therefore it is not incompetently before the court as **counsel** for the respondent submitted. Neither was it filed out of time.

The claimant argued that she was entitled to aggrevated damages**" Since the termination was high handed as exhibited by the arrogant conduct of the country director**" The claimant did not show how the director's conduct was arrogant. we are not satisfied that the claimant has made a case for aggrevated damages.

As already held above, the claimant was unlawfully and unfairly terminated . She argued through her lawyer that the damages should constitute the remuneration for the unexpired term totaling 174,755,840/ at 7,598,080/ per month. She relied on **Omunyakol Akol Johnson vs Attorney General (C,A 06/2012 SUP,CT).**

The respondent strongly argued that the sum of 174,755,840/ being compensation for the 23 months that were left on the contract was unattainable in law. She relied **on Bank of Uganda vs Betty Tinkamanyire(SCCA NO 12/2007)**

This Court in the case of **Mufumba vs UDC(LDC 138/2014),** after considering both **OMUNYOKOL** and **TINKAMANYIRE** awarded general damages and we have no reason to depart from this position. The claimant was left with 23 months to complete her contract when it was illegally terminated. this deprived her of a

regular income for her sustainance . She earned over7.5m.. per month. we are of the considered opinion that 65,000,000/ would be sufficient.

The claimant also argued that she was entitled to compensation under section 78(1) of the Employment Act. With due respect we consider the compensation under the said Act to be specifically applied by the Labour officers, Having awarded general damages as a court of law, we decline to award compensation.

In the final analysis we herby enter an award in fevour of the claimant in the above terms with interest at 20% effective the date of the award

Signed:

1. The Hon. Chief Judge, Asaph RuhindaNtengye .....
2. The Hon. Judge, Linda Lillian TumusiimeMugisha.....

Panelists

1. Mr. Ebyau Fidel .....
2. Mr. Anthony Wanyama .....
3. Mr. Micheal Matovu .....

Date: 04th/10/2016