

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE CLAIM No. 002 OF 2016**  
**(ARISING FROM HCT-CS No. 0023 of 2013)**

**BENJAMIN ALIPANGA.....CLAIMANT**

**VERSUS**

**GULU UNIVERSITY.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Rwomushana Jack Reuben
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**AWARD**

**Brief facts and background**

The claimant was employed by the respondent as a lecturer in the faculty of medicine and was appointed as head of the Psychotramatology project in 2008. According to the claimant, he applied for and was granted leave to go to Belgium for a PHD course. According to the respondent, the claimant was given a letter in support of his application for a scholarship but was not aware whether or not the claimant secured the scholarship since there was no formal communication to that effect. There were issues regarding the management of the project particularly concerning a vehicle and an account in the bank both in the personal names of the claimant. In the absence of the claimant, the appointments Board of the respondent convened and after deliberations interdicted the claimant and later on dismissed him.

**Issues**

The agreed issues are:

- 1) Whether the termination of the claimant's employment was fair and lawful
- 2) What are the remedies available?

**Summary of evidence**

The claimant adduced evidence from himself only. In his written statement (on oath) he testified that on the advice of the Dean of the faculty of Medicine he applied for a PHD programme, which the respondent was in strong support of. Before he went to pursue the programme, issues were raised against him which he responded to. On return, he received a letter recalling him from study leave and another one interdicting him.

### **Submissions**

In his submission counsel for the claimant contended that it was a contradiction for the respondent to stress that the claimant never applied nor communicated to them about the scholarship when a letter written by the respondent supported the application and the respondent stated therein that it would be an timely opportunity for the respondent. Counsel referred to annexure "D". He also argued that the letter (annexure "H") which recalled the claimant from leave materially contradicted the denial of the respondent to have granted permission.

On mismanagement of the project, counsel strongly argued that, the German Embassy in a letter (annexure "IC") addressed to the Inspectorate of Government cleared the claimant of the allegations by clarifying that the vehicle was registered in his names to facilitate the implementation of the project. He argued that the allegation of absconding could not stand since the respondent was aware the claimant was away on study leave when the appointments Board sat in his absence. He submitted that before the claimant returned from study, he was not aware of any interdiction nor recall from study leave.

He therefore argued, that he was not accorded a fair hearing in accordance with **section 66 of the employment Act**. He relied on **Dr. Kagwa Vs Plan International LDC 175/2014**.

Counsel submitted that allegations of mismanagement were put to rest by the donor of the funds and the criminal investigations were never carried out and that therefore there was no justifiable cause for dismissal.

According to him, the university had complained against him to the Inspector General of Government who had cleared him. He came to learn that he had been dismissed from the response of the respondent to the claim.

The respondent, through one Prof. Jack H. Pen-magi, in a written witness statement (on oath) testified that the claimant as head of the Psychotraumatology Project mismanaged it and it was subject of criminal investigation as a result of which a project vehicle was recovered from him.

He was then referred to the appointments Board before which he never appeared since he had absconded purporting to have been on an authorized PHD programme which was not the case

since he had not secured permission for the programme. He was interdicted and later on dismissed for absconding.

In reply counsel for the respondent submitted that whereas the respondent wrote a letter in support of the application for scholarship; there was no communication as to whether the same was secured. He argued that the claimant knew he had to seek permission to go to study once the scholarship was secured, the reason he stated in his letter (exhibits E) on page 2, last paragraph that he requested for leave to study. According to counsel, this permission was not granted because the claimant had disciplinary issues. He argued that the claimant was aware of the disciplinary proceedings as well as interdiction before he came from study because both were posted to his email.

Counsel contended that the claim was not about unlawful dismissal but about salary withheld and that the unlawful dismissal allegations were only brought up after the respondent raised the same in response to the memorandum of claim. It was his submission that the clearance of the claimant from criminal responsibility by the Belgian Embassy (or even by the I.G.G) did not necessarily deter the respondent from instituting disciplinary proceedings against the claimant.

#### **DECISION OF COURT:**

On perusal of the claim in this court, we are certain, as the respondent submitted, that the claimant did not file the claim for unlawful dismissal but rather to recover the salary that the respondent was alleged to have unconstitutionally withheld.

Since the respondent is contending that salary was withheld because the claimant had disciplinary issues which were determined against him rendering his dismissal and consequently his salary entitlement irrelevant, this court necessarily has to decide whether indeed such dismissal was lawful, although not directly pleaded by the claimant. Even then, on 20<sup>th</sup>/12/2016 just before hearing started, both counsel agreed that one of the issues for this court to determine was whether or not the claimant was terminated and if so if it was lawful. Therefore we do not find merit in the insinuation by counsel for the respondent that the plea of unlawful termination having not been pleaded this court need not discuss it and make a finding on it

There is no doubt that the claimant, as employee of the respondent had an obligation to perform his duties in accordance with the terms of the contract. It is standard procedure that before an employee leaves his station, permission is sought to do so from his employer who has the discretion to grant or withhold such permission. The claimant applied for a PHD programme and the respondent supported this programme in a letter as here below stated.

**20<sup>th</sup> May 2009**

**The Royal Belgian Embassy  
Rwenzori House, 3<sup>rd</sup> Floor, Lumumba Ave,  
P. O. Box 7043  
Kampala, Uganda.**

Dear Sir/Madam,

**MR. ALIPANGA BENJAMIN**

**I am writing this letter in support of Mr. Alipanga Benjamin's application for Mixed PhD scholarships.**

**Mr. Alipanga Benjamin is a lecturer in Mental Health Department, Faculty of Medicine Gulu University. Being awarded the scholarship would be a timely opportunity that would enhance research capacity for Gulu University in keeping with the University's policy to develop its staff.**

**It is against this background that the university fully supports his application for the scholarship.**

**Yours sincerely,**

**V. M. OkothOgola**  
**UNIVERSITY SECRETARY**

From the evidence adduced it is clear to us that whereas the respondent supported the claimant's application for a PhD programme, they were not in the know as to when in fact the same programme was to begin. The respondent was not aware whether in fact the application that they supported had been successful and whether the claimant was set to begin the programme at a particular time. It was expected that once the application was accepted and the scholarship granted, the claimant was to inform the respondent who then would release him for pursuit of the programme.

The evidence reveals that as the claimant was processing his scholarship, questions of indiscipline on his part were at the same time being raised and these questions reached a climax at the same time as he was due for his PhD. That is the reason why in his letter dated 30/3/2010, as he replied to the said questions he stated (inter alia) that:

**“Unfortunately I am not able to appear before the appointment's Board on 9<sup>th</sup> April as I am scheduled to travel to Gahent University to begin my PhD studies. My request for study leave dated March 20, 2010 of which copy was sent to you stated that I am expected to start the programme at the beginning of April 2010.....”**

The evidence suggests that in addition to having received support for this application for the PhD programme, the claimant was expected to ask for a release to go for the same once it materialized. Indeed in the above letter he referred to his own request to be released for the same. Unfortunately, the evidence does not reveal anywhere that the request for study leave was ever granted.

We tend to agree with the respondent that the same request was not granted because there were pending disciplinary processes going on and the claimant was aware of them.

It appears to us that having been aware that he had a disciplinary hearing on 9<sup>th</sup> April, the claimant made a conscious decision not to appear and be heard in preference to pursuing his

PhD programme as he stated in his explanation to the allegations that **“I believe this is an important step not only for me, but for the University as a whole”**.

What was more important for the respondent at that time was the disciplinary process and not the PhD programme, yet for the claimant it was the reverse. The strong argument of the claimant is that he had received permission to go for this PhD programme, and therefore the respondent in summoning him for the disciplinary hearing at the same time was not fair.

As already intimated, the claimant had requested study leave but there was no grant of the request for reasons that there were pending disciplinary issues. We do not accept the contention of the claimant that by giving support to the application for the PhD programme, the respondent had in fact given permission for him to travel and pursue the same. The claimant was given an opportunity to appear before the appointment Board on 9<sup>th</sup> of April but his opportunity cost favored the PhD programme. It was not in his interest at that time to attend to the disciplinary hearing.

Given that the respondent had not granted the study leave, and given that the respondent gave the claimant opportunity to formally appear before the appointments Board which he declined in preference to the PhD programme, we decline to be on record as saying that the claimant was condemned unheard.

The respondent was not under any obligation to formally recognize that the claimant was due to be out of the country on a PhD programme and therefore stop the disciplinary proceedings since in the first place the request to pursue the programme had not been granted.

In cross examination, the claimant informed court that it was the Board of Research and Graduate studies that approved the programmes of study but that he never appeared before the same, although he wrote to them. There was no evidence of the letter that he wrote to the Board. We consider lack of this evidence as strengthening the submission of the respondent that supporting the application for the scholarship did not necessarily result into granting permission to the claimant to pursue the programme. There were other processes to be complied with before the claimant started the programme.

The claimant in cross examination also informed court that once someone left the place of work without permission it amounted to absconding which could lead to disciplinary action.

The evidence on the record is constituted by (among others) a request from the respondent to the Inspectorate of Government to establish criminal liability of the claimant in mismanagement of a donor project. As a general principal, any criminal investigation or even acquittal of an accused person may not necessarily prevent the same accused person from civil liability. We agree with the respondent therefore that the claimant having been cleared of the criminal liability by the inspectorate of government did not in any way deter the respondent from instituting disciplinary proceedings and such clearance could not in any way be a good reason for the claimant not to attend the disciplinary proceedings.

Although there was no evidence to suggest that the claimant received a letter from the University Secretary recalling him from study leave while still on the study programme, we gather from the evidence as a whole that even then he was not in position to leave the programme to present himself to the appointment Board to answer the charges earlier communicated since he had already made up his mind in his earlier letter dated 30/3/2010

(Appendix G, to the claimant's witness statement, page 17) that the PhD programme was an important step for him.

We do not accept the contention of the claimant that the fact of recalling him from leave automatically meant that he had initially been granted the same. As already observed, the claimant himself acknowledged in the same letter dated 30/3/2010 that he requested for study leave but failed to produce evidence to show that it was granted. Secondly, the same letter of recall clearly states that the claimant had not secured permission for the programme.

Having made a finding that the claimant was not granted permission to pursue the PhD programme, we cannot accept the submission of counsel that the claimant could not attend the appointment's Board meetings (disciplinary) **“as he was away on study leave and had no idea of the recall nor interdiction by the Board and thus could not attend the disciplinary meeting with the appointments Board because he was away on study leave which had been granted by the respondent.”**

It seems to us that the claimant after getting permission from the respondent to be in charge of the project, he severed himself from the mainstream administration of the respondent, the reason he engaged the project funders to alter the terms of the project, although the donors themselves exonerated him. This is the same reason, in our view, that led to the claimant's failure to disclose the fact that the application for the scholarship had been successful and therefore seek permission to pursue the same. In the alternative, it would seem that because the acceptance of the application came at the same time as the disciplinary issues were being cited by the respondent, the claimant thought it wise not to reveal the fact of the scholarship grant for fear that the respondent might lead to its cancellation.

Either way, we are satisfied that the respondent was entitled to initiate disciplinary proceedings against the claimant. We are satisfied that permission was not granted to the claimant to be out of his station for the time that he was. Although he claimed he did not receive a letter of interdiction, it was revealed that the same was served on his email address which was not controverted. We agree with the submission of counsel for the respondent that even when the claimant was served with a letter of interdiction on 10/08/2010 almost immediately he arrived in the country, he did not take any step to seek to be heard. The court record reveals that the suit was filed on 30/8/2013, three years later.

The letter of dismissal (which the claimant says he has never received) is dated 25/10/2013 and is to the effect that the claimant breached **section 9 (b) (IV) (VIII) and (IX) of the Gulu University terms and conditions of service** and in accordance with **section 11 (VII) of the terms and conditions of service** the claimant was dismissed from the service of Gulu University. We were not privileged to look at the terms and conditions in the dismissal letter said to have been breached. At the same time we were not privileged to get a rebuttal from the claimant to the effect that no such terms of conditions and service were breached by the him. The claimant in submission only wondered whether the dismissal was for absconding or misconduct.

As a court, we have found that the claimant left his station without permission and as such the disciplinary process was properly instituted to which process the claimant from the outset decided not to submit to preferring to continue with his PhD programme. In the circumstances and in the final analysis, it is our finding that the respondent did not unlawfully terminate the services of the claimant.

**The second issue related to withheld salary.**

Having found that the claimant was not unlawfully dismissed, we do not think he would be entitled to claim salary from the date of interdiction since he did not offer any service to the respondent during interdiction up to the date of this award. Reference is made to the authority of **Ddamulira Vs National Insurance Corporation(1992) HCB 181 and also National Trading Corporation vs MosesKityo (1992) HCB 175.**

For the same reasons above, the prayer for general and punitive damages fails. We accordingly find no merit in the claim which is dismissed. No order as to costs is made.

**Signed by:**

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

**PANELISTS**

1. Mr. Rwomushana Jack Reuben .....
2. Mr. Anthony Wanyama .....
3. Ms. Rose Gidongo .....

DATED 22/12/2017