

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 074 OF 2016
(ARISING FROM LABOUR DISPUTE NO. 169 OF 2016)

NKURAIJA JULIUSCLAIMANT

VERSUS

KATUTANDIKE UGANDA..... RESPONDENT

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet MugambwaNganzi

AWARD

This is a claim filed by the claimant for

- (a) Compensation for loss of expectations and/or earning for the remaining 10 months of the contract amounting to 16,953,430.
- (b) General damages for inconvenience, suffering and unlawful termination.
- (c) Costs of the suit.
- (d) Any other relief.

In the particulars of the memorandum of claim, the claimant pleaded that the respondent having renewed his contract, terminated the same after 2 months of its renewal without offering him any hearing and on the wrong allegation that the respondent was undergoing restructuring.

When the matter came up for hearing, court having been satisfied that the respondent had been served but neglected to attend court, allowed the claimant to proceed ex parte.

In his evidence in chief expressed via a written witness statement, the claimant told court that having been employed in 2009 by the respondent on 16/05/2012 his contract was renewed by letter marked annexure "A" and signed by the chairman Board of Governors of the respondent.

In his evidence, he asserted that 2 months after the renewal of the contract he received notice of termination alleging restructuring which according to him did not exist, making his termination without justifiable cause. We have perused annexure "A" which states that

"You are requested to accept this renewed contract in writing and to sign the new contract and job description....."

Nowhere in the evidence of the claimant or in the memorandum of claim does the claimant allude to the fact that he signed a new contract as the annexure "A" asked him to do.

In the absence of a signed contract as per annexure "A" it is not easy for this court to hold that in fact there was a renewal of the contract on the basis of the letter from the Board Chairman marked "A". The letter marked "B" is a letter that gives notice of 1 month to terminate the contract of the claimant due to restructuring. Annexure "A" is date 16/05/2012.

Although by letter dated 20/9/2012 the respondent through legal counsel, at Mpanga Advocates, acknowledge having terminated the services of the claimant, and therefore admitting that the claimant was an employee of the respondent, we do not find any justification for the 16,953,430 as salary for 10 months in the absence of evidence of what he earned per month either under the old contract or under the renewed contract.

It is trite law as was pointed out by this court in **MUSINGUZI SOLOMON & OTHERS VS B.O.G. ST. Henry's S.S.S. Musigi** that grant of ex parte proceedings to a party does not by itself absolve the concerned party to prove the case on the required standard because he who alleges must prove.

The claimant in the instant case was under an obligation to establish on a balance of probability that he was entitled to the relief of 16,953,430/= as claimed in his memorandum of claim. The claimant in his evidence paragraph 4 states....."**The chairman Board of Governors**

.....signed the letter renewing my employment contract and according to that letter my contract was to run from 22nd June 2012 to 21st June 2013 at the net rate of 1,695,343/= per month after deductions...”

As already pointed out earlier in this award, the only document on the record close to a contract is annexure “A” which has nothing to do with the terms of employment as stipulated in the testimony of the claimant but which only states that the contract was renewed for one year from 22nd June 2012 to 21st June 2013 without stipulating either the previous terms or the terms under the renewed contract. The claimant was expected by the same annexure “A” to accept the renewed contract in writing and to sign the new contract and job description. None of this was done, at least according to the court record.

After perusal of the letter from A. F. Mpanga Advocates, addressed to Katende, Ssempebwa & Co. Advocates it is clear that the claimant was terminated under a provision of the contract that provided for one month’s notice in the event of termination.

However, under **section 68 of the Employment Act** a person cannot be terminated without being given a reason for the termination. If such termination is as a result of misconduct then the employer before the termination is expected to subject the employee to a disciplinary hearing as provided for under **section 66 of the Employment Act**.

Restructuring was alluded to in the letter giving notice to the claimant for termination. In the absence of evidence from the respondent that indeed there was a restructuring process as provided for under the Employment Act, this court cannot take the contents of annexure “A” as the truth and therefore we discard this as a reason for termination within the meaning of **section 68 of the Employment Act**.

Consequently even though the terms and conditions under which the claimant was employed have not been established, we are satisfied that there was an employee-employer relationship between the claimant and the respondent which was terminated by notice. As has been held by this court before, a termination without any reason or disciplinary hearing in accordance with **section 66** can only be taken to be unlawful and therefore we dare say that so it was in the instant case.

The question is: The termination having been unlawful, what remedies are available?

As already intimated above, the terms and conditions under which the claimant was employed were not established. As a court of law, we do not think that the claimant's assertion in paragraph 4 of his witness statement that the Chairman Board of Governors signed a letter renewing his contract at a rate of 1,695,345 as salary per month without the said contract on the court record is sufficient to establish that indeed these were the terms of employment. We cannot therefore grant a relief of 16,953,430/= as claimed in the memorandum of claim since it is based on a non-existent contract.

However, given that the letter of A. F. Mpanga Advocates mentioned earlier in this award states inter alia that

“Nonetheless our client has informed us that payment for your client’s salary for the month of August 2012, save from Julius Nkuraija, who has not properly handed over office properly is ready and by date of this letter, they had already been contacted to collect their pay cheques.....”

it is our considered opinion that the claimant be paid the salary that is referred to in the above letter.

Since there was no proof of the terms and conditions under which the claimant was employed, yet he lost his job unlawfully, we hereby grant him general damages of 1,500,000/= (One million five hundred shillings only).

No order as to costs is made.

Signed:

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet MugambwaNganzi

Dated: 20/7/2018