

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEAL LABOUR DISPUTE No.156/2015

ARISING FROM LD/06/06/2015

OKIIDI GERALD CLAIMANT

VERSUS

DELARU CONSTRUCTION LTD RESPONDENT

BEFORE

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MS. ROSE GIDONGO**
- 2. MR. ANTHONY WANYAMA**
- 3. MR. JACK RWOMUSHANA**

AWARD

BACKGROUND:

This matter was brought for payment of compensation for wrongful, unfair, unlawful termination, payment of salary arrears, payment of overtime worked while in employment, severance allowance, payment of all terminal dues , general damages, interest on all the above till full and final payment, costs of the suit and other reliefs that court may deem fit.

The Claimant represented himself and adduced evidence on his own. He applied to be heard ex parte and adduced evidence to the effect that on several occasions he had effected service on to the respondents but they had denied it. We were satisfied that on each occasion the respondents

had deliberately refused to accept service. We therefore granted the claimant leave to proceed ex parte.

BRIEF FACTS:

According to the Claimant, he was employed by the respondents as an administrator and records personnel and a technician in November 2013 and was responsible for several duties including, attending pre- bid meetings, handling and signing cheques and Company documents. He was terminated on the 9/06/2015. He also stated that he was entitled to a gross salary package of Ugx. 3,000,000/= payable in monthly instalments of Ugx. 250,000/=.

He claimed that the respondent engaged him to enable him procure a project for the construction of a court house in Wakiso District but after he had secured the project the respondent started paying his salary irregularly and abandoned the site and the workers to him. He claimed that he tried to communicate to the respondent about the workers grievances but the respondent was adamant. He claimed the Respondents denied him access to his work premises on the 9/06/2015.

The claimant then lodged a complaint before Labour Officer Wakiso District, but the respondent refused to respond to the Labour Officers invitation to attend a meeting to discuss the matter hence this claim, dated 29/06/2015.

ISSUES:

The claimant came up with the following issues;

- 1. Whether the claim raises a cause of action against the Respondent?**
- 2. Whether the Claimant's dismissal was lawful?**
- 3. Whether the claimant is entitled to his wages?**
- 4. What remedies are available to the parties?**

DECISION OF COURT

We shall consider issues 1 and 3 concurrently. After carefully analysing the evidence on the record, we found the following;

- 1. Whether the claim raises a cause of action against the Respondent and whether he is entitled to wages?**

We found that the claimant's signature as witness on the Insurance bonds and on the project contract for the construction of the Justice Centre at Wakiso District created a nexus between him and the respondent company. In our view this was evidence that there was an employment relationship between the claimant and the respondents. In the absence of evidence to the contrary we believe that the claimant was employed by the respondent, therefore he was entitled to the payment of wages in accordance Section 41 of the Employment Act 2006. Issues 1 and 3 are therefore answered in the affirmative.

2. Whether the Claimant's dismissal was lawful?

The claimant contended that on 9/6/2015, the respondents unlawfully terminated him when they instructed their Site engineer to deny him access to the site on which he had been deployed. There was no evidence to controvert this contention therefore we were inclined to believe the claimant. since there was no evidence to show that the claimant had been terminated in accordance with Section 68 of the Employment Act 2006. And there was no evidence to the effect that the clamant was accorded a hearing in accordance with Section 66 of the Employment Act, his termination was unlawful.

3. What remedies are available to the parties?

We already found that the claimant was employed by the respondents and that he was entitled to wages. The Respondents are therefore ordered to pay the claimant all his wage arrears as claimed at Ugx. 250,000/ per month for the months of November 2013 to August 2014 and the months of January and February 2015 the unpaid period he worked, amounting to Ugx. 3,000,000/= with interest at the rate of 20% until full and final payment.

The claimant also prayed for the payment of overtime. However he did not adduce any evidence to prove that he had worked overtime, therefore this prayer is denied.

He also prayed for General damages. Having found that his termination was unlawful, he is entitled to general damages. We think Ugx. 3,000,000/= at an interest rate of 20% per annum until full and final payment is sufficient.

He prayed for severance allowance. According to Section 87 (a) which provides that:

“Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply:

(a) The employee is unfairly dismissed by the employer....

(b)”

The claimant claimed he was employed by the respondents from November 2013 and terminated on the 9/6/2015. There was no evidence to the contrary. In the premises we found that he had worked continuously for over a period of 2 years. He is therefore entitled to severance allowance of 2 months’ salary for the 2 years worked.

He also prayed for the payment of all terminal dues. We were constrained to compute terminal benefits because there was the claimant did not provide any basis for its computation on the record.

In conclusion an award is entered in favour of the claimant in the following terms;

1. A declaration that the claimant was unlawfully terminated.
2. A declaration that he was entitled to wages and an order that all his wage arrears for the months of November 2013-August 2014 and January and February 2015 amounting to Ugx. 3,000,000/- at an interest of 20% until full and final payment.
3. Payment of General damages of Ugx. Ugx. 3,000,000/= at an interest rate of 20% per annum until full and final payment.
4. Payment of severance allowance of 2 months wages at Ugx. 250,000/- per month for the 2 years he served, amounting to Ugx. 500,000/=.
5. No order as t costs.

It is so ordered.

Delivered and signed by;

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. ROSE GIDONGO

2. MR. ANTHONY WANYAMA

3. MR. JACK RWOMUSHANA

DATE 19TH JAN 2018