

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT LIRA
LABOUR DISPUTE REFERENCE NO. 187 of 2016
(Arising from Labour Dispute 28/06/2016)

BETWEEN

AWIO ROSE FILDER.....CLAIMANT

VERSUS

1. THE SCHOOL MANAGEMENT COMMITTEE

HOFMAN C.O.G NURSERY AND PRIMARY SCHOOL

2. REGISTERED TRUSTEES OF THE CURA OF GOD

EAST AFRICA (UGANDA NATIONAL EDUCATION
SECRETARIAT.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Rwomushana Reuben Jack

2. Mr. Anthony Wanyama

3. Ms. Rose Gidongo

AWARD

Representations:

The claimant was represented by Ms. Acan Stella of M/s. Acan & Co. Advocates

The record shows by affidavit of service filed on 20/4/2017 that both the 1st and 2nd respondents were served with “**Summons to file a defence**”. The record reveals that to date none of the parties filed defence. The record also reveals that on 07/06/2017 Makmot Kibwanga & Co. Advocates inquired by letter addressed to the Registrar of this court as to the status of the case. In our view this showed they were instructed as advocates of the respondents.

On 11/9/2018, the record shows by affidavit that M/s. Makmot Kibwanga was served for hearing of the matter and one counsel Bakari received the hearing notice but none from the said firm of Advocates appeared.

In the circumstances, this court allowed M/s. Acan & Co. Advocates to proceed without the participation of the respondent.

Brief facts:

By an employment contract dated 26/05/2014 the claimant was engaged by the 1st respondent as Head teacher on full time basis at a monthly salary of 420,000/= for a period of five years.

By letter dated 1/04/2016, one Balidawa Patrick a Chairman of Education Secretariat, department of Schools, Church of God of E. A. (U) and on instruction of the Director raised the salary of the claimant to 600,000/= effective 1/1/2016.

According to the claimant in May 2016, the claimant verbally terminated her without a fair hearing and never paid her entitlements.

The issues as framed by the claimant are:

- 1) Whether the claimant's employment was unfairly terminated
- 2) What remedies are available to the parties.

As already stated the respondent despite being served never filed a reply and neither did they appear in court. The proceedings therefore went on exparte.

The claimant adduced evidence from herself and two others. In her evidence she reiterated the provisions of her contract of employment and also said she served the respondents diligently till May 2016 when she started getting informal confrontations with one Martin Okwany over funds of the school.

In one meeting she was asked to present a financial report which she did despite the management's refusal to appoint external auditors. According to her, after presentation of the report without any comments on the report, she was informed that her contract was terminated and that she should hand over the school properties. Later on one Abuka Moses was recruited as a head teacher.

According to her the 2nd respondent is the founder of the 1st respondent and responsible for funding the activities of the 1st respondent which is managed under the directives of the 2nd respondent. In her evidence, the 1st respondent was paying her rent which they stopped in April 2016 leading to the Landlord's detaining her property for failure to pay a total of 1,600,000/=.

The 2nd and 3rd witnesses were Chairperson of the Parents & Teacher Association(P.T.A) and Chairperson Management Committee of the 1st respondent respectively. Their evidence was corroborative of the fact that the 2nd respondent was founder and funder of the activities of the 1st respondent, that the claimant was employed as head teacher of the 1st respondent, that the claimant was entitled to payment of rent, and that after presenting the financial report the claimant was informed that her contract was terminated.

Submissions:

In her submission, counsel for the claimant rightly pointed out that the burden of proof is always on the one who asserts the affirmative of the questions in dispute. Relying on the case of Penny Kavuye Vs Post and Telecommunications 1998 Kampala Law Reports, she submitted that failure to file defence operates as an admission of facts as alleged by the claimant.

She argued that the fact that at a meeting in May 2016 the claimant was informed of her termination by the respondents who later on locked the office and stopped the claimant from stepping on the school premises amounted to termination of the contract. She submitted that the fact that she was given one day to prepare for the meeting which in her submission did not even amount to the disciplinary meeting, at which she was directed to present a financial report against her will, preferring for an audit of the school, and the fact that there after she was informed of her termination without being afforded a hearing amounted to unlawful termination. In her submission she relied on JABI VS MBALE MUNICAPL COUNCIL 1975 HCB 191.

On the remedies she contended that the claimant was entitled to 50,000/= as a monthly allowance for the period February 2016 to June 2016 as well as rent arrears for 20 months. The claimant having not taken leave in 2014, 2015 and 2016 she claimed entitlement to payment in lieu of leave as well as severance allowance of, in her view, 3,000,000/=.

Relying on Bank of Uganda Vs Betty Tinkamanyire supreme court Case 12/2007 and Oyet Ojera Vs Uganda Telecom HCCS 161/2010 as well as Wasswa Vs New vision HCCS 461/2001, counsel prayed for 20,000,000/= as general damages. She abandoned the prayer for exemplary/punitive damages but prayed that the claimant be awarded aggravated damages of 10,000,000/=.

Decision of court:

We have perused the evidence on the record which include the written witness statements of the claimant and the other witness statements as well as the employment contract between the 1st respondent and the claimant. It is very clear under the employment contract that the claimant was engaged as a head teacher for a period of 5 years. In our understanding of the contract, unless there was reason affecting the competence of the claimant, the claimant was to keep in employment for the said period of time.

The evidence from the claimant and the rest of the witnesses suggests that the claimant was terminated before the period elapsed.

The question is: Was there any justification for the termination of the contract before expiry of the agreed period?

As the court has held in the cases of **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT BANK LDC 133/2014** and **KANYAGOGA VS BANK OF UGANDA**

No discontinuation of employment ought to be done without any reason or justification and this is the spirit embedded in **section 2 of the Employment Act** which defines the terms “Dismissal” and “termination”.

The evidence on the record suggest that the claimant was accused of financial impropriety and against her suggestion that the respondents appoint an external auditor, she was asked to prepare a financial statement/report which she did and delivered at a meeting after which she was informed to hand over the school property and not to appear at the school premises. We agree with counsel for the claimant that this state of affairs amounted to termination of contract. It is our considered opinion that the circumstances operating constituted constructive termination of employment as provided under **section 65 (1) (c) of the Employment Act** which provides

“.....where the contract of service is ended by the employee with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee.” In the current case there was no termination letter issued but because of the conduct of the respondent which we believe was unreasonable the claimant could not continue working.

Nothing on the record suggests that the financial report had anything lacking. Nothing suggests that the claimant was asked to explain certain anomalies in the report. Instead as the claimant testified in her written witness statement, paragraph 2

“...immediately after presenting the report, without even telling me that they were dissatisfied with the financial report which I presented, Ocen Sam assistant Pastor and Ogwal J. B. Senior Pastor of Church of God then told me that my contract has been terminated and I should hand over all the school’s properties and never step on the school compound.”

We have no doubt in the absence of evidence to the contrary that a meeting was arranged by the respondents at which the above happened. In the evidence of the claimant, later on one Abuka Moses was recruited as a new Head teacher which in our view translated in the formal/actual termination of the claimant’s contract.

Given that the process of termination was contrary to **section 2 of the Employment Act** as interpreted in the case of **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT BANK**, and given that the same process was contrary to the provisions of **section 66 of the Employment Act** that provides for a fair hearing before termination of employment on the grounds of misconduct, and given that the same process contravened **section 68 of the Employment Act** that provides for a reason before termination of any employment, we find that the respondent by asking the claimant to hand over the school property and not to step at the school premises and by recruiting another Head teacher terminated her employment and as such, the termination being contrary to the law as above described was unfair and unlawful. The first issue is in the positive.

The second issue is what remedies are available to the parties.

In her memorandum of claim the claimant prayed for the following remedies.

- (a) A declaration that by their conduct, the respondent terminated the claimant's contract of service. As we have already stated the remedy is granted since the appointment of another Head teacher and the pronouncement that the claimant hands over all school's properties and does not step at the premises of the school in our view amounts to termination of the contract.

(b) Payment of General Damages

In the above analysis of the evidence we have concluded that the termination of contract was unfair and unlawful. The claimant had been engaged for 5 years and her prospects for earning 600,000/= as salary and the security of being employed were shattered by this unlawful act. She was only two years into the contract when it was terminated. We take cognizance of the fact that even if she had not been dismissed unlawfully there were chances that she would naturally die, possibly end her contract for better prospects or could have possibly retired. In that case she would not have served the remaining period. Consequently, given that the respondent is only a charitable organization catering for the interest of the less privileged, we think that an amount of 7,500,000/= as general damages would suffice.

(c) Payment of special damages

The law relating to special damages is that these damages must be strictly proved. In an attempt to prove that the respondent was responsible for house rent, the claimant attached an invoice from Megwa Nursing Home for house rent of 5 months at 80,000/= per month. She also attached a payment voucher of 50,000/= as allowance for February 2016.

The claimant had worked for 2 years and it is expected that the respondents would have paid rent for a number of months. Evidence of previous payments by the respondent in our view would have been sufficient proof that the respondent was responsible for rent. This is because there is need of more evidence than an invoice especially when the contract of service does not include rent as an added privilege in the course of service of the claimant. Consequently we are not satisfied that the component of rent in special damages has been proved and it is rejected. The claimant prayed for payment of salary for February 2016 to June 2016. The evidence reveals that she was terminated at the end of May 2016 and that she was paid for February 2016. It is therefore not possible for the court to award her salary for February and June 2016. In the absence of evidence to the contrary, we believe that she was not paid her salary of March, April and May. We therefore grant her 1,800,000/=.

The claimant claimed 50,000/= as monthly allowance. Although the contract of employment did not provide how much allowance the claimant was entitled it provided for “**other monthly allowances**”. As already pointed out, special damages must be strictly proved. There was evidence adduced of payment to her of 50,000/= as allowance for the month of February 2016 as indicated on the individual salary payment voucher for the year 2016. The being the case we find that an allowance of 50,000/= per month worked in addition to salary has been proved. Accordingly the claimant is awarded 150,000/= being allowance for the months of March, April and May 2016.

(d) Untaken leave

Section 54 of the Employment Act provides that an employee is entitled to annual leave. However, the annual leave is expected in a given year to be granted to the employee at an appropriate time convenient to the employer so that the leave of a given employee does not disorient the whole organization. The employer must find alternative source of manpower to do operations of the employee who is on leave. Consequently one has to apply for leave and the employer has to fix the date for the employee to go on leave. In the absence of evidence that the employee applied for leave and it was rejected by the employer, such employee would not be entitled to payment in lieu of leave. There is no evidence on the record that the claimant applied for leave and that the respondent denied her leave. It is a general practice that teachers go on holiday with their students and this culminates in their days of annual leave. Unless the claimant proved the contrary, the presumption would be that as a teacher the mandatory holidays tantamounted to grant of annual leave to the claimant. For these reasons, the prayer for payment in lieu of leave is rejected.

(e) **Severance Allowance**

Section 8 of the employment Act provides for payment of severance allowance once the employee is unfairly dismissed and **Section 89 of the same Act** provides for calculation of the amount of severance allowance.

- (f) In the case of **Donna Kamuli Vs DFCULDC No. 002/2015** the court held that in the event that there is no method of calculation of severance allowance provided for in the contract or otherwise by the employer, the claimant was entitled to 1 month's pay per year of his/her service period.

In the present case, we have already found that the claimant was unfairly dismissed. She is therefore entitled to severance allowance. The record does not show that the respondent had any method of calculation of such allowance and therefore the principal in **Donna Kamuli Vs DFCU** applies. The claimant served for less than 2 years. She will therefore be paid 600,000/=.

(g) **Exemplary and punitive damages**

Counsel for the claimant abandoned exemplary and punitive damages and instead prayed for aggravated damages. The claimant was asked against her will to present a financial report. After presenting the report she was callously told that her employment was over and that she should not step on the school compound. The padlock of the office was immediately changed and a new Head teacher was employed. In our view, this was callous and constituted arrogance on the part of the respondent. The claimant was humiliated by the callous nature of the termination. Accordingly we agree with counsel for the claimant that she deserves aggravated damages and we award her 500,000/=.

(h) **Costs:**

Since the respondent is a charitable organization catering for the less privileged, and in the spirit of promotion of good healthy employee/employer relationships on a wider scale, no order as to costs is made. However we think that in the event that the respondent does not satisfy the award in time, 20% interest per year from the date of this award till payment in full will be charged.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

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

Dated: 17th October 2018