

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO. 036 of 2015
(Arising from of 201.....)

BETWEEN

BONGOMIN RICHARD AKAI**CLAIMANT**

VERSUS

ATTORNEY GENERAL.....**RESPONDENT**

BEFORE

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

PANELISTS

- 1.Mr. Bwire John Abraham.
- 2.Mr.Mavunwa Edison.
- 3.Ms.Jullian Nyachwo.

AWARD

The claimant was an employee of the Pader District Local Government having been initially offered appointment on probation as an Economist/Planner by letter dated 4/1/2002 and confirmed by letter dated 15/06/2005. Later on he was appointed Acting district Planner for a period of 01/10/2007 to 03/03/2008. Subsequently he was arrested and charged in the Magistrates court at Gulu where he was convicted on charges of embezzlement, false accounting, abuse of office forgery and uttering a false document.

On appeal, the conviction and sentence were both sustained but on second appeal to the court of appeal, both were set aside.

The claimant on being set free by the court of Appeal, wrote to the Public Service as well as the Solicitor General about his reinstatement to the public service. Eventually he was reinstated but denied salary and allowances accruing while he served his sentence.

The issues as agreed in the Joint Scheduling Memorandum are:

- 1) **Whether the claimant is entitled to payment of his salary and other benefits upon being acquitted of the charges and reinstatement to his office as the Monitoring and Evaluation Officer.**
- 2) **Whether the claimant is entitled to the reliefs sought.**

We shall straight away move to resolve the first issue.

The contention of the respondent is that the claimant having rendered no service to the government of Uganda during the period he was incarcerated he was not entitled to salary as provided for under **the Standing Orders Chapter B-a(1)**. The respondent also relied on **section 41 (5) of the Employment Act 2000**.

The claimant on the other hand contends that having been acquitted by the appellate court of the charges leveled against him, in accordance with the **Public Service Regulations 2009, Regulation 38(3)** he was entitled to have his salary restored.

The record reveals that after reinstating the claimant to his job, the respondent considered the period that the claimant was incarcerated as **“leave without pay”**. It was argued on behalf of the claimant that it was untenable that the reasons for withholding of the claimant’s salary related to him having been on leave without pay as provided for under **Paragraph 2, Chapter C-c of the Government Standing Orders**.

The record also reveals that the solicitor General in his advice to the respondent on the issue wrote:

“To reinstate an employee is to put him back in his former position and the decision by Ministry of Public Service to reinstate and deploy Mr. Bongomin Richard Akal arose out of the fact that they did realize that he was wrongfully prosecuted for the

offences against him. Without those proceedings, Mr. Richard Bongomin Akal would have remained in his office and enjoyed the benefits that come with it which included full pay thus making him entitled to his salary and allowances that were not paid during the period when he was serving the sentence”.

Although as stated by counsel for the claimant, under Public Service Standing Orders, legal advice of the Attorney General or Solicitor General is final, this does not preclude the concerned parties to petition court to seek a judicial decision on the matter. The court may or may not agree with the opinion of the Attorney General or Solicitor General.

Regulation 29(3) of the Public Service Commission Regulations provides:

“Where disciplinary or criminal proceedings have been taken or instituted against an officer under the interdiction and such officer is not dismissed or as the case may be convicted as a result of such proceedings, the whole of any salary withheld under the provisions of paragraph 2 of this regulation shall be restored to him upon termination of such proceedings.”

Chapter B-a sub-section 1 of the Public Service Standing Orders provides:

"Salary is a payment to a public officer during the course of executing his or her duties while in the employment of public service" and subsection 12 thereof provides

“Payment of a salary to a public officer shall be stopped immediately the officer ceases to render services to the government under whatsoever circumstances including death”.

Section 41(5) of the Employment Act provides

“Wages shall not be payable to any employee in respect of any period where he or she has been sentenced and imprisoned by a court of law.”

There is no doubt that the first instance court convicted and sentenced the appellant and on appeal the first appellate court upheld the conviction. Both of these courts were competent courts of law and before the second appeal was determined the claimant was properly and legally incarcerated.

During this period the claimant did not offer any service to the government and therefore in accordance with **Public Service Standing Orders Chapter B-a(1) and (12)** (supra) the claimant was not entitled to salary payment.

The appeal process in the court system is not in our view calculated to undermine the capacity of the lower court which is bestowed with competent jurisdiction to decide the issues in controversy. The appellate process only provides for a second analysis of the law, issues and evidence by a superior court.

The claimant was properly charged before competent court. It is our strong conviction that if the appellate court had taken issue with the capacity or competence of the trial court or if it had taken issue with the technical procedure of charging the claimant rendering the trial null and void, the situation would have been different. If the trial was null and void it would follow that even the circumstances leading to the stoppage of the salary of the claimant would not exist making it possible for him to claim his salary under **Regulation 29(3) of the Public Service Commission Regulations** (supra).

In that case the application **Section 41(5) of the Employment Act** (supra) which deters payment of salaries during the period an employee is sentenced would not apply.

In the alternative, the claimant having been acquitted on his third appeal, he would have filed a civil suit for malicious prosecution and if successful, he would have been entitled to damages in which case his salary for the months he was incarcerated would be granted as part of the damages incurred by him as a result of malicious prosecution. This is because success in malicious prosecution means that the prosecution was instigated by malice and that therefore the stoppage of salary was effected maliciously entitling the claimant to the said salary.

Granting the claimant salary during the period he was **legally incarcerated** by a **competent court** in our view would be tantamount to granting him damages which as explained above is not called for in the circumstances. It is our strong conviction that the acquittal of the claimant on appeal did not in any way reverse the effect of **section 41(5) of the Employment Act** especially so when the conviction and sentence was initially done by a competent court.

Consequently the claimant having been reinstated on his job after acquittal, the respondent was not under any obligation to pay salaries and other benefits to him during the time he was legally and competently incarcerated without him having successfully sued for malicious prosecution. The first issue is therefore resolved in the negative.

The second issue **is whether the claimant is entitled to the reliefs sought.**

The claimant prayed this court to grant him basic salary between August 2010-March 2015 the period under which he was incarcerated. He prayed also for statutory allowances as provided for in the Public Service as well as general damages, costs of the suit and interest at 20% per annum.

We are afraid, the claimant will not be entitled to any of the above reliefs simply because his claim to any wrongdoing by the respondent has failed. In the absence of evidence that the claimant was maliciously prosecuted and given that in accordance with **section 41(5) of the Employment Act** he was legally denied the salaries during the period he was incarcerated, we do not find any reason to grant to him any of the reliefs claimed.

All in all the entire claim is unsuccessful and it is hereby dismissed with no orders as to costs.

BEFORE

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

PANELISTS

1. Mr. Bwire John Abraham.....
- 2.Mr.Mavunwa Edison.....
- 3.Ms.Jullian Nyachwo.....

Dated: 6/july/2018

