

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA
LABOUR DISPUTE LDC. No. 175 OF 2017
[ARISING FROM LABOUR DISPUTE No. 019 OF 2017]

BETWEEN

MADING JEROMECLAIMANT

VERSUS

THE SANCTUARY & 3 ORS.....RESPONDENT

BEFORE

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

PANELISTS

1. Ms. Adrine Namara
2. Mr. Matovu Micheal
3. Ms. Suzan Nabirye

AWARD

In a memorandum of claim filed in this Court on 03/8/2017, the claimant alleged that he was initially employed by the 1st respondent on 23/8/2014. According to the memorandum of claim, towards the end of 2015, the 2nd, 3rd and 4th respondents constituted themselves into a Community Based Organization to assume and carry on the activities of the 1st respondent and on 11/06/2017 the claimant was dismissed. According to him the respondents were jointly and severally responsible for what he called unfair and unlawful termination entitling him to severance, payment in lieu of notice, general and punitive damages as well as interest and punitive damages as well as interest and costs of the claim.

The 2nd and 3rd respondents filed a memorandum in reply in which they contended that by the time the claimant was dismissed they had ceased to be members of the Board of Trustees of both the 1st and 4th respondents and were not working with or for the 1st and 4th respondent. They denied playing any role in the dismissal of the claimant.

The facts of this case as we understand them are that the first respondent was registered as a non-governmental organization and secured a permit to operate as such on 13th July 2012. After sometime the 2nd, 3rd and 4th respondents registered a Community Based Organization called Jeremiah House. The claimant who was originally an employee of the 1st respondent continued to work for the Jeremiah House.

The 4th respondent based in Canada seemed to be in full control of Jeremiah House and after some time there was a restructuring of the same whereby the 2nd, 3rd respondents ceased to be members of the said Jeremiah House.

In the course of the restructuring and re-organization International Teams Canada, which controlled Jeremiah House, formed a new organization called Jinja Connection for which the 3rd respondent became a Director.

The letter terminating the claimant was by email and it was signed by the 4th respondent based in Canada.

The issues as framed by the claimant in his scheduling Memo were not contested by the respondent and they are;

- a) Whether the claimant's termination was lawful.
- b) Whether the 2nd, 3rd and 4th respondents were liable for the unlawful termination.
- c) Whether the claimant is entitled to the remedies sought.

We shall proceed to resolve the 1st and 2nd issues together and at once.

There is no doubt on the evidence that the claimant was employed by the first respondent which later on metamorphosed into Jeremiah House and this was from a Non-governmental Organization (N.G.O) to a Community based organization (CBO).

On perusal of the certificate of registration of the first respondent, it is clear that it was issued for a certain period and the same can be discerned from the permit given to the 1st respondent. This means it was expected that after the given period the 1st respondent was to get a renewal of the permit to operate. It is not clear from the certificate or the permit when the operations of the first respondent were to be renewed.

On the evidence adduced, we form the opinion that it was after failure to renew the operations of the first respondent that Jeremiah House as a Community Based Organization was formed. This being the case in our understanding, the first respondent ceased to exist on the date it failed to renew its license and therefore at the time the claimant was terminated it could not be responsible.

Termination of employment can only legally be made in accordance with the law. Under the Employment Act, in addition to being issued with notice before termination, the employer is expected to give a reason for termination. Once the termination is as a result of misconduct the employer is expected to provide the employee with a hearing so that the employee is given opportunity to defend himself /herself against the allegations.

In the instant case, the letter of dismissal refers to verbal warnings from one Johnston and the 4th respondent and the misconduct of the claimant. Nothing on the record shows that the claimant was subjected to disciplinary hearing for him to provide a defence to the allegations in the dismissal letter. We have no doubt that the termination was unlawful and therefore the first issue is in the negative.

The second issue is whether the 2nd, 3rd and 4th respondents were liable for the unlawful termination.

The contention of the respondents is that by the time of the dismissal of the claimant they were not part of Jeremiah House for which the claimant worked, and that they had nothing to do with the termination of the claimant's employment.

The claimant contends that the respondents were liable since the 4th respondent wrote the termination letter on their behalf as Board members of Jeremiah House for which the claimant worked.

Although Jeremiah House was registered in Uganda as a Community Based Organization, it is clear to us that its management and financial muscle lay in Canada as it reflected an international look out. Operational decisions were taken in Canada and disseminated to Jeremiah House by email or any other media mechanism. Under Article 19 of the constitution of Jeremiah House, the 2nd, 3rd and 4th respondents are listed as founding members in the capacity of

secretary, Treasurer and Vice Chairperson (of the Board of Trustees) respectively.

The basis of the claim against the respondent as we understand it, is that the respondent having been founding members of Jeremiah House and having not formally ceased to be recognized as such by the time the claimant was dismissed, they take responsibility for the dismissal since it was done on behalf of the Board of Trustees by the 4th respondent who was the Chairperson. This was irrespective of whether the 2nd and 3rd respondents were in fact not associated with Jeremiah House.

In his submissions counsel for the claimant emphasized that the 2nd and 3rd respondents were culpable because there was nothing on the record to suggest they were not members of Jeremiah House later on holding executive positions by the time the claimant was dismissed.

There is no doubt that at the formation of Jeremiah House both the 2nd and 3rd respondents were members of the House and held the various executive positions. There is no doubt as well that they did not show any express or formal method applied for them to cease to be members of the Jeremiah House. Article 16 of the constitution of Jeremiah House provided for circumstances under which membership of the organization could cease.

According to the 3rd respondent she ceased to be a Board member when the forth respondent in Canada decided to re-organise the organisation in Uganda and in Canada re-constituted another Board of Trustees. This version of events seem credible to us. This is because in his own evidence in cross examination, the claimant told Court that

“I told Allison that Shadrach had been fired and they were on me Allisson knew I was dismissed. She came to know about my dismissal because I informed her. I don’t recall. If she was surprised.”

As already intimated the Jeremiah House was an International Organisation whose management and control was in Canada. It is our view that the above evidence of the claimant gives credence to the fact that there was a shakeup of the organisation in Uganda by the controllers in Canada under the machinations of the 4th respondent who was permanently resident in Canada. We do not attach much value to EXH REX2, a letter addressed to Wanjala, 2nd

respondent informing him of a new Board because it is not signed by anybody and it is not dated.

The letter, DEXH5 in the trial bundle of the respondent addressed to the 2nd respondent may not absolve the respondents either. It is originating from Buikwe but it is signed off by “**the Board of Jeremiah House**”. It attempts to introduce new members of the Board. It is a reaction to a letter from the 2nd respondent requesting to assume an administrative position at Jeremiah House but instead it offers him a part time position. We are not convinced that the letter is authentic for it is not dated and properly signed. It is not clear when the new Board was inaugurated and how the decision to disband the old Board was reached.

DEXH4 is an email which tends to suggest that the above letter, DEXH 5, was an attachment sent by one Dave Piitz, a member of Jeremiah Board and the 2nd respondent replied to the email suggesting that he would take up the part time position and wait for the new terms and conditions of work. It is not believable that the email from Piitz was from Buikwe as the attached letter seems to suggest because as we have already intimated, the whole organisation was run from Canada. Just like the attached letter, both emails are not dated and it is not possible to determine when the events unfolding actually happened.

Consequently we agree with the submission of counsel for the claimant that the respondents were members of the Board by the time the claimant was dismissed. There was nothing to suggest that they resigned as members or that they ceased to be members of the Board as provided under article 16 of the Constitution of Jeremiah House. As evidence was led in cross-examination, the fourth respondent as chairman of the Board had been given powers by the respondents to manage the organisation and do everything on their behalf. Jeremiah House having been registered as a Community Based Organisation (C.B.O) could not be sued in its own names since it had no legal capacity as opposed to an ordinary Non-governmental organisation. This is because **section 29 of the Non-governmental Organisation Act** provides for a requirement of a certificate of incorporation yet **under rule 15 of the regulations made there under Statutory Instrument Supplement No. 13 of**

2017, a C.B.O is only required to get a certificate of registration from the local community.

It follows therefore that whereas an aggrieved party in a mainstream non-governmental organisation may sue the organisation, in a C.B.O, the aggrieved can only sue the individual managers of the organisation. This was clearly put in the case of **CHOME SIMEA and OTHERS VS Kaya Parish Grazing Area &another HCT CIV Appeal 0015/2010** where it was held that registration (**Arua**) as a Community Based Organisation did not confer legal Capacity to the Organisation to sue or be sued.

In the instant case, the dismissal was occasioned and the letter was signed by the fourth respondent.

It says (inter alia)

“Please understand that the Board sincerely appreciates your support of the boys and your support of Jeremiah House in the community over the last number of years, We deeply regret to take these serious actions but unfortunately your contravention of your contract has forced us to act accordingly”

In the absence of credible evidence that the respondents were not part of the Board of Trustees of Jeremiah House, it is not possible in our view for them to disassociate themselves from the above letter of termination. They were therefore liable and the second issue is resolved in the affirmative.

The last issue relates to remedies. The letter of termination does not give any notice to the claimant. Under **Section 58 of the Employment Act** an employee is entitled to notice or payment in lieu thereof before termination. The claimant started working for the respondent on 23/8/2014 and he lost the job on 11/06/2017. The claimant had therefore worked for close to 3 years. He was consequently entitled to not less than 1 month. Accordingly we grant

payment in lieu of notice equivalent to one month's pay i.e. 400,000/= including rent.

Although the claimant in accordance with section 54 of the Employment Act was entitled to leave, grant of such leave is subject to approval by the employer and entitlement only arises once the employee applies for it and the employer for some reason denies the employee the same. Nothing on the evidence suggests that the claimant applied for leave and that the respondents denied him the same. The fact that the contract did not provide for leave in our considered view did not preclude the claimant from applying for the same and we reject the plea that he was ignorant of his right to leave. This claim is therefore not allowed.

Under section 87, once the termination is declared unlawful, an employee is entitled to severance. **Section 89** of the same law provides for negotiation between the employer and the worker or labour union as to calculation of severance but in the case of **Donna Kamuli Vs DFCU Bank LDC 002/2015** this court held that in the absence of negotiations the employee was entitled to 1 month's pay per year worked. Therefore the claimant in his case will be entitled to 1,200,000/- as severance.

General damages

These damages are awarded in the discretion of the court. They are only meant to put in place the aggrieved party in a position he/she would have been had the unsuccessful party not caused the injury or loss to the aggrieved party. In the instant case we recognise that the letter dismissing the claimant was signed by the forth respondent who is not within the precincts of the jurisdiction of the court. We recognise the fact that the respondents were not party to the decision that the fourth respondent took since there was no evidence of a Board meeting. It is the position of this court that the respondents are only liable because they had not taken steps to cease to be members of the Board and yet they had allowed the fourth respondent to act on their behalf. In the circumstances we think that general damages of 3,000,000/= will be sufficient and it is so ordered.

The total sum allowed above will attract interest at a rate of 18% per annum from the date of this award until settlement in full.

The claim succeeds in the above terms with no order as to costs.

Signed By:

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

Panelists

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

Dated: 11th MAY 2018