

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL NO. 022 of 2017
(Arising from Labour Dispute of 201.....)

BETWEEN

G4S SECURE SOLUTIONS UGANDA LTD**CLAIMANT**

VERSUS

201 FORMER EMPLOYEES OF G4S SECURITY SERVICES
(EXCLUDING THOSE WHO WITHDREW THEIR COMPLAINTS.....**RESPONDENT**

BEFORE

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

PANELISTS

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

AWARD

This is an appeal from the decision and order of the Labour Officer. Originally the respondents were employees of the appellant who were aggrieved after termination of their employment. They filed a complaint at the Labour Office at Kampala City Council and after a hearing the Labour Officer made the following findings.

- 1) It was wrong for G4S not to explain to the complainant what they would have expected as “**Long Service Award**”.
- 2) It was wrong not to have given the Long Service Award to the employees at the right time.

- 3) G4S was obliged to give the Long Service Award Certificates to its employees who served for a long period.
- 4) G4S breached their Industrial relations practice by not giving Long Service Awards to their employees.
- 5) In the absence of any provisions relating to gratuity in the employment contracts, the aggrieved complainants should be given prizes (or long service award) in from of money i.e. those that had served for 5 years to be given Ugx. 150,000/-; those that served for 5 years but below 7 years to be given Ugx. 250,000/-; those that served 7 years but below 10 years to be given Ugx. 350,000/- and those that served 10 years and above to get Ugx. 500,000/-.
- 6) For purpose of repatriation the employer was required to provide proof of the places of recruitment of the complainants since recruitment was always carried out by the employer.
- 7) The cost of repatriation of the complainants would be as per charges shown by a transport company called the Uganda Pickups Association although G4s was required to provide additional of at least 50,000 for each of the complainants to cater for extra transport from the various towns to each of their villages. The appellant was dissatisfied with the decision of the Labour Officer and therefore lodged an appeal and formed the following grounds of appeal

- 1. The Labour officer erred in law when she decided that the appellant should not issue certificates as per the appellants policy and practice for the long service award and instead awarded the respondents monetary prizes which are not provided for in law or the respondents contracts of service of employment.**

- 2. The labour officer erred in law by making arbitrary long service awards to the respondents as follows:**

- i. ug.shs 150,000/= to the respondents who served for periods of service between 3 and 5 years.**
- ii. Ug.shs. 250.000/= to the respondents who served for the periods of service between 5 and 7 years.**
- iii. Ug.Shs. 350,000/= to the respondents who served for periods of service between 7 and 10 years.**

- iv. **Ug.Shs. 350,000/= to the respondents who served for periods of service above 10 years.**
3. **The Labour officer erred in law in deciding that the burden to prove whether or not the respondents qualified for repatriation was on the appellant.**
 4. **The Labour Officer erred in deciding that the respondents qualified for repatriation on the basis of their areas of origin and not the areas of recruitment.**
 5. **The Labour officer erred in law in deciding that the respondents who did not qualify for repatriation under the Employment Act should nonetheless be repatriated at the appellant's expense.**
 6. **The Labour Officer erred in law in failing to hold that the appellant was only liable to repatriate only those of the respondents that had served the appellant for 10 years and above by the time they terminated their employment contracts with the appellant.**

Grounds No. 1 and No. 2 were based on the complaint that the money awarded by the Labour Officer was arbitrary and not supported by the contract of employment or the law. The appellant strongly argued that the respondents were not entitled as of right to the service awards since their contracts did not show that they were so entitled as of right. He submitted that the contracts only gave discretion to the appellant to issue the awards or not to issue the same and that therefore the awards were not mandatory. It was the submission of counsel for the appellant that his client was not legally obliged to confer any service awards on the respondents. In his submission, the respondents entitlement would only accrue from the date that the appellant declared that any of the respondents would get an award and not automatically on attaining the service period enumerated in the contract.

Counsel for the appellant in support of ground 1 and 2 also argued that the respondents were not entitled to money awards and that the Labour Officer misconstrued the meaning of “Award” as used in the contracts of service of the respondents.

He argued that whereas Uganda Airlines and Dairy Corporation Staff Regulations provided for money awards, it was erroneous for the Labour Office to conclude that this was a **common practice of companies** in **Uganda** and that it had nothing to do with the appellant.

Counsel asserted that awards were defined as “**formal recognitions**” and not “**payments**” by the Free Dictionary. He therefore reiterated that the respondents had no legal basis of demanding for or claiming for a service award in monetary terms unless the appellant specifically offered money as part of the service award.

It was the submission of counsel for the appellant that the Labour Officer erred in law to award service awards to respondents who had served for 2, 4, 6, 7, 8 and 9 years since the contracts provided for those that had served for 1, 3, 5 and 10 years at the pleasure of the appellant.

Counsel contended that it was erroneous of the Labour Officer to substitute gifts in form of money for gratuity since according to him these were completely different as service awards were not part of the salaries or retirement benefits unlike gratuity.

In reply to grounds No. 1 and 2 in the Memorandum of Appeal, counsel for the respondent argued strongly that the provision of long service award in the contracts of the respondents was ambiguous and the Labour Officer had a right to interpret the same in favor of the respondents since no service award had been effected by the appellant prior to termination despite the respondents having attained the service periods as prescribed in the contracts of employment. This having been the case, counsel argued that the Labour Officer was right to make a monetary award basing on a comparative analysis of the Dairy Corporation and Uganda Airlines Systems.

In his submission, under **section 93(4) of the Employment Act 2006**, the Labour Officer was empowered to make the aggrieved party whole once an employer failed to fulfill his/her obligations. In this respect according to counsel, the appellant having not provided the Service Awards in form of certificates after a very long time, it was no longer feasible and only money could suffice to make the respondents whole in accordance with the above

provision of the law. He argued that the awards were due on attainment of the stipulated years of service and were not at the discretion of the employer.

Counsel submitted that the Labour Officer was correct to compare gratuity and long service award and that in the absence of an alternative model provided by the appellants, the Labour Officer was right to rely on the model of Diary Corporation and Uganda Airline in calculating the value of the awards.

For grounds 3 and 4, the appellants argued that the Labour Officer erred in deciding that the burden to prove whether the respondents qualified for repatriation was on the appellant and that the qualification for repatriation was not based on areas of origin (of employees) but rather on areas of recruitment. Counsel relied on **section 39 of the Employment Act**. He argued that the employee's journey from the place of engagement to his/her home or place of origin was not the responsibility of the employer. According to him the respondents having been recruited from Kampala, the appellant had no liability to repatriate them. In reply counsel for the respondent asserted that in arbitration proceedings a Labour Officer was not obliged to apply strict rules of evidence. He relied on **section 101** as well as **section 2(1) of the Evidence Act**.

Relying on **section 18 of the Labour Dispute (Arbitration and Settlement) Act 2006**, counsel argued that even this court was not bound by strict rules of evidence. Also relying on **section 13(1)(b) of the Employment Act**, counsel argued that the Labour officer was correct in demanding for the proof of the place of recruitment from the respondents since the appellants had themselves on their own volition offered to furnish a list of those eligible for repatriation.

For ground 5, counsel for the appellant complained that the Labour Officer was not correct to decide that some employees who did not qualify for repatriation should nevertheless be repatriated. In his submission, in the absence of evidence by the respondents that they were recruited at a place 100km from their homes and that their employment was terminated by reason of sickness or accident, they were not entitled to repatriation. According to him, the respondents having terminated their own employment under **section 58(2) of the Employment Act**, they were not entitled to repatriation under section 39 of the same Act.

In reply to the submission of the appellant on ground 5, counsel for the respondents submitted that the Labour Officer followed the provisions of **section 39 of the Employment Act** in holding that the claimants were entitled to repatriation.

DECISION OF COURT

Having summarized the submissions and arguments of both counsel, we now proceed to discuss and make findings on each of the grounds. On the 1st and 2nd grounds we have no doubt (and it was not disputed) that the appellant developed a policy within the organization to recognize its employees who served for long periods by giving them awards in form of certificates. We have also no doubt that by the time of litigation before the Labour Officer, the respondents having left the employment of the appellant after the said long service, no recognition had taken place.

The submission of the respondent that the term **“Long Serving Awards”** was ambiguous and that the Labour Officer was at liberty to interpret the same in favor of the respondent by making the award a monetary award is not acceptable to us.

The clause **“Employees may qualify for one (1) three (3), five (5) and ten (10) years service awards”** in our considered view did not amount to a monetary award for the employees.

The 1st ground therefore succeeds on the question whether or not the Labour Officer was right to award the respondents monetary awards.

The 2nd ground relates to the specific monetary awards to specific employees. Having made a finding that the decision of the Labour Officer to provide for a monetary award was wrong, it follows that the specific monetary awards given to specific employees were null and void.

We do not buy the argument of counsel for the respondents that the Labour Officer had a right to imply into the contract of service a monetary award simply because the appellant had not given each of the respondent any award for the long service. It was not disputed that in the case of the Diary Corporation and Uganda Airlines Systems the regulations provided for money awards and yet in the case of the respondents no money awards were provided in the

contracts or anywhere in the regulations. We therefore agree with counsel for the respondents that the word “**Awards**” in the context used in the contracts of the respondents meant “**formal recognition**” and not necessarily by cash payment. There was therefore no legal basis for claiming any service award in monetary terms.

The question to be answered is whether the respondents were obliged under the specific contracts of service to “**formally recognize**” the long service of the respondents.

Counsel for the appellant strongly argued that the respondents entitlement could only accrue from the date of declaration by the appellant that such award was available to a particular employee since according to counsel the contract gave a discretion to the appellant to issue or not to issue the awards and there was no legal obligation for the appellant to issue the same.

The clause in the respondents’ contracts of employment that provided for service awards read as follows:

“Employees may qualify for one (1), three (3), five (5) and ten (10) years service awards”.

Whereas the appellant argued that the word “**may**” was permissive and discretionary to getting the award, the respondents argued that the word “**may**” was used not to guarantee that one would reach the period 1, 3, 5 or 10 years and not to qualify for the awards.

It is our intention to look at the purpose and intention of the above provision in the contract. Why would such a provision be inserted into the contract of service of an employee by the employer? We form the opinion that the employer intended to formally recognize the long service of the employees so as to encourage retention of the employees. This in return would motivate the employees to continue working tirelessly in the hope that they would get such recognition which could be useful in search of any other employment elsewhere after leaving the appellant’s employment. It follows therefore that on attainment of , 3, 5 or 10 years the employees would rightly anticipate the said formal recognition.

We take the position that in inserting this provision in the contracts of the respondents, the appellant knew and was aware that the respondents on attaining such long service would anticipate and that the appellant would provide the said formal recognition. It was this formal

recognition that the respondents would show to any other prospective employer that they ever worked and were ever appreciated for the services they rendered to their employer. This provision was inserted in the contracts with an intention to be complied with by the respondents. It was intended to encourage the employees to the benefit of the Employer. Consequently it was not erroneous for the Labour Officer to hold that the appellant was obliged to give the awards to the long service employees and that failure to have done so was in breach of the **Industrial Labour Relations** .

The 3rd and 4th grounds revolved around repatriation of the employees of the appellant. It was argued on behalf of the appellant that it was erroneous for Labour Officer to decide that the burden to prove whether the respondents qualified for repatriation was on the appellant.

Section 39 of the Employment Act provides:

- 1) **An employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases:**
 - a. **On the expiry of the period of service stipulated in the contract.**
 - b. **On the termination of the contract by reason of the employee's sickness or accident.**
 - c. **On the termination of contract by agreement between the parties, unless the contract contains a written provision to the contrary; and**
 - d. **On the termination of the contract by order of the Labour officer, the Industrial Court or any other court.**
- 2) **When the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the expense of the employer, in the event of the employee's repatriation or death.**
- 3) **Where an employee has been in employment for at least ten years he or she shall be repatriated at the expense of the employer, irrespective of his or her place of recruitment.**
- 4) **A Labour Officer may, notwithstanding anything in this section, exempt an employer from the obligation to repatriate in circumstance where the Labour Officer is satisfied that it is just and equitable to do so, having regard to any**

agreement between the parties or in the case of the summary dismissal of an employee for serious misconduct.'

According to counsel for the appellant, **section 39 of the Employment Act**, does not give a right of repatriation to an employee to his/her home. In his interpretation **“the right of repatriation only extends to the employees place of engagement if he/she can prove that he/she was recruited at a place 100 km or more from his/her home..... The employee’s journey from the place of engagement to his/her home or place of origin is not the responsibility of the employer under section 39 of the Employment Act.”** In other words the employer was only responsible for repatriating the employee from his home to his place of work and only on proof that such employee was recruited 100km from his or her home. According to counsel it was not the business of the employer to repatriate the employee from the workplace to his or her home.

Counsel based his interpretation on the emphasis in his submission on the words in section 39 above mentioned **“An employee recruited for employment at a place which is more than one hundred kilometers from his or her home, shall have the right to be repatriated at the expense of the employer to the place of engagement....”**

If the interpretation of counsel was to be right, it would necessarily follow that the employer would only be liable to refund or compensate the employee for his/her transportation from his/her home to the place of engagement i.e. the work place, since such a right only arises at the termination or expiry of employment. This is because the employee would have already paid for his transportation to the work place as indeed was required of the respondents in their contracts.

Unlike counsel for the appellant, we take the position that the **place of engagement** and the **“place of recruitment”** both refer to where the employee is to start work, ie the workplace. It was envisaged that recruitment would ordinarily be effected either at the work station or away from the workstation but whichever the case the employee would have to travel from his home. Repatriation therefore embodies transportation of an employee from his/her work station to his home. Ordinarily to repatriate means, in our view, to **“return to origin”**. It does not mean to **“refund”**. **“Repatriating the employee to the place of engagement”** as used in section 39 in our view was meant to mean **“repatriating the employee from the**

place of engagement". This is because on internalizing the whole of **section 39 of the Employment Act** it is about repatriation on the expiry of contract or termination of contract. We form the opinion that repatriation is about returning the employee from the work place to his/her home. We therefore do not accept the submission of counsel for the appellant that the section has nothing to do with the employee's journey from the place of engagement (which counsel calls the place of recruitment but which we call the work place) to his/her home or place of origin. In the alternative the legislature could have meant refunding transport to the place of engagement without denial of repatriation from the same place.

Our position is that the section of the law above cited was intended to help the employee to be able to return home after termination of his employment.

We reject the submission of counsel for the appellant that the right of repatriation to the employee's home or place of origin does not exist under **section 39 of the Employment Act**. The Labour Officer was therefore right to hold that such right existed.

We agree with the submission of counsel for the respondents that **section 101** read together with **section 2(1)** both of the **Evidence Act** give exception to arbitrators such as Labour Officers in the application of strict rules of evidence. **Section 18 of the Labour Dispute (Arbitration & Settlement Act)** provides that even this court may not be bound by strict rules of evidence.

In considering the question whether the appellant was bound to pay repatriation, according to the record, the Labour Officer sought to rely on information provided by the appellant as to who was entitled and who was not entitled which information was never brought to the attention of the Labour Officer.

We do not therefore fault the same Labour Officer for having relied on the evidence of the Financial Controller of the appellant that recruitment was done in Kampala and on records available in the Labour Officer to the effect that most employees were from areas beyond 100kms. Counsel for the appellant in his submission was emphatic that the respondents provided evidence of their home areas but did not provide evidence of their recruitment, yet the Financial Controller of the appellant provided the evidence of recruitment. Nothing in the submissions of the appellant seemed to contest the fact that the respondents home areas were

100km and beyond from Kampala, the recruitment site and station of work of the respondents.

Counsel's complaint was that the respondents **“chose to adduce evidence of their place of origin only and were entirely silent altogether about their place of recruitment even when the appellant's Financial Controller testified that the appellant never recruited up country.....”**

We take the position that the respondents having adduced evidence of their places of origin, it was incumbent on the appellant to show that such places of origin, were not within the 100 Km mileage provided for under **section 39 of the Employment Act**. The fact that recruitment was not done upcountry in our view did not deter the respondents from repatriation.

In the 5th and last ground of the Appeal the appellant complained that the Labour Officer decided that the respondents who did not qualify for repatriation should nevertheless be repatriated.

In her award at page 5 the Labour Officer had this to say:

“The company may also consider repatriation of the complainants who came from areas less than 100 Km as they may also not be able to walk to their homes while carrying their property.”

We think this was uncalled for as it had no basis in law. Only those entitled to repatriation in law should be paid based on the law and not on sympathy as the Labour Officer seemed to suggest.

We do not accept the submission of counsel for the appellant that the respondents would not be entitled to repatriation because they terminated their own contracts before expiry of the same. One of the circumstances under which an employee is entitled to repatriation under **section 39 of the Employment Act** is

“(c) on termination of the contract by agreement between the parties unless the contract contains a written provision to the contrary.”

We agree with the submission of counsel for the respondents that the agreement between the parties as provided in section 39 above does not have to be “**mutually negotiated**” and “**formally agreed**”. The record shows that the respondents gave a notice of termination and no evidence was led to show that such notice was rejected by the appellants as an expression of disagreement. Nothing in the submissions of the appellant suggests that they did not accept the termination of employment by the respondents. This being the case it is safe to conclude that there existed an agreement between the parties within the meaning of **section 39 (c) of the Employment Act** so as to entitle the respondents to repatriation.

In conclusion the appeal partly succeeds and partly fails with the following declarations/orders:

- 1.The labour officer erred in law to hold that the respondents were entitled to a monetary award or recognition and all orders of monetary awards are hereby set aside.
- 2.The long service awards as contained in the contracts of the respondents were legally binding on both parties and the appellant breached the contract on failure to give the same to respondents who qualified for the same.
- 3.Section 39 of the Employment Act 2006 provides for repatriation of employees from the place of work to their home areas and the labour officer was right to hold so. Therefore orders related to repatriation of respondents 100km from the workplace are hereby sustained.
4. The respondents were entitled to damages for breach of contract. From our interpretation of the contracts of the respondents the appellant intended to recognize long service which in return would grant opportunity to respondents to offer service elsewhere and for own satisfaction which did not happen. we consider **500.000sh.(five hundred thousand)** for each of them as sufficient general damages.
5. Since the appeal has partly succeeded no order as to costs is made.

SIGNED BY:

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

PANELISTS

- 1.Mr. Ebyau Fidel
- 2.Ms. Harriet Mugambwa
- 3.Mr. F.X. Mubuke.

Dated. 6/ july/ 2018