

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 298 OF 2014
ARISING FROM HCCS No445/2014

SSENUNI MOHAMED

MAWANDA MATIA

BAKITI FIASAL AND 31 ORS CLAIMANTS

VERSUS

KAMPALA CAPITAL CITY AUTHORITY RESPONDENT

BEFORE:

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

PANELISTS

- 1. MR. EBYAU FIDEL**
- 2. MS. HARRIET NGANZI MUGAMBWA**
- 3. MRF.X.MUBUKE**

AWARD

BACHGROUND:

The claimants brought this claim against the respondents jointly and severally for declarations that: that on account of their continued employment, they were

permanent and pensionable, they were unlawfully terminated, for orders that they are paid gratuity and pension arrears, general damages Aggravated damages and costs.

BREIF FACTS;

According to the claimants, in 1999 they were appointed by the former Kampala City Council as Law Enforcement Assistants via a single Circular. In 2005 they were individually issued letters of appointment titled "*Vocational Employment Offers*" of 3 to 6 months. According to them they worked continuously and uninterrupted but the respondents irregularly renewed their appointments in 2007 and 2009 and the renewals were disguised contracts termed "*Vocational Employment offers.*" The appointments stipulated that each of them would earn Ugx. 100,000/= per month which was later enhanced to Ugx. 150,000/-

They claim they were dismissed on the 15/02/2012, without notice, terminal benefits hence this claim.

The Respondents on the other had contend that the claimants were at all material times employed on temporary terms to perform particular tasks and on the completion of the tasks their services would terminate with no need for notice of termination or a requirement to pay terminal benefits.

ISSUES

1. Whether the claimants were unlawfully terminated and entitled to terminal benefits?
2. Remedies available?

1. Whether the claimants were unlawfully terminated and entitled to terminal benefits?

It was submitted for the claimants that they were engaged as Law Enforcement Assistants in 1999 and from 2005 they were issued with short term contracts of 3 to 6 months termed "**Vocational Employment offers.**" It was Counsel's submission that, according to CW1 Ssenuni Mohammed, between 2005 and 2007, whenever the short term contracts expired, the respondent let the claimants continue with work without contracts. According to the witness the claimants contracts were last renewed in 2009 and they continued working until 15/02/2012 when they were prevented from accessing the respondent's premises. Counsel contended that the Claimants' contracts are contrary to Section 4 (a) of the Employment Act 2006 and Section 19(1) (a) of the Contracts Act 2010, because they deprive them of their entitlement to terminal benefits which are their economic labour rights. According to him the "**Vocational Employment offer**" was intended to keep the claimants under indefinite probation contrary to Section 67 of the Employment Act and meant to deny the claimants' their rights as provided under the Employment Act and the law of Contract. He was of the opinion that the claimants' employment falls within the ambit of Section 86 of the Employment Act, because the claimants worked continuously. He argued that since the claimants' work was continuous it accrued terminal benefits which the respondents deliberately denied to pay to them. It was his submission further that the claimants' oral termination was unlawful because it contravened Article 44 of the Constitution of Uganda 1995 and Section 62(2) of the Employment Act.

In reply Counsel for the Respondents insisted that the claimants' had always been employed on temporary basis under mutually agreed contracts for a specified period, at the rate of Ugx. 100,000/- per month and with no provision for terminal benefits. He argued that the claimants' were expected to stop work once their contracts expired and any extension would have been made formally and in writing which was not the case. He cited **EBIJU V UMEME LTD CS No. 133 OF 2012**. He argued that the claimants' had not proved that the respondent breached the short term contracts' and insisted that there was no requirement for the respondent to issue them with termination notices or to pay them terminal benefits because the contracts did not provide for the same. He asserted that parties to a contract are bound by its terms and since the contracts did not provide for terminal benefits this claim was an afterthought.

It was his submission that the claimants had not discharged their obligation under section 101 of the evidence Act to prove that they served continuously without interruption until 15/02/2012 or that they were terminated by the respondent. He cited **UGANDA TELECOM LTD VS TANZANITE CORPORATION SCCA No. 17 OF 2004**. According to him the claimants do not qualify to be paid Pension because they are not public officers within the meaning of Article 254 and Section 9(1) of the Pensions Act, which entitles Public Officers to pension and it was the Public Service Commission and not the respondents who were responsible for computing and paying pension. In his view therefore this claim is futile.

DECISION OF COURT

After carefully scrutinizing the record, the evidence adduced, Counsels submissions and the relevant law, we find as follows:

It is not disputed that the claimants were employed by the respondents on temporary terms on fixed contracts of 3 to 6 months referred to as **"Vocational Employment Offers."**

What is disputed in our view is whether these temporal contracts amounted to continuous employment and therefore entitled the claimants to terminal benefits?

According to Section 83 of the Employment Act 2006, continuous service is defined as follows;

"83 Definition of Continuous Service

- 1) Subject to the provision of this section "continuous service" means an employee's period of uninterrupted service with same employee.***
- 2) There shall be a reputable presumption that the service of an employee with an employer shall be continuous, whether or not the employee remains in the same job.***
- 3) Any week or part of a week in which an employee is employed for sixteen hours or more shall count in calculation as a period of continuous service.***
- 4) Consecutive periods of employment with two successive employers where the successor has taken over the business of the former employer as receiver, personal representative, or heir or upon transfer of the whole or part of the business shall be deemed to constitute a single of continuous service with successor."***

The contracts of 28 of the claimants on the record show that they were all titled **"Offer of Vocational Employment"**, their duration is between 3 and 6 months, they all indicated that the remuneration was Ugx. 100,000/= per month. All the contracts did not provide for the payment of terminal benefits. According to CW1

all the claimants accepted the terms of the contracts and signed them. CW1 Muhammed Ssenuni admitted that all the claimants' were offered temporary employment as law enforcement assistants with no entitlement to terminal benefits and they accepted the terms. He said ***"... yes it was written that we were not entitled to terminal benefits... first it was 3 months then 6 months ... yes in both we agreed to those terms..."*** He admitted that the contracts provided for the payment of Ugx. 100,000 per month. No evidence was presented to show that whenever one of the contracts expired a new contract would be entered into as an extension or renewal of the previous one. None of the contracts indicated that it was an extension or renewal of an expired contracts. They were all titled ***"Offer of Vocational Employment"***. In the circumstances the claimants did not prove continuity of employment as provided under section 83(supra).

We were also not convinced by Counsel for the claimants that the contracts fell within the ambit of Section 86, because Section 86 provides for seasonal employment. Section 86 provides that;

"86 Seasonal employment

(1) Where an employee is engaged in an occupation in which it is customary to employ some workers only at a certain season or time of the year, and that employee is employed in successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he or she has actually performed work for the same employer in successive seasons.

(2) For the purpose of this section, "employed" means employed under a contract of service for a minimum of sixteen hours per week."

The contracts do not describe the nature of the work that the claimants were to execute neither do they state that the work was to be executed seasonally for it to be construed within the ambit of Section 86(supra). They do not provide for period the work is to be executed or timelines within which to convey a decision to either renew or extend their terms, therefore they do not create any expectation on either party for their renewal or extension or continuity.

We are of the considered view that although the Employment Act does not define ***"Vocational employment"***, by making the contracts short term and fixed to a period of 3 to 6 months without providing for their extension or renewal and excluding the payment of terminal benefits, the respondents intended that they terminate on expiry without a requirement for notice and payment of benefits. We are therefore inclined to believe the assertion by Counsel for the respondent that the Respondent was not under any obligation to give the claimants notice of termination. CW1 also testified that the claimants' agreed to and actually executed the duties assigned to them under these terms. Based on his testimony, it is clear to us that the claimants were employed on temporary terms, for specific tasks to be completed within a specified period of the appointment. CW testified that ***"... yes we were offered vocational employment... yes it was temporary ... we were picked from the gyms, especially boxers, we were called ... there was no advert ... we did not start on the same date ... we worked from morning to 6 pm ... other times we slept over to watch over the grass planted ..."***

According to Section 65 1 (b) of the Employment Act 2006, termination is deemed to take place ***"once a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task, and it is not renewed within***

a period of one week from the date of expiry on the same terms or terms not less favourably to the employee, ..."

CW1 testified that they continued to work despite their contracts not being renewed. He said ***"... we continued to receive salary therefore it is KCC and KCCA that has evidence that the contract was extended ... we agreed to work based on verbal increment ..."*** We have already established that there was not continuity of service after the expiry of their contracts because the expired contracts were neither renewed or extended instead new contracts were drawn. No evidence was adduced to prove that they continued working and receiving salary even after their contracts expired.

The Respondent having not been renewed or extended the claimants expired contracts, they terminated on expiry in accordance with Section 65(1) (b) and there was no requirement for the respondent to give them notice. In the circumstances the claimants' assertion that they were unlawfully terminated by the respondent therefore fails.

The claimant also failed to prove that their salary was increased orally, because no evidence of its receipt or payment was adduced in court. The burden to prove this oral increase of salary lies squarely on the claimants. They have failed to do so therefore their claim fails.

Did the claimant's contracts violate Section 4 (a) of the Employment Act 2006 and Section 19(1) (a) of the Contracts Act 2010?

Section 4 provides that;

"4.Provisions in agreement

Any provision in an agreement, or a contract of service shall be void where it-

a) Excludes or limits the operation of any provision of this Act to the detriment of the employee;...” and

Section 19(1) (a) of the Contracts Act provides that:

19. Lawful consideration or objects.

(1) A consideration or object of an agreement is lawful, except where the consideration or object-

(a) is forbidden by law;

We have already established that the claimants contracts were short term fixed contracts and the claimants agreed to the terms as stated therein and they actually executed the contracts. We do not think that they were executed to their detriment and therefore they did not violate Section 4 (a) of the Employment Act 2006 (supra) and Section 19(1) (a) of the Contracts Act 2010(supra).

According to the first Schedule of the Pensions Act Cap 286, Regulation 4, for an employee to qualify for pension, he or she should have held a pensionable office in the Service of the Government for 10 years and more. In the instant case the claimants served on temporary short term fixed contracts of 3 to 6 months. The contracts did not state that the service they were rendering was pensionable service or that it accrued pension. We have already established that the claimants agreed to the terms of the contracts, therefore they cannot now turn around and demand anything outside these contracts. They are therefore estopped from claiming terminal benefits which were not provided for in their contract in the first place.

In conclusion given that the claimants' contracts were for short fixed terms with no provision for extension or renewal or payment of terminal benefits and given that they did not qualify to be considered under Article 254 and the Pensions Act, their claim fails. It is our finding therefore that the claimants' termination was not unlawful and they were not entitled to any terminal benefits under their temporary contracts of service.

2. Remedies available?

Having found that they were not unlawfully terminated we find that they are not entitled to any remedies and no order as to costs is made.

Signed and delivered by;

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

1. MR. EBYAU FIDEL
2. MS. HARRIET NGANZI MUGAMBWA
3. MRF. X. MUBUUKE

DATE 18/05/2018

The block contains three handwritten signatures, each followed by a dotted line. The first signature is at the top, the second is in the middle, and the third is at the bottom. The signatures are written in dark ink and appear to be cursive or stylized.