THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA

LABOUR DISPUTE REFERENCE. No. 75/2017

(Arising from Labour Dispute No. 246/2016**)**

BETWEEN

KITAKA ERISMUS.. **CLAIMANT**

AND

AIM DISTRIBUTORS..................... **RESPONDENT**

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

PANELISTS

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

AWARD

The claimant filed this claim for recovery of (inter alia) damages for unlawful termination of a contract of employment.

It was not contested that the claimant was an employee of the respondent before the employment came to a halt. What was contested was the nature of employment and whether it was on a casual basis or on terms other than causal.

The facts as we understand them are that the claimant was an employee at the Depot of the respondent. According to him he was employed on an oral contract as a store keeper but

according to the respondent he was a casual worker who would come to the Depot seeking for work and was paid on a daily basis as and when he got work to do.

The issues for determination as agreed are:

(1) Whether the claimant was terminated from work and

(2) Whether the claimant was entitled to the remedies sought.

We have no doubt that there was an employee-employer relationship between the claimant and the respondent since November 2012. This is as claimed by the claimant in paragraph 2 of his statement on oath which was not controverted by the respondent. The relationship between both parties was based on an oral arrangement which both parties agree to. It is our considered opinion that it was incumbent upon the claimant to prove to this court that he was employed on terms other than casual terms. The only evidence available before this court is a payment voucher dated 7th Dec 2013 showing payment of 240,000/= for 16 days.

In his evidence in chief the claimant testified that he earned a salary of 920,000/= per month allowances inclusive as a store keeper although the respondent testified that this was not the case as the claimant was paid as and when there was work for him and he was never a store keeper. The Employment regulations 2011 regulation 39 provides

"39 contracts for causal employees

1) **A person shall not be employed as a casual employee for a period exceeding four months.**
2) **A casual employee engaged continuously for four months shall be entitled to a written contract and shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him or her.**
3) **An employment card shall be issued to and retained by the causal employee except at the request of the employee and shall not be taken from him or her, except for the purpose of having it marked by the employer which shall be done on each day worked or in the case of a day to be counted as worked on the next working day.**
4) **Where a causal employee is laid off by an employer and retired the service shall be regarded as continuous.**

> A casual laborer is generally defined as one who gets paid per day after doing what he has been engaged to do. There is no guarantee that his employer will give him a job the next day and the obligations and responsibilities towards either the employee or the employer end with the work and payment of a particular day.

It was the submission of counsel for the respondent that since the claimant admitted having been paid 240,000/= for 16 days it was not possible that he earned a monthly pay of 500,000/= as salary and 420,00/= as allowances. He argued that this was proof that the claimant did not know how much he earned per month because he was earning per day.

We agree with this submission and we are fortified in this by the available proceedings before the labour officer where the claimant claimed 920,000/= as commission but only to file the matter in this court and claim the same money as salary. We do not accept the submission of counsel for the claimant that it was up to the respondent to prove that the claimant was a casual laborer by producing a number of vouchers since the only voucher produced showed the number of days that were paid for and which the claimant admitted. We think the claimant had to prove that he was not a casual laborer. The claimant was not sure if he earned the 920,000/= as salary or as commission. The voucher which he signed did not show that he was employed as a store keeper.

Consequently we hold that the claimant was employed as a casual worker. The respondent in evidence both in chief and in cross-examination admitted that the claimant was a casual laborer up to 7th December 2013 when he received his payment but never returned to work.

Since the claimant started to work with the respondent in November 2012, it follows that by the time he received the 240,000/= he had worked for over 12 months as a causal laborer. The question however is whether he was in continuous engagement within **regulation 39 of Statutory Instrument no 61 of The Employment regulations.**

Continuous engagement in our view connotes engagement everyday to do particular works over a certain period. In terms of regulation 39 above the period is four months. The evidence from the claimant is that he was engaged as a store keeper which was denied by the respondent. The documentary evidence available is a voucher payment to the claimant for 16 days during December 2013.

In our considered opinion this is only evidence that the respondent engaged the claimant but it does not show that the claimant was continuously engaged for four months so as to take

benefit of regulation 39 above. It is possible that he was engaged as and when there was work at the Depot as the respondent testified. The claimant needed to adduce further evidence to prove continuous engagement and having failed to do so by the time he lost the engagement he was still regarded as a casual laborer and **regulation 39 (2) of the Employment regulations** did not apply to him**.**

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Consequently the respondent was not entitled like other employees to a hearing as provided for under **section 66 of the Employment Act,** notice as provided for under **section 58 of the said Act**, Severance as provided under **section 87 of the said Act**, leave as provided for under **section 54 of the said Act**.

Even then, the respondent denied having terminated the claimant although the claimant told court that he was orally told not to come to work. The burden is on the claimant to prove termination. In his evidence in cross examination the/ /claimant testified that he was fired on 18/01/2014 because he stood surety for one Mukasa Geoffrey his brother. According to the respondent the claimant was last seen at the work place on 07/12/2013 when he got his last payment. No further evidence was offered on behalf of either the claimant or the respondent in relation to termination. Given the burden on the claimant, we think he should have provided further evidence for the termination of his engagement. The fact that he stood surety for his brother in our view is not a sufficient discharge of this burden. We therefore find that the fact of termination was not proved.

.Consequently the claim fails and it is dismissed with no order as to costs.

Signed by

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye

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2. The Hon. Judge, Linda Lillian Tumusiime Mugisha ……………………………

PANELISTS

1. Ms. Adrine Namara …………………………………….
2. Mr. Micheal Matovu …………………………………….
3. Ms. Susan Nabirye …………………………………….

Dated: 6/APRIL/2018