THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE No. 143 OF 2016

[ARISING FROM LABOUR DISPUTE No. 420 OF 2016]

BETWEEN

KYAZZE TUCKER ……..CLAIMANT

VERSUS

BUSOGA COLLEGE MWIRI……...… RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

By an appointment letter dated 08/05/1990, the claimant was offered a job as a driver by the Head master of the respondent with effect from 15/02/1990. The letter of appointment did not include anything to do with retirement.

On 01/02/2014, the Board of governors of the respondent under minute 03/BOG/2014 recommended trimming of support staff in departments that had excess staff some of whom were undisciplined and over aged.

On 24/03/2014 the Headmaster as secretary of the Board of governors wrote to the claimant a letter he titled **"staff re-organization"** the effect of which was termination of the claimant on the ground that he was over the 60 age bracket.
The claimant contested the termination and hence filed a claim in the Labour office which claim ws subsequently referred to this Court.

The issues agreed to be determined by this Court are;

1) **Whether the claimant was unlawfully terminated.**
2) **What are the remedies available to the parties**.

The claimant strongly argued through his legal counsel that the respondent breached the contract of service by purporting to terminate the claimant on the grounds that he had attained 60years when the contract of service did not provide for retirement at that age and when the age factor did not feature at the time the claimant was engaged. In his submission, there was no policy at the school regarding retirement and this was reflected in the fact that most affected employees were above 60 years including the claimant who expected to work all the time as long as he was able bodied. He argued that even if the policy was in effect the claimant was entitled to notice as per **section 58(3) (d) of the Employment Act**. He submitted that failure to give notice rendered the termination unfair and lawful.

In Reply the respondent through legal counsel strongly submitted that **section 65 of the Employment Act** provided for termination through retirement and according to counsel case Law has defined 60 years to be the age for retirement. He relied on the case of **Othieno VS Uganda Broad Casting Corporation Case 107/2013**, consequently in his view the termination was lawful.

It is trite that whenever a contract of employment (or any other contract) is written, and signed by both parties, the obligations and responsibilities as outlined in the contract provide the guidance in the execution of the contract. It is therefore expected that the intentions of the parties are as specified in the contract.
The appointment letter of the claimant is silent about the retirement age.

Although the respondent through RW1 testified that the respondent school had a policy of retirement at 60 years, the appointment letter did not at all refer to such policy and neither was the said policy adduced in evidence.

We take Judicial notice that the respondent school is a fully fledged government school. It seems to us that the school, through the Headmaster thought that this being a government school, the claimant was subjected to the government standing orders that prescribed retirement age at 60 years.
However this was not the case since the claimant was employed by the board of governors on the terms that were already in the appointment letter which did not refer to the said standing orders.
We therefore agree with the submission of counsel for the claimant that in the absence of a policy in the school on the retirement of the support staff, the claimant was entitled to believe that he was employed until he was not able to perform his duties or until he was responsible for misconduct in performance of his duties.

The letter constituting termination of the claimant was headed **"staff re-organization".**
Under **Section 81 of the employment Act**, where the employer contemplates termination of a number of employees due to economic, technological, structural or similar reasons, he /she is required to give notice of not less than 4 weeks unless there is cause for the employer not to do so.

In the instant case, and on the evidence available, the respondent was in the process of re-organizing the staff as far as age limit was concerned.
Consequently **Section 81 of the Employment Act** ought to have been complied with.
Given that as employer the respondent was entitled to restructure the support staff and that the claimant was entitled to be notified, we fault the respondent for failure to so notify the claimant of the pending re-organization. It was not fair for the respondent to terminate the claimant without notice as envisaged in the above section of the law.
He will be paid 4 weeks pay in lieu of such notice which is computed at his salary of 205,000/=.

The second issue is about remedies.

a) **General damages:** Since the respondent had a right to re-organize the institutional support staff, and this Court has already granted 4 weeks in lieu of notice, we do not think damages arise from the failure to give such notice. Accordingly we decline to award damages.

b) **Annual leave:** It was claimant's submission that because the claimant was by virtue of his appointment required at school full time, he was expected to be paid in lieu of leave.

Although an employee is entitled to leave in accordance with the Employment Act, such leave is ordinarily granted when the employees applies for it and unless there are special circumstances an employer may not force an employee to go on leave. The employee is expected to apply for leave so as to give the employer opportunity to fill the gaps once the employee is on leave. Unless there is evidence to the fact that the employee applied for leave and the employer refused to grant the same, it is a given in our view that the employee was comfortable without leave and therefore he is estopped from claiming payment in lieu of the same once the he/she is terminated.

In the instant case the fact that the claimant was engaged **"fulltime"** did not stop him from asking for leave. In fact all employees who apply for leave are ordinarily engaged on **"full time"**.
Nothing in the appointment letter precluded the claimant from applying for leave but even if such a clause existed, it would be null and void. Consequently the prayer to payment in lieu of leave is rejected.

Repatriation:-
Section 39 of the Employment Act compels the employer to provide for repatriating the employee to his or her original place once the recruitment was 100 or more kilometers from his or her home though if the employee has been in service for over 10 years, the distance of his/her from the work place does not affect this repatriation.

According to counsel for the claimant, his client was recruited from Kasokoso, Kampala and he prayed for 500,000/=. According to the evidence in chief of the claimant, paragraph 7 he was recruited from Mukono, Lugazi County, Kanoho sub county, Kasokoso village.

In view of this evidence and in view of the fact that the respondent agreed to pay 200,000/=, we think 300,000/= will be sufficient for repatriation and we grant that this figure be paid to the claimant .

Interest:- Due to inflationary aspects of the economy, we grant that interest in the above sums be at 20% per annum from the date of termination till payment in full.

Since the claimant was terminated as a result of re-organization of the respondent, and since we have already granted payment in lieu of notice we decline to grant the rest of the prayers. The claim partly succeeds in the above terms with no orders as to costs.

SIGNED BY

1. Hon. Chief Judge Ruhinda Ntengye.....

2. Hon. Lady Justice Linda Tumusiime Mugisha.....

PANELISTS

1. Mr. Matovu Micheal.....
   .
2. Ms. Adrine Namara.....

3. Ms. Suzan Nabirye.....

DATED: 13/APRIL/2018