

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA  
LABOUR DISPUTE CLAIM NO. 192 OF 2014  
ARISING OUT OF HCT-CS NO. 375 OF 2013**

**WILBER BATEISIBWA:..... CLAIMANT**

**VS**

**LAKE VICTORIAL AUTHORITIES  
CO-OPERATION COMPANY LTD..... RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Michael Matovu
3. Mr. Anthony Wanyama

**AWARD**

The claimant brought this claim against the respondent for salary arrears of 72,0000 USD for the months beginning April 2012 up to August 2013, general damages, costs and interest.

**Representation:**

The claimant was represented by M/s. Sheilla Tumwine and the respondent was represented by M/s. Nakachwa. After several adjournments this court fixed the hearing for 26/11/2018 and the respondent together with counsel were absent. The court was satisfied that counsel for the respondent had been served and allowed the claimant to proceed exparte.

**Brief Facts:**

By virtue of a contract document dated 1/9/2011 the claimant was engaged by the respondent as Secretary General for 1 year from 1/9/2011 up to 30/8/2011. The contract was to be extended up to a maximum of another 3 years if the claimant as Secretary General mobilized funds to cover employee costs and other obligations of the respondent institution. The contract also provided in paragraph 8(11) that :

**“The employee salary shall be met from the running Side agreement up to 31/3/2012. Salary for the period April to August 2012 shall be met from Chapter contributions or any other source identified by the Secretary General”.**

The claimant in Mid-August 2013 through an sms informed the respondent through Mr. Stephen Kabuye and Mr. Mohammed Kezaala President and Vice President of the respondent respectively, of his intention to resign for non-payment to which the respondent reacted by immediately telling him to vacate office without making arrangements for a formal handover.

Subsequently, though he did not fully handover because he was off the computer, he managed to handover the physical items in his possession.

**Issues:**

Two issues were framed and they were:

- (a) Whether the respondent breached the employment contract by failing to pay the claimant's arrears?**
- (b) What are the remedies available to parties?**

**Evidence:**

The claimant filed a written witness sworn statement detailing his employment. According to him before he was recruited there was an audit which queried an expense of **300,000 USD** and this interrupted cash flow and therefore his salary which was USD 4,000 per month. The Audit was in March 2012 and it was for the period he had not joined the respondent but management advised him to keep working till the audit issues were resolved.

According to him he mobilized **£85,500** and **Euros 10,000** which were sufficient to cover the project costs but he was not paid. His contract was extended upon the request of the president and he continued working till he resigned.

**Decision of Court:**

**Section 41(1) and (2)** provides that an employee is entitled to wages and the rest of the section provides for the manner in which it is paid, and circumstances (and periods) when the employer is exempted from paying. **Sections 42-50 of the Employment Act** buttress the fact that an employee is not only entitled to wages but rest periods as well.

Consequently, where the employer fails to pay wages to his/her employee, the latter is entitled to either resign or file a claim in courts of law or do both. The claimant opted not only to resign but also file a claim for his wages.

A claim for wages must be based on the terms of the contract for services between the employer and the employee. It is this contract that guides the court on whether the employee is entitled to the wages claimed and if so how much.

In the submission of counsel for the claimant, the claimant having worked for the respondent at 4,000USD per month was entitled to 72,000 USD being salary from April to August 2012. Counsel did not refer to **clause 8 of the contract** that provided for the source of funds for salary of the claimant. This provision expressing provided that salary from April to August 2012 would be met from **Chapter contributions or any other source identified by the claimant.**

By taking up the job with the above term in the contract of service, we form the opinion that the claimant was aware that his salary would be pegged to his ability to mobilize and identify funds from which his salary would be paid.

The contract of the claimant was effective September 2011 and he was paid salary up to 31<sup>st</sup> March **“from the running Sida agreement”** as provided for in the contract of service **paragraph 8(1)**.

This having been the case, it is not acceptable to us that failure to pay him salary for the rest of the period was because of an audit query over misuse of funds over the period he was not yet in the respondent organisation. We take cognizance of the fact that the contract expressly provided for the source of the funding for his salary and it had nothing to do with the previous funding to the respondent which allegedly was subjected to audit and found wanting.

The claimant’s confirmation to work with the respondent after 31/3/2014 was in the hope that he would mobilize funds for the purpose of his salary and other obligations of the respondent as the contract stipulated.

In his evidence the claimant testified that in accordance with the contract he secured funding to the tune of **£85,500 and Euros10,000** but still he was not paid. On perusal of **exhibition P3, CDKN innovation fund**, we find that indeed there was a recommendation for an award of British pounds 85,500 at the instance of mobilization skills of the claimant.

However evidence is not sufficient on the record to prove that in fact this recommendation was effected. The letter, **exhibit P3** reads:

**“I am delighted to inform you that the panel of Review was very impressed by your group’s application and has recommended it for an award under the CDKN innovation fund for the value requested of £ 85,500.....**  
.....  
.....  
.....

**Please be aware that this letter is not in itself an offer of an award and does not commit CDKN to making an award.....”**

There were other factors mentioned in the letter that were to be complied with before release of the funding. Neither in the submission of counsel nor in the evidence of the claimant do we find that the conditions in the offer letter were complied with. There is nothing on the record to suggest that the funding mentioned was in fact secured into the respondent organisation.

Although the claimant mentioned that he secured Euros10,000, there is no evidence on the record to support this assertion. Merely stating that the claimant got this funding from the Austrian Embassy was not in our opinion sufficient.

The claimant was under a duty to prove that not only did he solicit for the funds but that the funds were actually released to the respondent and that the respondent refused to use part of it to pay his salary as per the contract of service. The obligation of the respondent to pay salary/wages as provided for under **Section 41 of the Employment Act** could only arise after

proof that the respondent received funding as a result of the mobilization skills of the claimant. Since this evidence was lacking, we find that the claimant has failed to prove his claim and it is hereby dismissed with no orders as to costs.

**Signed by:**

1. Hon. Chief Judge RuhindaNtengye .....
2. Hon. Lady Justice Linda TumusiimeMugisha .....

**Panelists:**

1. Mr. Ebyau Fidel .....
2. Mr. Michael Matovu .....
3. Mr. Anthony Wanyama .....

Dated: 29/3/2019