

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE CLAIM NO. 232 OF 2016  
(ARISING FROM LAB. NO. 092 OF 2016)**

**BUYONJE CHARLES.....CLAIMANT  
VERSUS  
RAKAI DISTRICT ADMINISTRATION.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

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

**AWARD**

By a memorandum of claim the claimant filed this claim for a declaration that he was still an employee of the respondent and for an order reinstating him in his previous position as an Assistant Husbandry officer, an order for salary arrears, general damages, exemplary damages, interest and costs of the claim.

**Brief facts:**

The claimant was employed by the respondent as Assistant Animal Husbandry Officer and was confirmed in the service on 20/12/2004. He was on 4/11/2010 appointed by the respondent's District service commission to the post of Sub-county NAADS Coordinator for a 3 year period after which it was extended to May 2014. Once the NAADS programme was removed from local governments, he applied for reinstatement to his position of Assistant Animal Husbandry officer which was not done, despite a circular from the Ministry of Public Service instructing that all former NAADS staff be either reinstated, or granted early retirement having treated their period with NAADS as leave without pay.

According to the claimant the respondent reinstated other NAADS employees following the circular from public service but refused to reinstate him. When the matter came in court on 14/1/2019 court was informed that the respondent had agreed to reinstate the claimant and that the only issue was whether or not the claimant was entitled to salary arrears from the date the Ministry of Public Service issued the above mentioned circular. Both counsel were asked to file written submissions on this aspect and on the aspect of general damages.

### **Submissions:**

Mr. Wilberforce Seryazi of Nshimye & Co. Advocates filed submissions on behalf of the claimant. He argued that both the Permanent Secretary and the solicitor General having advised that the claimant be reinstated, he should have been reinstated immediately and the respondent having failed to do so should pay salary of the claimant since 1/7/2014. It was his submission that failure to immediately reinstate the claimant and pay his salary would put him in the category of those who absconded from duty and consequently affect his retirement benefits.

Counsel contended that since the respondent willfully refused to reinstate the claimant on his job despite the guidelines from the permanent secretary and the Solicitor General, it should on the principle of **Kayonza Distributors A.G. HCCS 211/2018** pay general damages for the stress, harassment and humiliation. In his view 300,000,000/= would be fair.

The Attorney General was on 14/1/2019 represented by Mr. Twinomugisha and we assume he is the one who filed the written submissions. He argued that the claimant having abandoned the service of the respondent, she as a benevolent benefactor reinstated him and therefore the claimant should not be allowed to abuse such benevolence. According to counsel, the claimant was beseeched, as was his colleagues, to volunteer with the respondent as she worked with the government bureaucracy to provide the wage bill, but while his colleagues accepted, the claimant refused.

He submitted that since the respondent did not terminate the claimant's employment, the same respondent could not be responsible for the loss of the claimant. He argued finally that the claimant was claiming for payment for the work done and that the tax payer ought not be condemned to unjustifiable earnings.

**Decision of court:**

In the **guidelines for implementation of the National Agricultural Single spine Extension Service Delivery System**, the Ministry of Public Service in January 2015 pointed out (among others) **at page 9 .....**

**" all officers falling in the above categories should be given options to either be reinstated in service or be granted early retirement. In either case the period during which they have been engaged until NAADS should be regarded as leave without pay".**

Following the above circular, the solicitor General wrote to the Chief Administrative Officer on 19/9/2016 advising that the claimant be forwarded to the District Service Commission for appropriate action.

According to the claimant the above two communications were binding on the respondent and since the respondent failed to comply, an order for payment of salary from 1/7/2014 ought to issue.

The claimant was originally employed by the respondent until 4/11/2010 when he moved to the NAADS programme under a different contractual arrangement. This arrangement terminated in May 2014, according to paragraph 4(e) of the memorandum of claim, and the question whether or not he should be reinstated in the respondent's service was only settled by consent on 14/01/2019. The court consent order reads:

**"Order**

**By consent of both counsel it is hereby ordered that**

- 1. The respondent shall reinstate the claimant to his former position.**
- 2. The issue of the claimant's salary arrears be determined by court."**

By simple definition a salary is a fixed amount of money or remuneration paid to an employee by an employer for the work done, as agreed by both parties. The presupposition therefore is that the employee has done some work as agreed to the satisfaction of the employer. Ordinarily therefore, in order for salary arrears to emerge, an employee is expected to prove that he/she was engaged for a service by the employer which service was done but the employer failed to pay the agreed salary.

Salary arrears may also arise if the employee proves that he/she having been engaged by the employer for a certain period to do work at a certain salary scale, he/she as employee failed to do the work as a result of the fault of the employer.

In the instant case the claimant on his own volition left the direct service of the respondent and opted for the NAADS programme which provided better remuneration. After the programme became extinct, both the Attorney General and the Ministry of Public Service advised the respondent to treat the period when the claimant was with the NAADS programme as leave without pay which is ordinarily granted to an employee for a specific purpose and for a certain period. It is leave granted to an employee for his personal or career development.

Leave without pay will normally end at the time it was specifically intended to end and once the employee resumes his duties.

In the instant case the **“leave without pay”** was not granted by the respondent. It was created by the circumstances under which the claimant willfully left the direct employment of the respondent. Nothing in the advice of the Attorney General or the Public Service Ministry suggests that the claimant should be reinstated immediately. We do not therefore accept the contention of the claimant that since the advice of the Attorney General dated 19/9/2016 agreed with the guidelines of Jan 2015 from Public service, the claimant was entitled to salary arrears. The Attorney General advised the Chief Administrative Officer (CAO) to submit the name of the claimant to the District service commission for the purpose of either early retirement or reinstatement in the service. The fact that the CAO did not immediately or soon thereafter submit the name of the claimant to the District service did not in our view entitle the claimant to a salary. As already explained a salary is earned by working for one’s employer. While this court was rejecting a claim of salary arrears in the case of **BONGOMIN RICHARD AKAI VS ATTORNERY GENERAL L.D.C. 036/2015**, the court relied partly on Chapter B-a sub-section 1 of Public service standing orders which provides:

**“Salary is a payment to a public officer during the course of executing his or her duties while in the employment of Public Service.”**

Sub-section 12 of Chapter B-a provides

**“Payment of a salary to a public officer shall be stopped immediately the officer ceases to render services to the government under whatsoever circumstances including death.”**

During the period the claimant is claiming salary, he did not render any service to the government of Uganda. Consequently the claimant is not entitled and the respondent is not bound to pay any salary for the period when the claimant did not offer any service. The next question is **whether the claimant is entitled to any damages**.

In simple terms the word “**Damages**” means compensation payable by an unsuccessful party in court proceedings to the successful party as a result of a court order. This compensation arises from the fact that the court has considered the circumstances of a given case and has come to a conclusion that the successful party deserves compensations as a result of the injury or inconvenience. Damages are not meant to enrich the successful party at the expense of the unsuccessful party but to put the successful party in as close as possible in the position he/she would have been/had the injury or inconvenience by the unsuccessful party not happened.

In the instant case the claimant argued that as a senior citizen who had spent the best part of his life in service of government, he suffered stress, harassment and humiliation when the respondent refused willfully to reinstate him on the job despite the guidelines of the Permanent Secretary and solicitor General. For what counsel called impunity of the respondent, he prayed for 300,000,000/=. On the other hand the respondent contended that the claimant abandoned service in disregard of the laid down procedures and that the respondent was only benevolent to reinstate him at the time that she did.

According to counsel, it was imperative for the claimant to exercise good naturalness and not abuse this benevolence. Counsel stated that while the colleagues of the claimant accepted to work as volunteers as the respondent sought a solution from the central government, the claimant refused this option.

One of the circumstances that court considers when deciding on whether or not to grant damages and how much to grant, is whether the successful party did anything to mitigate the loss or inconvenience suffered. There was nothing in the submission of the claimant to controvert the submission that he was, like his other colleagues asked to volunteer as the respondent sorted out the reinstatement but he refused. This could have been one of the ways to mitigate the inconvenience of having no job.

The claimant himself voluntarily left the direct employment of the respondent and opted to be employed under another contract of service without making arrangements for his return to his job in the event of the lapse of the new employment. In our view this was an oversight on the part of the claimant.

We agree entirely with the submission of counsel for the respondent that the respondent having not terminated the claimant from its employment, it should not be wholly responsible for the loss or inconvenience caused by the claimant's entering into another employment relationship willingly.

However, we appreciate the significance of the solicitor General's advice that the claimant and other former NAADS staff be forwarded to the District Service Commission for either reinstatement or retirement. We form the opinion that although the failure of the CAO to do as advised did not entitle the claimant to a salary, if the CAO had followed the advice of the Solicitor General within a reasonable time, the inconvenience or damage to the claimant would have been reduced, although the claimant did not show anything to suggest that he asked the CAO to forward his name and the CAO refused.

For this lapse of the CAO we think the claimant will get away with 3,000,000/= as general damages. Order accordingly. No order as to costs is made.

**Signed by:**

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

**PANELISTS**

4. Ms. Adrine Namara .....
5. Ms. Susan Nabirye .....
6. Mr. Michael Matovu .....

Dated: 10/05/2019