

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE No.118 OF 2018**  
**[ARISING FROM LABOUR COMPLAINT No MGLSD/012/2018]**

**BETWEEN**

**LUBEGA MOSES .....CLIMANT**

**VERSUS**

**HOLY CROSS ORTHODOX HOSPITAL .....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. FX Mubuke
3. Ms. Harriet Mugambwa

**AWARD**

**Brief facts**

The Claimant filed this claim alleging that the Respondent being his employer terminated his services unlawfully. In the memorandum of claim filed in this court on 01/8/2019, the Claimant stated that he was on 1/09/2017 unfairly terminated although the letter referred to the termination as a suspension citing ongoing restructuring and financial constraints.

He prayed for the following reliefs

- a) A declaration that he was unlawfully terminated.
- b) Accumulated leave for 2 years amounting to 1,800, 000/=.
- c) Severance allowance of 5,000,000/=.
- d) Payment in lieu of notice of 2,400,000/=.
- e) Compensation order for 1 month.
- f) Repatriation of 600,000/=
- g) General damages.
- h) Interest.
- i) Costs of the suite.
- j) Any other relief deemed fit.

The Respondent in reply to the memorandum of claim stated that it did not owe the claimant any of the claimed reliefs and that the claimant was suspended due to ongoing economic and structural changes at the hospital which scrapped the position of Finance Director originally occupied by the claimant. According to the respondent the termination was not unlawful and was done in accordance with the law and the contract of service.

### **Agreed issues**

In a Joint Scheduling Memorandum filed in Court on 30/7/2019 both parties agreed to the following issues;

- a) Whether or not the claimant's "**Suspension**" termination from the respondent was unlawful.
- b) Whether or not the claimant was entitled to and was paid terminal benefits.
- c) Remedies available to the parties.

### **Evidence**

It was the evidence of the claimant that he was employed as Finance Director on 15/3/2016 for 3 years at a salary of 1.2M and was demoted to Finance Accountant on 28/8/2017 for alleged revealing of confidential information, only 3 days later to be suspended for reasons of restructuring and financial constraints in circumstances that amounted to termination. He was not paid anything in lieu of notice or any terminal benefits.

It was the respondent's evidence, through one Rev. Father Mutalagwe Checalambos that during 2017 and part of 2018, the respondent Hospital was in financial stress as a result of mismanagement of a previous Executive Director one Zalwango Nina. Various meetings were held at which a decision was taken to inter alia, revise several staff positions so as to reduce the expense thus suspending the claimant's services upon which he was paid 1 month's salary of 1.2 M and 500,000/= terminal benefits both of which the claimant failed to pick. According to the witness, there were other staff laid off because of the same reasons.

### **REPRESENTATIONS**

The Claimant was represented by Mr. Kikabi Ibrahim of M/s. Kikabi & Co. Advocates while the Respondent was represented by M/s. Anasta Kamahoro of Kamulegeya kamahoro Advocates.

### **SUBMISSIONS**

It was the claimant's submission that no evidence of a financial crisis was revealed and that therefore termination on the basis of the Respondent being in financial crisis was not applicable.

According to the Claimant the Audit report was only for the consumption of the Board members and even then it did not reveal that the respondent was in financial crisis.

Counsel insisted that the Claimant as a member of the board did not attend the Board that took the decision to terminate him implying that the Board may not have even sat to deliberate on the matter.

Counsel concluded by asserting that the termination was contrary to Sections, **65 and 68 of the Employment Act** as well as the case of **Blanche Byaruhanga Kasita Vs Africa Field Epidemiology Network, Labour Dispute Reference 131/2018**.

It was the Claimant's submission that having not been paid his terminal benefits, the court ought to order the Respondent to pay the same.

Counsel for the Respondent in her submission, and relying on **Section 81 (1)** of the **Employment Act** contended that the Claimant was laid off on exercise of a right by an

employer to terminate due to structural or economic reasons as testified by RW1. She insisted that the reason for termination as clearly shown in the termination letter was because the Hospital was in immense financial difficulty.

### **Decision of Court**

Section 81 of the Employment Act provides:

#### ***“81. Collective termination.***

- 1) Where an employer contemplates termination of not less than ten employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature, he or she shall***
  - a) Provide the representatives of the Labour Union, if any, that represent the employees in the undertaking with relevant information, and in good time which shall be a period of at least four weeks before the first of the termination shall take effect, except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to the reasons for the termination contemplated, the number and categories of workers, likely to be affected and the period over which the terminations shall be carried out, and the information in paragraph (a) shall include the names of the representatives of the employees in the undertaking;***
  - b) Notify the commissioner in writing of the reasons for the termination, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.***
- 2) An employer who acts in breach of this Section commits an offence.***

In the case of **Programme for Accessible Health Communication and Education (PACE) Vs Graham Nagasha, Labour Dispute Appeal 035/2018** this court held that Section 81 of the Employment Act makes it mandatory for the employees contemplated for termination to be informed at least 1 month before the termination takes effect and that the commissioner for labour must be notified of the reasons for termination.

***See also Dr. Elizabeth Kiwalabye Vs Muteesa Royal University, LDC 005/2017.”***

Although Section 81 of the Employment Act is about Collective termination of not less than ten employees, it is our considered opinion that even where one employee is expected to be affected by re-organisation or restructuring of his/her position, such employee is entitled to the process enshrined under the said Section of the law. Thus in the case of **Cissy Nankabirwa Magezi Vs Board of Governors, St. Kizito Technical Institute – Kitovu, Labour Dispute Claim 60/2016** at page 5 of the Award, as this court emphasised the right of an employer to restructure the organization it stated:

***“It is our view that the fact that one is occupying a certain position does not exclude the employer from advertising the same position if the said employer seeks more qualifications or if the same post is being restructured. The employer has a right to restructure posts in his/her organisation as long as the employees are aware of the process. ”***

In the instant case it is clear to us that the claimant was not informed or notified about the impending abolishment of his post or being laid off for reasons of financial constraints. The KCCA letter exhibit “B” of the respondent showing indebtedness of 15,623,015/= (**Fifteen Million Six Hundred Twenty-Three Fifteen Shillings**) could not alone be evidence of financial constraints because in our considered opinion being indebted per se is not necessarily a financial distress culminating into termination of one’s employment.

Even if this court was to find that such indebtedness amounted to financial constraints on the part of the Respondent, it was incumbent upon the respondent to notify the claimant in accordance with Section 81 of the Employment Act, 1 month before effecting the termination.

Granted that the Board of Governors took a decision to scale down the employment team as Counsel for the Respondent submitted, but such a decision was not expected to be effected contrary to provisions of **Section 81** of the **Employment Act**. On perusal of the Board decision, it is clear that the resolution to terminate the claimant was as a result of the following observations

- ***“Warning letters from former Executive Director about absence, payment of ghost workers and late coming***
- ***Without the knowledge of the Board the Executive Director made him Finance Director which position was non- existent through a forged contract dated 15/5/2016***
- ***Had a contract that expired in July 2013***
- ***The letter which was written by him to the current Executive Director was an act of insubordination which is totally unacceptable in any institution considering that there are better channels to go through.”***

Given the above observations by the Board of Governors, we form the opinion that the correct and legal procedure would have been to notify the Claimant and then allow him time to defend himself as provided for under **Section 66** of the **Employment Act**. In the alternative as pointed out earlier, the respondent was under a legal obligation to follow procedure prescribed under section 81 of the Employment Act. Having failed to do so, this court has nothing to do but declare that the termination was unlawful and it is hereby so declared.

The second issue is **whether the claimant was entitled to and was paid terminal benefits**.

Terminal benefits refer to final entitlements of an employee upon termination of an employment contract. Ordinarily these benefits are offered to the employee as a motivation for such employee to be committed to his duties as given by the employer and to attract good or better employees. Once these benefits form part of the contract of an employee, they become entitlements at termination of employment depending on the provisions of the contract or the Human Resource Manual or both.

In the instant case, counsel for the Claimant referred to the payments by cheque offered to the claimants which according to him were not given to his client.

The Respondent on the other hand submitted that the Claimant was paid **1.2Million** as in lieu of notice and **500,000/= (Five Hundred Thousand Shillings)** as terminal package which he did not pick.

In view of the fact that the Claimant, as his counsel submitted, contested the legal principal in determining the terminal benefits, and considering that no evidence was adduced that the employer had committed to pay a certain amount of money as terminal benefits either in the contract or in the Human Resource Manual, this prayer is denied for failure of proof that it was an entitlement.

The third and last issue is: **What remedies are available?**

**1) Leave days for the past 2 years**

The cases of **Mbiika Dennis Vs Centenary Bank Ltd, labour Dispute Claim 023/2014** and **Edace Micheal Vs Watoto Childcare Ministries Labour Dispute Appeal 21/2015** are for the legal proposition that unless the employee applied for leave and leave was refused by the employer, such employee at termination would not be entitled to claim payment in lieu of such leave. Accordingly, in the absence of evidence that the Claimant applied and was refused to take leave, this prayer is denied.

However, in submission the Respondent conceded to 7 days leave and the claimant shall therefore be paid 7 days' emoluments in lieu of leave.

**2) Severance allowance**

Having declared that the Claimant's termination was unlawful, he is entitled to severance allowance as provided for under **Section 87 of the Employment Act**. In accordance with the principle in the case of **Donna Kamuli Vs DFCU Bank Labour Dispute Claim 002/2015**, the Claimant will be entitled to 1,600,000/= for the 16 months worked.

**3) Payment in lieu of notice**

The claimant having started work on 15/03/2016 as per Exb. CEX 1, and having been terminated on 13/09/2017, he had worked for about 16 months and under **Section 58** of the **Employment Act**, his entitlement is 1 months' notice. Therefore, he shall be paid **1,200,000/= (One Million Two Hundred Thousand Shillings)**.

**4) Repatriation**

According to **Section 39 of the Employment Act** the claimant would only be entitled to repatriation if his recruitment was at a place more than 100km from his home and only in the following cases:

- a) "On the expiry of the period of services stipulated in the contract.*
- b) On the termination of contract by reason of the Employee's sickness or accident.*
- c) On the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary.*
- d) On the termination of the contract by order of the Labour officer, the industrial court or any other court"*

The evidence on the record does not reveal any of the above circumstances and therefore the prayer of repatriation is hereby denied.

#### **5) Compensation order for 1 month**

This remedy, in our view, is only applicable when the labour officer is the one handling the matter. Since unlike the Labour Officer this court has a larger latitude to Award unlimited damages depending on the circumstances and the discretion of court, the damages so granted caters for compensation of four weeks provided under **Section 78 (1) of the Employment Act**. Accordingly, this remedy is denied.

#### **6) General damages**

The Claimant had only worked for 16 months before he was terminated.

We have considered the nature of the job he was employed to do, how much he was earning and the fact that the same earning was unlawfully stopped rendering his survival and family difficult. In our assessment and given that the Respondent is a charitable organization, damages of **8,000,000/= (Eight Million Shillings)** shall be sufficient and we so order.

#### **7) NSSF Contributions**

In the absence of proof that the account of the claimant in N.S.S.F was not credited with the N.S.S.F contributions, this prayer is denied. The claimant is advised to cross check his account with N.S.S.F and lead N.S.S.F towards recovery of the contributions if any.

In conclusion the claim succeeds in the above terms. No order as to costs is made.

**Delivered & Signed by:**

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

**PANELISTS**

1. Mr. Ebyau Fidel .....
2. Mr. Fx Mubuke .....
3. Ms. Harriet Mugambwa .....

Dated: 19/03/2021