

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 024 OF 2017
(ARISING FROM LD. NO. 09.12.16, WAKISO LABOUR OFFICE)**

MUGISHA SIMEO.....CLAIMANT

VERSUS

THE DIRECTOR RWANTAMA SWEATERS AND SHOE MAKERS.....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

This claim was brought by the claimant who claimed salary arrears and several damages for breach of contract and for non-payment of salary. He was represented by M/s. Bukenya Naima from the Platform for Labour Action.

By memorandum of claim he stated that he was employed under an oral contract for 4 months at a monthly salary of 300,000/= which was never paid.

On 12/2/2019, we were satisfied that the respondent had been served and no memorandum in reply had been filed, so we allowed the claimant to proceed exparte.

Issues

At the commencement of hearing no issues were framed. However during submissions counsel for the claimant identified the followed issues: -

- 1) **Whether there is an employment relationship between the claimant and the respondent.**

2) Whether the claimant is entitled to any of the remedies sought.

Evidence

The claimant adduced evidence from himself only. In his written witness statement he testified that having worked as a machine mechanic in the year 2010 for 50,000/= whenever he was contracted to work, in 2016 the manager of the respondent one Nava asked him to work permanently at a salary of 300,000/= per month. According to him, the Director, Gilbert Bukenya subsequently told him that he, the claimant, would replace Nava as Manager. Under the contract the respondent was expected to provide the claimant with meals and school fees for his children but this was not done.

Submissions

Relying on **Section 2 of the Employment Act** counsel for the claimant argued that a contract of service could be made orally. She submitted that the claimant was verbally engaged by the respondent at 50,000/= per month which later on increased to 300,000/= per month. According to counsel, the respondent determined the wages payable, expected the claimant to repair machines and teach workers how to make sweaters and undertook to pay school fees for the claimant's children, all showing that the respondent controlled the work that the claimant was doing and therefore establishing an employer - employee relationship.

Decision of Court

We entirely agree with the submission of counsel for the claimant that a contract of service can be either in writing or can be made orally.

Section 2 of the Employment Act provides

“A contract of service means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship.”

Just like any other contractual relationship a contract of service whether oral or written must be proved in the courts of law when there is necessity for the parties to seek a remedy in the courts of law and for obvious reasons the existence of a written contract is more easily proved than an oral contract.

In oral contracts the need for additional evidence to show their existence and the terms under which they were made is much greater than in written contracts.

In the instant case the claimant relied on his own testimony to prove the existence of an oral contract between himself and the respondent. Although the proceedings were *ex parte*, the claimant still had the burden to prove on a balance of probability that the contract of service between him and the respondent existed. The mere fact that the respondent did not appear to defend or did not file a reply did not necessarily result into an award for the claimant.

In his evidence the claimant told court that it was the respondent's manager who told him that the Director, Mr. Gilbert Bukenya wanted him to work permanently and that Mr. Gilbert Bukenya told him that his new position was that of manager replacing one M/s. Nava. He also stated that on the promise of the Manager that the respondent would pay fees for his children, provide accommodation and meals, he moved to the factory with his wife and children.

Given the fact that this was an oral contract, we form the opinion that the claimant was expected to adduce further evidence of the existence of the contract. The evidence of Nava, the manager who the claimant replaced was very crucial for the sustenance of the claim against the respondent.

The workers or co-workers mentioned in the evidence of the claimant who he was teaching was another source of additional evidence that the claimant would have produced.

The cases of **Sebuliba Vs Co-operative Bank Ltd (1982) HCB 129**, and **Nsubuga Vs Kavuma 1978 HCB 307** are authority for the legal proposition that in civil cases the burden lies on the plaintiff to prove his/her case on the balance of probabilities and that the other party can only be called to dispute or rebut that which has been stated by the party alleging.

Section 101(1) of the Evidence Act (Cap 6) provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove those facts.

The circumstances of the alleged oral contract before us, dictate in our view, that there ought to have been additional evidence to prove the existence of the contract. We are at pains not to believe the evidence of the claimant without any other additional evidence. We therefore find just like we did in the case of **Emma Obokullo Vs Walter Arnold** **Labour Dispute Reference No. 023/2014** that the claimant failed to prove an employee – employer relationship between himself and the respondent. The first issue is therefore decided in the negative.

The second and third issues relate to wages and remedies. Having found that there was no employment relationship between the parties, the rest of the issues are inconsequential.

Accordingly the claim having not been proved, it is hereby dismissed. No order as costs is made.

Signed by:

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

Dated: 14/06/2019

