

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 038 OF 2015
[ARISING FROM LABOUR DISPUTE No. 09.06.14]**

BETWEEN

NAKAFUMA DAPHINECLAIMANT

VERSUS

PARAMBOT BREWERIES LTDRESPONDENT

BEFORE

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

PANELISTS

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

AWARD

By Memorandum of claim, the claimant alleged that having been employed by the respondent, the respondent did not pay her remuneration totaling Ugx. 10,500,000/=. She prayed for an order of Court for this amount as well as interest thereon, special and general damages to the tune of Ugx. 3,500,000/= and costs of the claim. Through a memorandum in reply the respondent alleged that the claimant absconded from duty before expiry of her probationary period and therefore did not perform her obligation under the contract.

On 23/1/2018, both counsel were in Court and after the respondent complained of not having been served with the claim, this court ordered that service be

effected on the respondent and Mr. Kitende for the respondent informed Court that if served he would file papers by 6/2/2019 and the matter was fixed for mention on 20/2/2019.

On 20/2/2019 this court was satisfied that the respondents had been served but they had neither filed any papers nor appeared in Court and the matter was fixed for hearing on 27/06/2019.

This Court having been satisfied that the respondents were served for hearing on 27/06/2019 but failed to turn up, decided to proceed exparte and the claimant adduced evidence from only herself and counsel thereafter filed written submissions.

According to her own written testimony, the claimant was employed by the respondent on 1/7/2013 at a salary of Ugx. 500,000/= per month. She was to be paid a commission and also be facilitated to do her work. He was never paid any money for her work and when she, on 13/1/2014 made a formal demand for her salary she was ignored. She then filed a Labour complaint before the Wakiso labour officer who referred the matter to this Court. The proceedings having been exparte, this evidence was not challenged in cross examination.

Counsel for the claimant submitted that the respondent breached **Section 41(1) and 43 (4) (C) of the Employment Act**. We have no doubt in our minds that the claimant carried out her duties as envisaged under the Contract of service and we agree with counsel for the claimant that without any substantiation by evidence the pleading of the respondent in the memorandum in reply that the claimant absconded before end of her probationary period cannot be acceptable to us. He who alleges must prove the allegation. Both **Section 41(1) and 43(4)** provide for payment of wages to the employee by the employer and the method of payment. For avoidance of doubt **Section 41(1)** provides

“ Subject to subsection (2) wages shall be paid in legal tender to the employee entitled to payment according to subsection 2, the employer subject to the agreement of the employee may pay by cheque or postal order, money order or direct into the employee’s account”

Section 43 4 (c) provides

“In the absence of prior written agreement to the contrary – (c) an employee paid fortnightly or monthly shall be paid at the end fortnight or month”

By exhibit “B”, the claimant was appointed by the respondent as sales assistant at a monthly a net pay of Ugx. 500,000/= per month. The claimant as already discussed, in the absence of evidence to the contrary, performed her duties as sales assistant. Accordingly she was entitled to be paid her wages as provided for in the above section of the law and failure to pay her amounted to breach of the contract of service. The first issue is therefore in the affirmative.

The second issue is about **remedies**.

The claimant, according to her evidence worked from 1/7/2013 up to 24/6/2014. At a salary of 500,000Ug,shs per month she was entitled to Ugx. 5,416,000/= for the 10 months and 24 days she worked.

We, however have reservation on whether under the circumstances she was entitled to the facilitation of 42 crates of beer per month. This facilitation according to the contract was meant to facilitate her work in terms of airtime vehicle maintenance, lunch, fuel etc... Since she was not paid the same, she ought to have produced evidence to prove that she used the same amount of money in execution of her duties. It was not part of the salary that was payable to her.

Paragraph 4 of the contract of service provided

“You will be provided with 42 crates per month as your facilitation to cover costs of vehicle maintenance, airtime, lunch, fuel etc. You will be required to account for the 42 crates you are given as facilitation per month”

In the absence of accountability in the form of proof that the claimant in fact spent the money equivalent to 42 crates of beer in the course of her duties, this court will not allow her to recover the same. The claim is therefore denied.

We consider the fact that denial of the claimant's salary payment caused her inconveniences and suffering as submitted by her lawyer for a period of almost two years. Accordingly we award her damages of 1.5 million.

We form the opinion that given the inflation nature of our currency, the claimant shall be entitled to an interest of 20% per year on the total sum awarded to her.

No order as to costs is given.

DELIVERED & SIGNED:

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

PANELISTS

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

Dated: 03/08/2019