

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE: APPEAL NO.20/2016**  
**ARISING FROM BKW/LG/003/05/16**

**OWINO RAYMOND RAANGA** ..... **APPELLANT**

**VERSUS**

**BOARD OF GOVERNORS LOARD'S MEAD**

**VOCATIONAL COLLEGE NJERU** ..... **RESPONDENT**

**BEFORE:**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

- 1. MR. FX MUBUKE**
- 2. MS. HARRIET NGANZI MUGAMBWA.**
- 3. MR. EBYAU FIDEL**

**AWARD**

This Appeal is brought under section 94(1) (2) of the Employment Act and the Employment Regulations 2011, against the decision of Senior Labour Officer Buikwe, Ministry of Gender, Labour and Social Development, Mr. Kiruta Elly S. in the case filed before him, on 17/08/2016.

## **BACKGROUND**

The Appellant was employed by the Respondent as a Head teacher of its vocational School on a verbal contract. According to him, the duration of his contract was 5 years from 1/02/2012, at a salary of Ugx. 1,313,000/= per month which included, as salary 813,000/=, which was net salary and 500,000/=, as a top up on salary. On 1/12/2015, he received a letter notifying him that his services as head teacher would no longer be required by 1/1/2016. He was subsequently terminated by the chairman **TOFTA EDUCATIONAL TRUST** on 30/12/2015 and given a postdated cheque of Ugx.2, 439,000/-as a token of appreciation for the services he had rendered for the school. He filed a case against the Respondent, before the Labour Officer Buikwe District, for being terminated without a reason and without being accorded a hearing. According to him he was entitled to Ugx. 30,000,000/= as arrears for 60 months from 1/02/ 2012 to January 2017, residue of 13 months unpaid amounting to Ugx. 17,069,000/-, Ugx, 28,710,000/=being gratuity for 60 months at 30% per annum, Ugx. 13,920,000/= being unremitted PAYE and Ugx. 9,900,000/- being unremitted NSSF.

The Respondents on the other hand admitted that the Appellant was employed orally but for 4 and not 5 years and he was terminated because he failed to meet their expectations of increasing the school's enrolment, for mismanagement that led to the school being deeply indebted and the decline in the School's academic performance during his tenure. The Respondent also denied that it owed him anything, because he was the accounting officer who was responsible for drawing salary schedules and paying all staff including himself. According to the Respondent, all the cheques that were issued to pay service providers including

NSSF and PAYE remittances were withheld by the Appellant and he never presented them to their respective beneficiaries, to the Respondent's financial detriment. It was contended that in spite of all this, the Appellant was paid 3 months' salary in advance, in appreciation of the services rendered and he was always given opportunity to be heard through various meetings held by the respondent. According to the Respondent, the Labour officer's award was made in their favour because the Appellant failed to prove his case against them. Being aggrieved and dissatisfied with the Labour Officers decision the Appellant filed this Appeal.

**THE GROUNDS OF APPEAL ARE AS FOLLOWS:**

- 1. That the Senior Labour Officer erred in failing to follow the procedure as laid down by the Employment Act 2006 and Employment Regulations 2011.**
- 2. The Senior Labour Officer erred in making a ruling/decision as Arbitrator having only conducted mediation but no Arbitration hearing between the parties.**
- 3. The Senior Labour Officer erred in failing to give the Appellant a fair hearing before making an Arbitration decision.**
- 4. The Senior Labour Officer erred in law where he failed to properly evaluate the evidence on record and thereby coming to a wrong decision that the Appellant failed to produce the proof of the contract of employment for five years.**
- 5. The Senior Labour Officer erred in law when he failed to properly evaluate the evidence on record and thereby coming to a wrong decision that since**

**the Appellant as Accounting Officer ought to have paid all his dues plus NSSF and PAYE.**

- 6. The Senior Labour Officer erred by finding that there was a consent reached between the Appellant and the Respondent whereas not.**
- 7. The Senior Labour Officer erred just to direct the respondent to update the appellant NSSF Account without following the NSSF Act guidelines.**
- 8. The Senior Labour Officer erred in law not to award the appellant his balance of salary for the remaining period plus his arrears which had not been paid to the appellant.**

During submissions Counsel for the Appellant abandoned grounds 2 and 3 and only argued grounds 1, 4, 5, 6, 7 and 8 respectively.

It is our considered opinion that the resolution of grounds 1, 5 and 7 will resolve this Appeal.

## **REPRESENTATION**

The Appellant was represented by Mr. Kituuma Magala, of kituuma- Magala & Company Advocates and the Respondent by Mr. Christopher Munyamasoko of M/S Tuyiringire & Company Advocates.

## **SUBMISSIONS:**

Ground 1.

**That the Senior Labour Officer erred in failing to follow the procedure as laid down by the Employment Act 2006 and Employment Regulations 2011.**

Counsel for the Appellant submitted that the labour Officer ought to have handled the complaint by invoking sections 2, 66(2), (3),(4), 68, 71(2), (a) and (b) of the Employment Act, 2006 and Regulations 7 and 8 of the Employment

Regulations 61 of 2011, to resolve the issue whether the termination of the Appellant's employment contract was lawfully brought to an end?

According to Counsel the labour officer ought to have invoked section 68(1) which required the Respondent to prove the reasons for the termination, to prove that the Appellant's letter of termination dated 1/12/2015 did not give any reasons and that they were only stated by the chairman Tofta Educational Trust, during the hearing before him.

He further submitted that had the labour officer invoked sections 66,68 and 71 read together he would have come to a different conclusion that the Appellant was never given a chance to defend himself nor was he given any reasons for the termination as discerned in the letters dated 1/12/2015 and 30/12/2015. He argued that the right to a fair hearing as provided for under Articles 28(1) and 44 of the constitution and the holding in JABI VS MBALE MUNICIPAL COUNCIL (1975) HCB 192 was violated, hence the termination was unlawful and wrongful and therefore entitling him to general damages and 4 weeks' pay as provided under section 66(4) of the Employment Act.

Counsel further submitted that had the labour officer invoked section 73(1), (2), (a), (b), (c) and (d) of the Employment Act he would have established that the Respondent did not possess a Code of discipline as required under the Law and even if they did they did not warn the appellant in any way.

In reply Counsel for the Respondent submitted that on the contrary the labour officer did not fail to invoke the provisions of the Employment Act as stated by Counsel for the Appellant or fail to frame an issue as to whether the termination of the appellant's employment contract was lawfully or wrongly brought to an

end. According to Counsel the labour officer considered the issue on page 5 of the record of proceedings and found that the appellant had amicably signed the termination token and made a hand over honourably, on page 6<sup>th</sup>, 4<sup>th</sup> and 5<sup>th</sup> line on the same page, the Appellant had failed to adduce evidence of his claim that his contract was extended to 5 years by the Respondent's representative one John Kirkwood.

Counsel asserted that the Claimant's contract automatically terminated at the end of its 4 year duration and the Respondent was not obliged to renew it. According to him in **FLORENCE MUFUMBO VS UGANDA DEVELOPMENT BANK LDR No. 138/2014**, expiry of the contract was stated as one of the justifiable reasons for terminating a contract and that is what happened in this case. He however contended that the Appellants failure to perform his duties as head teacher, his failure to increase enrollment, failure to collect fees from learners among others was the reason his contract was not considered for renewal and not termination because it had automatically terminated already, therefore ground one should fail.

After carefully perusing the record, we found that when the matter came before the Labour officer on the 16/03/2016 without expressly stating so he proceeded to hear the matter. He stated that ***"since both complainants and the respondent were ready to challenge each other, the court granted them the permission..."***

He heard evidence from all parties present and made his judgment which was based on the documentary evidence adduced by both parties. According to the lower record, the Labour officer formulated the issues for resolution as follows:

- ***Whether it is true that the complainant was on contract with the respondent for 5 years and not four.***

- *Whether for sure the contention of 500,000/= top up salary was there, true and why to be considered outside taxation.*
- *Why the complainant signed and consented to the termination and the benefits therein.*
- *What was meant by the term 'Token in the terminal letter?'*
- *How could NSSF and PAYE in arrears be paid to the required agencies at present*
- *Wish that the Employer (respondent) consider December 2015 in addition to the Token paid as last salary to the complainant.*
- *To provide service certificate to the complainant which the respondent accepted in agreement.*

He also listed what was agreed between the parties as follows:

- ❖ *The complainant be paid a December equivalence amount with PAYE. This was fulfilled by the respondent and paid the complainant Shs 813,000/= as cheque dated 26/4/2016 through Labour court.*
- ❖ *The respondent banks NSSF arrears or to show proof for that.*
- ❖ *This was accepted and they discussed with NSSF a schedule, started to bank arrears and proof was tendered in.*
- ❖ *For the case of PAYE was outside the Jurisdiction of the District Labour Court so no action of forced.*
- ❖ *On issue of service certificate to the complainant, the court directed the Respondent to issue one which they agreed.*
- ❖ *On the issue of terms and conditions thus the 500,000/-top up salary non taxable and the remaining balance for the unworked period of 2016.*

**❖ The issue of the shs.500,000/- nontaxable could not be resolved similarly the proof for the fifth year of the contract remained at the shoulders of the complainant to prove,**

The record also indicates that he also granted them an opportunity to sit inter party and resolve the unresolved issue of the 500,000/ nontaxable top up before he made his judgment. We find nothing unusual about his suggestion to the parties settling the outstanding issue through dialogue especially given that the majority of issues had been resolved. We believe that a consent can be reached at any time during the proceedings and even after the issuance of a judgment.

What is required of Court as we understand it, is to make a finding on whether the Labour officer applied Sections 2, 66(2), (3),(4), 68, 71(2), (a) and (b) in resolving the Appellant's complaint? The answer to this question in our view shall resolve the entire appeal.

Section 2 of the Employment Act, defines termination to mean the discharge of an employee from employment at the initiative of his/her employer for justifiable reasons other than misconduct such as expiry of contract, attainment of retirement age, etc. Under the same section termination has the meaning as assigned under section 65 of the employment Act. Section 65(1) stipulates in part that:

**1) Termination shall be deemed to take place in the following circumstances-**

**(a) Where a contract of service is ended by the employer with notice;**

**(b) Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified task and is not renewed within a**

- period of one week from the date of expiry on the same terms or the terms not less favorably to the employee;*
- (c) Where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee and ;*
- (d) Where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.*

*...”*

The labour officer made a finding that the Appellant failed to prove that his contract was for a duration of 5 years. When we re- evaluated the evidence on the lower record and the facts of this Appeal, we found that the indeed the contention about the duration of the Appellants contract was not proved by the Appellant. It was not disputed that his contract was an oral contract and an oral contract as provided under section 25 of the Employment Act is a valid contract. However its duration being in contention was an issue which the labour officer had to resolve.

The burden of proving an allegation remains with the person making the allegation. In this case the burden of proving the duration of the contract of employment and the rights provided under it, even in the absence of documentary proof remained with the Appellant.

Whereas counsel cited **PROF. GEORGE KAKOMA VS ATTORNEY GENERAL CS No. 197/2008** to support the assertion that there was indeed a contract, it is

distinguishable from the instant case because the issue in contention is not **whether there was a contract but what the duration of the Oral contract was?**

We did not find any evidence on the lower record to support his claim that the duration of the contract was 5 years and not 4 years. The Appellant did not discharge the burden of proving that his contract was for 5 years and not for 4 years as stated by the Respondent. We are also not satisfied that the contract was terminated without a reason given that there was no evidence that it was a 5 year contract and it was not fixed to 4 years. The Respondent insisted that his contract was for 4 years and they were under no obligation to renew it. It seems to us that it was a fixed contract which automatically terminated on expiry and the Claimant has not claim against the employee after that unless it was expressly provided for under the Contract. The only evidence on the record was the payment of salary at Ugx.813,000/=. We found no other evidence regarding the terms of his oral contract.

According to him, he commenced work in February 2012 therefore the contract expired in February 2016. Having been paid for 3 months in December 2015, the contract was fully paid for its duration therefore the element of termination cannot arise. In our view the Contract was fully executed. In **MOTA -ENGIL ENGEN HARIA vs NYARUHUMA PATRICK LABOUR DISPUTE APPEAL NO.09/2018** this Court interpreted 65(1) (b) (supra) to mean that *"... there is no obligation on the part of the employer to give reasons to an employee why a fixed term or task contract of employment should not be renewed. Although this Court in Mufumbo(supra) made it a requirement for an employer to give reasons for terminating an employee's contract of service, the expiry of a fixed term contract ends the contract or terminates it. Once the duration of the contract expires being a fixed duration, this is a consensual termination. The terms of the contract were intended to lapse on the expiry of its duration. Therefore to require an employer to give*

*reasons would be stepping beyond the terms of the contract which has come to an end. However if the fixed term contract is terminated before its expiry or prematurely, the procedural requirements as provided under Section 66 and 68 of the Employment Act 2006 must be complied with notwithstanding that it is a fixed term contract.”*

Having already established that the Appellant did not prove that the duration of his contract was for 5 years as opposed to 4 years as asserted by the Respondent, we do not think that the Labour officer needed to invoke sections 66, and 68(supra) to make his decision. We therefore find no basis upon which to hold that the Labour officer erred not to invoke Sections 66, 68 and 71 in making his finding that the Appellant failed to prove that the Contract was for five years. We do not think that he would have found differently even if he had invoked these provisions, given that the Appellant did not substantiate his claim.

In the Circumstances ground 1 fails and ground 4, **The Senior Labour Officer erred in law where he failed to properly evaluate the evidence on record and thereby coming to a wrong decision that the Appellant failed to produce the proof of the contract of employment for five years, also fails.**

We shall now consider ground 5 and 7 together.

**Ground 5. The Senior Labour Officer erred in law when he failed to properly evaluate the evidence on record and thereby coming to a wrong decision that since the Appellant as Accounting Officer ought to have paid all his dues plus NSSF and PAYE.**

**Ground 7. The Senior Labour Officer erred just to direct the respondent to update the appellant NSSF Account without following the NSSF Act guidelines.**

Counsel submitted that the Appellant was employed on an oral contract which was valid as provided under section 25 of the Employment Act (supra). He

reiterated his contention that the Labour officer did not apply Section 13 (a) and (b), 73(a) and (b) of the Employment Act together with rule 8 of the Employment Regulations 6,2011 thus being unable to receive all the documents that would have enabled him to reach a logical conclusion.

He argued that Section 11 (1),(6) of the NSSF Act, establishes the duty of the employer to pay the Fund within 15 days next following the last day of the month for which the relevant wages are paid and that every employer shall furnish the Managing Director on an approved form such particulars regarding each eligible employee in his or her service his or her wages, the contribution due on each wage , the total wages to such employees and the total contributions and such other information as the managing director may require. Counsel argued that although the Appellant was the Accounting Officer, he was simply an employee and it was therefore the Respondents who were duty bound to ensure compliance with the above provisions. He argued that the Decision to direct the Respondent to bank and update the NSSF account of the Appellant without invoking a penalty was wrong. He contended that by the time of making these submissions the Respondents had only made remittances up to April 2014, leaving 20 months uncovered. He insisted that the Labour Officer did not diligently investigate this matter or apply the relevant laws therefor he made a wrong decision.

He insisted that given that the appellants claim was premised on an oral contract the onus to bring documents to prove it was the respondent whom the Labour officer did not compel to do so. He was of the view that given the respondents

failure to prove the contract the labour officer should have awarded the Appellant Ugx. 84, 779,000/- as special damages.

In reply Counsel for the Respondent argued that the Labour Officer at page 7, 8 and 9 of the record properly evaluated the evidence, when he stated that both parties had agreed that the Respondent would bank the NSSF arrears and according to him, the process was commenced with discussions about the schedules and subsequently the NSSF was banked and proof was tendered in court. Counsel asserted that under page 9-12 the Labour Officer observed that the Appellant did not apply the administrative powers that were given to him by the Respondent, because, he kept fully signed cheques meant for NSSF in his drawers instead of banking them. He refuted the assertion that the Labour officer did not analyze the evidence yet he did, the record as shown on Pages 33-37 and 37-72 of the Respondent's submissions, indicated the NSSF documents and the teachers' pay rolls respectively. According to Counsel, therefore the Labour Officer properly evaluated the evidence on the record and came to the right conclusion.

A careful evaluation of the evidence indicated that the issue of NSSF was agreed between the parties. It was stated that:

- ❖ ***“The respondent banks NSSF arrears or to show proof for that.***
- ❖ ***This was accepted and they discussed with NSSF a schedule, started to bank arrears and proof was tendered in....”***

We have already established that the onus to prove the existence, terms and duration of the contract of employment lay on the Appellant and not the Respondent. We also established that the appellant failed to discharge the

burden of proving that his contract was for 5 years and not for 4 years as stated by the Respondent.

We also established that it was a 4 year fixed contract and by paying the Appellant 3 months in advance, the Respondent had fully executed the contract which would have terminated on the expiry of the 4 years.

Therefore the application of Section 13 (a) and (b), 73(a) and (b) of the Employment Act, together with rule 8 of the Employment Regulations 6, 2011, would not arise given that it was the Appellant who had the responsibility to prove his case.

With regard to the Remittances of the NSSF, this court in **AIJUKYE STANLEY VS BARCLAYS BANK (U) LTD LDC No.243/2014**, already decided that the deductions from an employee's salary for remittance as NSSF, constituted the employees personal property and therefore he or she had a legal right to protect it from anyone with an interest of depriving it from him or her. Although the right is enforceable by the claimant, it has to be done in accordance with the NSSF Act. Therefore the deduction once made must be deposited into the Fund as provided under section 11 of the NSSF Act. In the circumstances the Labour Officer's decision directing the Respondent to update the NSSF and deposit the same in the Bank was in accordance with the NSSF Act.

The Appellant did not deny that he was given the responsibility of managing both the Human and financial resources of the School, the record includes a number of salary computations and Vouchers that he raised for the approval for payment by the board, there was no computation for NSSF.

We are inclined to agree with the Labour officer that the Appellant who did not deny he was mandated to manage the entire affairs of the school, had the

responsibility to raise the required computations of the staffs NSSF deductions, for consideration by the Board and onward deposit into the Fund. We are convinced this was not done because we found no evidence to that effect.

Contrary to Counsel for the Appellants submission that the last remittance was made in April 2015, we found an NSSF Transactions Reference Number **SBUG038830**, indicating that there was a remittance made on 25/4/2016, at 13.15.19 through Stanbic Bank. We found no reason to doubt that the said transaction was done in line with the NSSF Act. We think that there was a possibility that he was not included on all remittances that were made after he left the School. Unfortunately he did not adduce any evidence to show the contribution was deducted from his salary during the subsistence of his contract and that it was not paid into the Fund. Therefore the claim for the 20 months has no basis and therefore it cannot stand. In the circumstances grounds 5 and 7 also fail.

Having found that the Appellant failed to prove that his contract was for a duration of 5 years and not a fixed contract that was terminable on expiry, with an obligation on the part of the Respondents to renew it, and having established that there was no evidence of other terms save for the payment of salary and the statutory requirement to pay NSSF in accordance with the NSSF Act, this Appeal has no basis, it is dismissed with no order as to cost.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

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**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA** .....

**PANELISTS**

**1. MR. FX MUBUKE** .....

**2. MS. HARRIET NGANZI MUGAMBWA.** .....

**3. MR. EBYAU FIDEL** .....

**DATE: 5<sup>TH</sup> JULY 2019**