

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM NO. 005/2015

ARISING FROM HCT-09-CV-CS-001/2011.

FRANCIS OKODEL CLAIMANT

VERSUS

BUKEDEA DISTRICT

ADMINISTRATION RESPONDENT

BEFORE:

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

PANELISTS

- 1. MR. RWOMUSHANA JACK**
- 2. MS. ROSE GIDONGO**
- 3. MR. ANTHONY WANYAMA**

AWARD

BRIEF FACTS

According to the Claimant, on 31/05/2006, he was appointed as Clinical Officer of Kumi District Local Government. On 7/11/2008, he was transferred to Bukedea District Local Government. On 19/01/2009, he was posted from Kolir Health Centre III to Bukedea District Local Government Health Centre IV where he duly reported. He was then transferred to Kabarwa Health Centre III where he reported and started working.

He alleges that on 16/08/2010 he was unlawfully terminated by the Respondent, hence this suit. On the 5/03/2018 he was cross examined by the Respondent. The matter was adjourned to 18/06/2019 for further hearing but the Respondent

did not appear so Court ordered that the case proceeds ex parte under Order 9 rule 20 of the Civil Procedure Rules SI 71-1.

ISSUES

1. **Whether the claimant's employment was unlawfully terminated?**
2. **What remedies are available to the parties?**

EVIDENCE

The Claimant confirmed his witness statement in chief.

SUBMISSIONS:

It was submitted for the Claimant that he was Public officer within the meaning of Section 1(o) of the Local Governments Act. Counsel contended that on 16/08/2010, the Claimant was issued with a termination letter, without following the procedure terminating a public officer employed by the Local government. According to Counsel, the Respondent should have applied Section 14(2) of the Public Service Act which provides that:

“Public Officers shall be disciplined and removed from the Public Service only in accordance with laid down regulations and procedures.”

She contended that he was terminated without justifiable cause contrary to Article 173(b) of the Constitution of Uganda and **Omunyokol Akol Johnson vs The Attorney General SCCA No. 06 of 2012**, in which was to the effect that Article 173 of the Constitution protects the tenure of the office of Public Servants by providing that no public servant shall be dismissed or reduced in rank without just cause and the same was re echoed in section 13(b) of the Public Service Act and Section 59(1)(b) of the Local Government Act.

It was Counsel's submission that the letter of termination did not clearly explain to him the reasons for his termination. She refuted the assertion by the

Respondent that the Claimant was terminated for absconding from duty because he testified that he did report to Bukedea but was verbally transferred to Kabwara and his efforts to get posting instructions from the CAO were in vain.

She argued that the Claimant's responses to the allegation of absconding from duty dated 17/07/2010, 21/07/2009 and 12/07/2010 were ignored by the CAO and he only received a termination letter 1 year later when Claimant considered the matter settled.

Counsel further contended that he was not given a hearing contrary to Article 28(1) of the Constitution which provides for a mandatory hearing in the determination of civil rights and obligations or any criminal charges, Article 44 which makes the right to a fair hearing non-derogable and Section 18 of the Public Service Act which is to the same effect. She also cited **Omunyokol** (supra) and **Jabi vs Mbale Municipal Council (1975) HCB** for the same position.

It was further her contention that the Respondent terminated the Claimant without notice contrary to paragraph 2 of Section (A-n) of the Public Standing Orders which stipulates that:

“A public Officer leaving the Public Service shall be entitled to a period of notice in accordance with paragraph 21 below.”

Paragraph 21 provides that:

“On termination of appointment other than in the circumstances stated in paragraph (22) below, notice shall be given an officer in accordance with the following: -

C) Termination of probationary appointment 14 days

Counsel also cited **Bank of Uganda vs Betty Tinkamanyire SCCA No. 12 of 2007**, whose holding was to the effect that an employee could be terminated with notice or payment in lieu of notice and since the Claimant worked for the Respondent for 5 years he was entitled to reasonable notice. She contended that the Claimant was not given notice and the progressive disciplinary procedure provided under the Public Standing Orders Section F-s paragraph 5 that provides for an officer in issue to be given a verbal warning, then formal written warning and final warning was not followed therefore the termination was unlawful.

She quoted Mr. Obitbok Richard, who testified that when the claimant requested him for a transfer, he advised him to go to the District Health officer to ask for the transfer. The Claimant told him that District Health officer verbally allowed him to transfer to Kabarwa Health Centre III and on the basis of the oral transfer he started working there while waiting for the transfer letter. According to Obitok the claimant was working at Kabarwa and he did not abscond from duty.

Amodoi confirmed that the claimant was issued the termination 1 month after he assumed duty at Kabarwa.

Counsel contended that when the Claimant responded to the CAO's demands for an explanation about his absence from duty, the Claimant made 3 responses which the CAO ignored. The Claimant interpreted the CAO's failure to respond as a sign that the matter was settled. Therefore, his termination without a warning was contrary to nor did he ask him to make a written explanation about it as required under Section (A-n) of the Standing Orders. She further contended that the Respondent as provided by paragraph 10 of the Standing Orders did not stop the Payment of the Claimant's salary nor was, he given an exit interview to explain the procedure of exiting the Public service and advise him about any accruing terminal Benefits. Citing **Waga B Francis vs**

Maracha District Local Government HCCS No.5 of 2016, which was to the effect that the unilateral suspension of an employee must be done in accordance with the procedure agreed upon in the contract of service and the rules governing the employment and to do otherwise would be considered a breach of contract, she insisted that given that the Respondent did not follow the procedure as laid down in the Standing Orders, the Public service Act and Local Government Act and regulations thereunder the Respondent was in breach of the Contract of the Claimant's Contract therefore he was entitled to damages.

DECISION OF COURT

According to exhibit CEX2 dated 7/11/2008, the Claimant was employed as Clinical Officer by Bukedea District Local Government on transfer from Kumi District Local Government effective 13/07/2006. On 19/01/2009 he was posted from Kolir Health Centre III to Bukedea Health Centre IV as Medical Officer effective 1/02/2009. According to the CEX 5, he accepted the transfer but in the same acceptance requested to be posted in another area because of personal reasons. It seems to us that although he picked his posting instructions to Bukedea health Centre III, he did not assume duty at the centre but instead moved to Kabarwa Health Centre on III purportedly on verbal transfer by the District Health Officer.

His acknowledgment of the transfer dated 12/02/2009 read in part as follows:

"... I acknowledge the receipt of the transfer letter dated 19th /1/09 that transfers me from Kolir H/C III to Bukedea effective 1/2/09.

I have also demonstrated my willingness to respect the instructions by reporting to the above.

However, I kindly ask you to deploy me anywhere else as will not be able to work in the above for a reason.

I remain waiting for your instructions to that effect.

Your in service

OKODEL FRANCIS ...”

Section (F-c) paragraph 2 and 4 of the Public Standing orders provide that

“2. A public officer reporting for duty on the first appointment shall immediately report to the Responsible officer at the station to which he or she is posted . An officer who does not comply with the posting instructions will be liable to disciplinary action.

4.A public officer on posting shall be required to hand over office in accordance with f-d”

It is clear from his letter acknowledging transfer (supra), that he picked the transfer letter to Bukedea, however there is nothing to show that he assumed duty at Bukedea. Given CEX6, which looks like a photocopy of a page in a register book, indicating that on the 19/05/2009 he reported to Kabarwa Health Center III on verbal instructions, we think he did not assume duty at Bukedea. According to Section F-d of the Public Standing Orders paragraph 5, ***“When posting public officers, the responsible officer must ensure that copies of the posting instructions are sent to the receiving station or institution.”***

The Claimant’s posting instructions were sent to Bukedea but he did not pick them from Bukedea. The instructions were in writing as provided under section F-d of the Public Standing Orders. Obitek and Amadoi who testified also alluded to the fact that he had to get a transfer letter to his duty station. No transfer letter was adduced as evidence to show that he was actually transferred to Kabarwa and not Bukedea. There was no evidence to show that his posting to

Kabarwa was authentic, given the absence of any formal posting instructions. There is no other evidence regarding his transfer save for his letter acknowledging his transfer to Bukedea and requesting to be posted to Kabarwa instead.

We therefore have no doubt in our minds that the Claimant's posting was to Bukeadea Health Center IV and not to Kabarwa as he would want Court to believe. By failing and or refusing to assume duty in Bukedea Health centre IV he had not complied with his posting instructions as provided under the Public Standing Orders. Refusal to comply with posting instructions or orders is listed under what constitutes misconduct warranting disciplinary action under Section F-s of the Standing Orders. In our considered our opinion therefore the Claimant's conduct amounted to a fundamental breach of his employment relationship with Bukedea District Local Government, which warranted disciplinary action against him. We are also inclined to agree with the CAO that his failure to assume duty at Bukedea Health centre IV amounted to absconding from duty, because he was employed by the District as clinical officer and in light of Section 41 of the Employment Act it was the district that had the mandate to give him work and he was given work to be performed at Bukedea Health Center IV but he did not report to assume the duties.

The CAO under the Public Standing Orders as the Officer Responsible for the administration of the District, is mandated manage its human Resources including disciplining errant public officers. He or She is dressed with discretion to determine whether an officer should be terminated or not, however in exercising this discretion he or she is expected to abide by the law and the principles of natural justice such as granting the officer in issue an opportunity to be heard before they are terminated/dismissed.

There is no evidence on the record to indicate that the Disciplinary procedures as set down in the Public Standing Orders and other Human Resources Policies were followed before the Claimant was terminated.

Given that the Claimant fundamentally breached his employment contract with the Respondent, the CAO was correct to terminate him with no notice and the termination was lawful. Section 69 provides that; where an employee fundamentally breaches his contract of employment, an employer could terminate him or her with no notice or less notice than he or she was entitled to and such a the termination was lawful. However, Section 66(4), provides that even when the termination is summary termination, the employer must give the employee in issue a reason for the termination and an opportunity for the employ to respond to the reason, accompanied by a person of his or her own choice. By not following this procedure the CAO denied the Claimant a right to a fair hearing which is sacrosanct.

In the circumstances we fault the CAO for not following the set disciplinary procedures and this entitles the Claimant to 4 weeks' pay for this violation.

In conclusion the Claimant's termination was substantially lawful. For the CAOs failure to follow the disciplinary procedure the Claimant is entitled to 4-week wages and no other remedies.

No order as to costs is made.

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PANELISTS

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DATE 19/DECEMBER/2019