

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO.272/2014
(Arising from HCT-CS NO. 314/2012)

ETUKET SIMON CLAIMANT

VERSUS

**KAMPALA PHARMACEUTICAL
INDUSTRIES (1996) LTD.....RESPONDENT**

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet Nganzi Mugambwa

AWARD

This is a claim brought by the claimant against the respondent for:

- a) Payment of terminal benefits
- b) Payment of gratuity
- c) Payment of overtime
- d) Payment of repatriation
- e) Payment of general damages and costs of the suit.

REPRESENTATIONS

The claimant was represented by M/s. Nampola while the respondent was represented by Mr. Walukaga.

Brief facts:

The claimant was an employee of the respondent from 1997 to February 2009. In February 2009, citing health conditions and failure by the respondent to take his advice on production of good quality drugs, the claimant tendered in his resignation. Subsequently the respondent rejected the claimant's resignation and in a termination letter asked him to explain why he had been absent from duty. The claimant was not amused by rejection of his resignation and termination of his employment and considered the termination unlawful and hence filed a complaint to the Labour officer who eventually referred the matter to this court.

Each of the parties filed own scheduling memorandum and the agreed issued reflected in submissions are:

- (a) **Whether the claimant was entitled to a hearing after he had handed in his resignation from the respondent's employment.**
- (b) **Whether the claimant is entitled to terminal benefits and if so in what quantum?**

- (c) **Whether the claimant's employment was unlawfully terminated.**
(d) **What remedies are available to the parties?**

Submissions:

On the first issue, counsel for the claimant submitted that the respondent having rejected the resignation letter, he, the claimant was then entitled to a hearing. She argued that because of rejecting the resignation the respondent was obliged to follow the proper procedure of termination as laid down in the employment Act.

He relied on **section 73(2)(a) & (b) of the Employment Act, Article 28(1) of the Constitution, section 66(1)(2)(3) and (4) of the Employment Act as well as clause 9(1)(b) of the respondent's Personnel Policy Manual Page 17.**

Counsel for the claimant strongly argued that because of the rejection of his resignation the claimant was entitled to a hearing. Counsel went on to reiterate the evidence of the claimant as to the rejection of his resignation. Counsel also pointed out the right of his client to be heard before termination as provided for under section 73(2)(a) and (b) and section 66 of the Employment Act. She also relied on the authority of *JABI VS MBALE MUNICIPAL COUNCIL* (1975HCB at 191.)

On whether the claimant's employment was unlawfully terminated, counsel for the claimant reiterated that this was the case because of the respondent's refusal to grant a hearing before termination and also failure to give a termination notice which was contrary to **section 5(1)(c) of the Employment Act** entitling the claimant to 3 months' notice. Counsel further argued that the termination was unlawful since it was contrary to **Section 68 of the Employment Act**, which provides for justifiable reason why the services were terminated. For this submission she relied on the case of **Florence Mufumba Vs UDC, LDC No. 138/2014.**

Counsel for the claimant argued the third issue as **remedies available** to the parties. Counsel argued that the claimant was entitled to benefits which according to him were acknowledged by the respondent's officials from the claimant's testimony that one Magandazi told him that the respondent would calculate the payments and call him.

As to repatriation counsel relied on **section 39(3) of the Employment Act**. In her submission, irrespective of the place of recruitment of the claimant, he was entitled to repatriation having worked for over 10 years with the respondent.

As for overtime, counsel relied on paragraph 45 of his client's witness statement as well as **section 58(8) of the Employment Act** for her submission that the claimant was entitled to overtime. She submitted that her client was entitled to annual leave as well as severance.

In response and on the first issue above counsel for the respondent argued strongly that it was upon the claimant's immediate resignation that his employment was terminated and that therefore there was no need of a hearing since the claimant wrote to end the employment without notice. According to counsel **section 66 of the Employment Act** that provides for a hearing does not envisage a situation where the employee resigns. Counsel submitted that hearing under section 66 applies where the employer is considering termination on grounds of misconduct or poor performance but in this case the claimant clearly ceased to be an employee of the respondent after he handed over his resignation and therefore **section 66** could not be invoked to have a hearing after issuance of a termination letter.

On issue No. 2: **Whether the claimant was unlawfully terminated** – it was strongly argued that the claimant terminated his own contract by way of resignation and that the termination letter was merely a confirmation of the termination.

On the claim of **gratuity, repatriation and overtime**, counsel for the respondent argued that the claimant had no basis for the claim of gratuity and leave days as he himself testified in cross examination. According to counsel no evidence was led to prove that a claim of overtime existed.

Decision of court:

Resignation is a method of terminating an employment at the instance of an employee. In organized enterprises resignation is always stipulated either in the contract or in the personnel management manual as a method of terminating an employee – employer relationship. The manual or the contract will normally provide the other various methods of termination and the various consequences/ benefits that arise out of the termination.

In circumstances where neither the contract nor the personnel manual provides for resignation as a method of termination, it is presumed that the employee as a result of the inherent freedom of contract has the right to terminate his/her employment by resignation for whatever reason best known to himself/herself and he/she is not obliged to reveal such reason. Therefore on the basis that an employee has a right to freely sell his/her labour wherever it is in demand, such employee has a right to resign from his/her job.

However, resignation may in some circumstances be deemed to constitute constructive dismissal. This is when 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 as provided for in **section 65(c)**. In this case the employee resigns not as a result of free will but because of some form of coercion or influence.

In the instant case nothing was disclosed either in the evidence or in the memorandum of claim that there were agreed terms under which the claimant could resign. Consequently, it is our position that the claimant exercised his right of freedom of contract to resign from his job. The question is: **would resignation be subject to approval by an employer?** As already pointed out resignation is a right of an employee. To resign or not to resign is strictly for an employee to decide. Because the relationship of an employer and an employee is heavily reliant on the trust and confidence the employer has in the employee, even when the disciplinary process has begun the employee's resignation ought not be interfered with except for the purpose of completing the exit process. This is because the disciplinary process is normally instigated by the lack of confidence in the employee, and the resignation would automatically culminate in cessation of employment which ordinarily is the purpose of the disciplinary process.

Consequently, any termination or any process by the employer subsequent to the resignation of an employee intended to nullify such resignation is in our considered opinion null and void.

In the instant case it was the evidence of the claimant that as a result of the unhealthy environment he worked in, and because he had advised the respondent to improve on the quality of the drugs in vain, he opted to resign and wrote a resignation letter on 3/2/2009. There is no alleged unreasonable conduct of the respondent precedent to his resignation.

Although in cross examination the claimant stated that his resignation was not voluntary, we do not accept this part of his evidence because he subsequently stated that it was for health reasons and because the respondent manufactured what was in his view fake drugs, that he resigned.

None of these reasons were proved to have constituted unreasonable conduct on the part of the respondent so as to turn the resignation into constructive dismissal.

The purported termination was after the resignation of the claimant and the resignation in our view having been a voluntary resignation, the purported refusal of the resignation in the termination letter was null and void and of no legal consequence. The same applies to a demand for an explanation as to why the claimant had been absent from duty previously. Consequently we agree with the submission of counsel for the respondent that the right of a hearing under **section 66 of the Employment Act** does not arise when an employee resigns from his employment. We do not accept the contention of counsel for the claimant that the respondent having rejected the claimant's resignation, he, the claimant was entitled to a hearing. This is because as already pointed out such rejection was of no legal consequence. The right of a hearing under **section 66** arises only when the employer is considering termination of employment which was not the case in the instant case. We agree with the respondent that the claimant terminated his own employment and he was therefore not entitled to a hearing as envisaged under **section 66 of the employment Act**. The first issue is decided in the negative.

The second issue is whether the claimant's employment was unlawfully terminated. We do not intend to labour too much on this issue. As already discussed in the above issue, the claimant terminated his own employment. The question of the respondent justifying the termination by giving a reason under **section 68 of the Employment Act** does not therefore arise and neither does the question of giving notice as provided for under **section 58(3) of the Employment Act**. All the submissions of counsel for the claimant in this regard are therefore not acceptable to us. The authority of **Florence Mufumba** cited by counsel for the claimant is irrelevant in as far as it is not applicable in the instant case for the employer to give a reason for termination, the claimant having terminated himself. The second issue is in the negative. The third issue was largely about **the remedies** available.

Gratuity being an expression of gratitude to the employee for the work done for the employer over time, is normally provided for either in the contract or in the Human Resource Manual. In order to benefit from gratuity after cessation of employment, the employee will prove that the component of gratuity was envisaged in the employment relationship.

The evidence of the claimant was lacking in this aspect. There was nothing to show that there existed any intention on the part of the respondent to pay gratuity to the claimant and neither was there evidence to suggest that in the course of his employment the claimant expected gratuity at the end of his service with respondent. In cross examination, although the claimant stated he had gratuity with the claimant, he could not explain how it arose. We have no basis to grant this prayer and it fails.

Repatriation:

Section 39(1) of the Employment Act provides “An employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have

the right to be repatriated at the expense of the employer to the place of engagement in the following cases:

- (a) On the expiry of the period of service stipulated in the contract.**
- (b) On the termination of the contract by reason of the employees 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.**

Since none of the above is applicable in the instant case, no repatriation arises and therefore the prayer is denied.

Overtime and leave:

From the claimant's written witness statement **paragraph 45**, he was never allowed to take leave and he used to work overtime without pay or compensation for the same.

According to a witness statement of one Ademson Consolate, **paragraph 20**, at the time of his resignation, the claimant had no pending leave dues or any outstanding overtime payments. In cross examination the claimant merely stated that he used to work overtime although he did not know the calculations involved.

In his submission counsel for the claimant argued that since under **section 54(4) of the Employment Act** hours of work are not to exceed 10 hours per day or fifty six hours per week and yet the claimant worked from 8.00am to 6.00pm, his work constituted overtime. It is **section 53** and not **54** that provides for working hours per week and **Section 53(4)** provides for not more than 10 hours per day or fifty six hours per week. In our calculation if one started work at 8.00am and ended at 6.00pm as the claimant was doing, the total hours worked is 10 hours per day which comes to 60 hours per week including Saturday. The claimant did not help this court by failing to appreciate the calculation of overtime given that he was employed on and off and in different capacities, at one time being a casual laborer and at another time being employed on contract.

In the absence of evidence as to the exact times when the claimant was entitled to overtime and how much was due we do not find it tenable to grant this claim which is hereby disallowed.

There is no doubt that under **section 54 of the Employment Act**, employees are entitled to a number of days as their annual leave days. However employees are required to apply for such leave days and only when they are denied to go on leave after expressing interest to exercise this right does the employer get obliged to pay in lieu of such leave. In the absence of evidence of expression of interest to take leave by the claimant, we decline to grant this prayer(see: **MBIIKA DENNIS VS CENTENARY BANK L.D.C NO.023/2014 AND EDICE MICHAEL VS WATOTO CHILD CARE MINISTRIES L.D.APPEAL21/2015**

It seems to us that the claim by the claimant to any payment from the respondent is based only on the insinuation by one Magandazi to the effect that he would get some kind of compensation after resignation. In his evidence in re-examination the claimant stated that **“after I submitted in the resignation letter, Magandazi told me to leave my phone**

number that they would calculate my payments and then call me... I did not receive the payments”.

In his witness statement, **paragraph 25** the claimant stated that:

“I worked throughout January 2009 and I received the mid-month payment and also received the balance of the payment at the end of the moth as it always was”. And in paragraph 26 the claimant states that on 3rd February 2009 he reported to work and wrote a resignation.

Although one Magandazi may have intimated that the respondent would calculate payments due to the claimant, this was not a guarantee that such payments were due given that the claimant was not aware of any payments that were due.

All in all we find the claimant has failed to prove his claim against the respondent, having voluntarily resigned from his job and having failed to prove any payment due to him after resignation. The claim is dismissed with no orders as to costs.

BEFORE

1. The Hon. Chief Judge, AsaphRuhindaNtengye
2. The Hon. Judge, Linda Lillian TumusiimeMugisha

Panelists

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet MugambwaNganzi

Dated: 29/03/2019