

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 083 OF 2016
(ARISING FROM WAKISO LD NO. 02/08/2013)

NSUBUGA ABDULUTIF ALI.....CLAIMANT

VERSUS

DIRECT AID AFRICA MUSLIM AGENCY.....RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

Brief facts

By letter of appointment dated 01/01/2013, the claimant was appointed as a fulltime orphans supervisor of the respondent organisation. The appointment was for 1-year renewable with mutual consent of both parties and effective 01/01/2013 to 31/12/2013. Earlier on, he had served for one year from 30/11/2011 to 30/11/2012 under the same terms of 430,000 per month. In July on 23rd 2013, the respondent wrote a letter to the claimant as follows:

“As stated reference, I am disappointed with your characters referring to the warning letter dated 23/3/2013 which was given to you in my office accusing you of duty negligence, however, you have continued to grant yourself short leaves as if you are a pat timer orphan supervisor. On 23/4/2013 another

warning letter was given to you from D.O.S's offices about irregularity at work, still you went ahead to minimize our warning letter, with evidence it seems that you are no longer interested in A.M.A's work and you got a job in a certain secondary school. You have totally failed to respect and co-operate with the entire administration at the centre. Remember the records of your absenteeism since April 2003 to date were recorded and no more warning letter should be given to you apart from this which demand you to stop your services with Assahaba Centre Kakiri as an orphanage supervisor, according to the rules and regulations, terms and conditions of service, contract signed, it instructs that to be given 1 month pay from 22nd May 2013 up to 22nd August 2013 as you arrange to vacate the staff quarters so that to be re-occupied by another supervisor.

Thanks for your co-operation.

(Signed)

Hassan Sheikh

Centre Director

Cc: Accounts Department

Cc: Country Director

Cc: Personal file

According to the claimant's scheduling memo on the record issues arising from the above facts are:

- 1) **Whether the claimant was summarily dismissed by the respondent.**
- 2) **Whether the respondent owed the claimant salary arrears for 3 months.**
- 3) **Remedies available.**

REPRESENTATIONS

The claimant was represented by Mr. Ssozi Stephen of M/s. Baluti & Ssozi Advocates while the respondent was not represented.

After court being satisfied that the respondent was served with court process but they failed to file their response or attend court for hearing on 5/12/2019, the claimant was allowed to proceed exparte.

EVIDENCE ADDUCED

The claimant adduced evidence only from himself by a written witness statement which he swore to in open court. He testified by the said statement that he developed conflict with the Centre Director out of the Director's weaknesses which the Regional Director found out when he visited. As a result, the Centre Director, his immediate supervisor, raised false allegations of the claimant's absence from duty and his coming late to work. According to him the letter of termination contained falsehoods as he had never received any warning letters since he was always at his duty station as per an attendance list marked as **AC**. He was not summoned before any disciplinary Committee and he was never heard. He was allowed to work for 1 month after being given the letter of termination although he was supposed to be paid arrears for 3 months, **May, June and July 2013**.

SUBMISSIONS

Counsel for the claimant filed written submissions. Relying on the case of **Oyet Ojera Vs Uganda Telecom Limited HCCS 161/2010**, counsel argued that the claimant could only be dismissed summarily if he fundamentally breached terms of the contract. In his submission the termination of the claimant contravened **Section 66 of the Employment Act** which provides for a fair hearing and therefore the respondent acted unlawfully.

DECISION OF COURT

The law relating to exparte proceedings is that even though the defendant (or respondent) has not appeared to defend the suit (or claim) the plaintiff (or claimant) is still under a duty to prove his/her case or claim on a test of a balance of probabilities. The legal maxim that he who alleges must prove does not fly away simply because the defendant/respondent has not filed a defense or appeared to defend the suit/claim.

In the instant case evidence was led from the claimant that he was employed by the respondent organisation for a term of 1 year and this is evident in the appointment letter attached to the memorandum of claim and **marked "A"**. Evidence was adduced to the effect that before the period in the contract elapsed, the claimant was terminated by letter **marked "B"** also attached to the memorandum of claim. The termination letter alleged that the claimant was absenting himself from duty and as well coming late to duty and that he had been severally warned, hence his termination.

The claimant having adduced evidence that he never absented himself from duty and that he was never even warned of any late coming, the burden shifted to the respondent to adduce evidence to the contrary. In the absence of any warning letters on the record and in the absence of any evidence to controvert that of the claimant that he never absented himself, we have no reason to believe what is contained in the termination letter.

Even if we were to believe the contents of the termination letter, it was incumbent on the respondent to bring the infractions mentioned in the letter to the attention of the claimant so that he could say something in defense of the infractions before a competent and impartial tribunal before the respondent could take the drastic measure of termination. We therefore agree with counsel for the claimant that the termination of the claimant was in contravention of **Section 66 of the Employment Act** which provides for a hearing before a dismissal.

No fundamental breach of the contract of service was established before dismissal and therefore the dismissal could not have been in accordance with **Section 69 of the Employment Act** which provides for summary dismissal. We therefore find that the termination was unlawful

The claimant stated in his evidence that he was not paid his salaries of May, June and July. The termination letter indicated that he was to be given '**1 Month pay from 22nd May to 22nd August**' indicting that salary of May and June was yet to be paid.

Since the letter of termination is dated July 23rd it is safe to say that his salary of July was not paid. Accordingly, we allow the prayer for salary of May, June, and July.

As for rent and lawyers' fees, we are of the considered view that they are in the class of special damages which had to be strictly proved. In the absence of such proof, they are denied.

The claimant prayed for general damages, which we think he is entitled to having declared the termination contrary to the law.

Given the nature of his contract, the amounts involved, the period under the contract that was yet to be completed, and the manner of termination, a sum of 1,800,000/=, we believe will be sufficient as general damages.

Consequently, the claim succeeds with the following declarations:

- 1) The respondents breached the claimant's contract for failure to abide by the provisions of **Section 66 of the Employment Act** and therefore the termination of the claimant was unlawful.
- 2) The claimant shall be paid 1,800,000/= (One million eight hundred thousand only) as general damages.
- 3) The Claimant shall be paid his May, June and July salary in the total sum of UGX 1,290,000.
- 4) No order as to costs is made.

Delivered & Signed by:

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

Panelists

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

Dated: 03/07/2020