

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL No. 017 of 2019
(Arising from Mbale Labour Complaint No. 077/2019)

BETWEEN

MT. ELGON HOSPITAL..... CLAIMANT

VERSUS

NANGOSYA HERBERT ERIC.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Ms. Harriet Nganzi Mugambwa

AWARD

This is an appeal arising from the decision of a Labour officer sitting at Mbale in Labour Complaint 77/2019.

The background of the appeal is that the appellant employed the respondent on a 5-year contract ending 31st December 2018. In a letter dated 8/8/2018, the appellant wrote to the respondent to inform him that the respondent had upheld the recommendation to review his contract but noted certain performance lapses and that because of these lapses the appellant would within 3 months appraise him.

On 31/12/2018, the appellant wrote to the respondent notifying him of the non-renewal of the contract whereupon the respondent lodged a complaint to a

Labour Officer claiming that by the letter dated 8/8/2018 the appellant had renewed the contract which was unlawfully terminated by the letter of 31/12/2018. The labour officer agreed with the respondent and ordered compensation of the claimant in the following terms:

No.	Item	Ugx. Shillings
1)	Notice pay	1,730,000
2)	Failure to give a hearing	1,730,000
3)	Compensatory pay	5,190,000
4)	Severance allowance	5,190,000
5)	Gratuity	15,570,000
6)	Unexpired contract	20,760,000
7)	Length of service	13,840,000
8)	Reasonable expectations	17,300,000
9)	Opportunities available	17,300,000
10)	NSSF for a breached contract	2,760,000
11)	Untaken leave	11,648,000

The appellant was aggrieved and hence this appeal.

REPRESENTATION

The appellant was represented by Ms. Dagira Suza of M/s. Dagira & Company Advocates while the respondent was represented by Mr. Ocheng Yafesi of K.M Advocates and Associates.

The appeal was founded on 3 grounds as follows:

1. That the Labour Officer erred in law when she held that the respondent had been unfairly and/or unlawfully dismissed/terminated by the appellant from its employment.
2. That the Labour officer erred in law when she misconceived and or misapplied the provisions of **Section 78 of the Employment Act.**
3. That the Labour Officer erred in law when she awarded the respondent a total of 113,018,000/= as compensation for the purported unlawful dismissal.

SUBMISSIONS

On ground one, the appellant submitted that after a series of renewal of contracts between the appellant and the respondent, an offer was made to the respondent on 14/05/2018 which was conditional upon an appraisal before the expiration of the five-year term. According to counsel the Board opted not to renew the contract upon expiry and the respondent was informed accordingly. The contract expired and it was not renewed. He argued that the respondent's offer to have the contract renewed was terminated by the appellant's counter offer and that as such there was no binding or enforceable employment contract. In the alternative, counsel argued that the contract was terminated under **Section 65(i)** with payment in lieu of notice which did not require any hearing envisaged under **Section 66 of the Employment Act**.

According to the respondent the letter of 8/08/2018 renewed the contract beginning/1/1/2019.

He submitted that the appraisal mentioned in this letter having not been done by the appellant the respondent at the beginning of 2019 embarked on his new contract until 10/01/2019 when he was served with a notice of non-renewal of the contract. He argued that the non-renewal of the contract was unlawful for being served when the contract was already running. He insisted that the claimant was entitled to a hearing as provided under **Article 28 of the Constitution**. He relied on various legal authorities as cited in his submissions.

In his submission, the letter of 8/8/2018 did not constitute a conditional offer since the appraisal was not done by the appellant so as to find the respondent wanting.

Decision of court

It is imperative to quote verbatim the letter of renewal of contract:

MOUNT ELGON HOSPITAL
P. o. Box 1147
Mbale, Uganda
Tel: 256-454431230
Email: elgon@meh-mbale.com

8/8/2018

Mr. Eric Nangosya

Administrator, MEH

Dear Mr. Eric,

RE: RENEWAL OF YOUR CONTRACT OF SERVICE AS THE ADMINISTRATOR

Reference is made to your application letter dated 14/05/2018 seeking the renewal of your contract of service and the subsequent appraisal exercise that was conducted on 9/06/2018 by the Staff Appraisal Committee (SAC) of the Board of Directors (BOD).

Am glad to inform you that the BOD, at their sitting on 05 august 2018, considered the SAC report and upheld its recommendation to renew your contract of service by another period of one (1) year counting from the date of expiry of your contract of service by another same Terms and Conditions of Service.

However, the BOD noted with concern that your performance still needs to improve especially in the following aspects:

- a) Ensuring timely recovery of monies from credit clients;
- b) Ensuring that insurance companies and other medical account holders adhere to the service contracts; and
- c) Preparation of regular management reports based on your key performance indicators.

Accordingly, your performance will be appraised after a period of three (3) months from the date of this letter. We trust that you will use this period to register satisfactory improvement in your performance.

I congratulate you upon renewal of your contract and wish you well in your career.

Yours sincerely,

Dr. Kirya Fred
Chairman, Board of Directors

of the Board of Directors

Cc: All Board Members
CEO, Mount Elgon Hospital

The claimant applied for renewal of his contract on 14/05/2018 which contract was ending on 31/12/2018.

Section 65 of the Employment Act provides:

“65. Termination

Termination shall be deemed in to take place in the following instances

(a)

(b) Where the contract of service, being a contract for a fixed term or task, ends with expiry of the specific term or completion of the specific task and is not renewed within a period of one week from the date of expiry on the same terms not less favorable to the employee.’

Where a contract of service is silent on renewal, the presumption is that it will not be renewed until the contrary is proved by the conduct of the parties. Where there is a provision of renewal in the contract, the presumption is that the parties intended to renew the same, other factors being constant and therefore the subsequent behavior of the parties after expiration of the contract may be interpreted to mean that the contract was in fact renewed (**see: National Social Security Fund (NSSF) Vs Khainza Pauline L.D.A 024/2018**).

In the instant case the contract was a fixed term contract ending on 31/12/2018 without any provision of renewal. It was to automatically lapse on this date. The renewal of the contract dated 8/8/2018 could therefore only be effective after the 31/12/2018. By stating **“the BOD, at their sitting on 05/8/2018, considered the SAC report and upheld its recommendation to renew your contract under the same terms and conditions of service”** the letter of renewal emphasized this fact since the same letter did not purport to introduce any new terms and conditions.

Consequently, the insinuation of the respondent that the contract was renewed on 8/8/2018 with the result that the letter of 31/12/2018 notifying him of non-

renewal constituted breach of contract was misplaced. In our considered view the letter of renewal dated 8/8/2018 constituted an intention of the appellant to renew the contract come 31/12/2018 on condition that there would have been an appraisal to satisfy the appellant that the respondent was a better performer. The fact that the appellant did not appraise the respondent within the three months mentioned in the letter did not overrule the fact that the contract was a fixed term contract ending on 31/12/2018. On perusal of the contract there is nothing to suggest that it was subject to renewal, later on subject to an appraisal. For that matter, we do not find the appraisal mentioned in the letter forming part of the running contract, which was a fixed term contract. Consequently, our firm view is that the appellant was not obliged to appraise and subsequently renew the contract simply because of the contents of the letter of renewal dated 8/8/2018. There is no evidence on the record to suggest that the respondent worked beyond 31/12/2018 since the respondent did not prove that he received the letter after this date and that he received it while working with the appellant. Our finding therefore is that contrary to the expression of the respondent that the appellant renewed the contract by allowing him to work beyond the contract period, the respondent stopped working on the date of expiry of the contract.

Accordingly there was no unfair or unlawful termination of employment and the Labour officer erred to have found so. The first ground is successful.

Grounds 2 and 3 relate to the compensation awarded by the Labour officer to the respondent. Following the above findings, none of the compensation on items identified by the labour officer could have been properly awarded. Consequently any orders by the labour officer regarding compensation are hereby set aside. Order accordingly as the whole appeal succeeds. No orders as to costs.

Delivered & Signed:

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Ms. Harriet Nganzi Mugambwa

Dated: 21/08/2020