THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 189 OF 2015
[ARISING FROM LABOUR COMPLAINT NO. CB/027/2015 - MBALE]

BETWEEN

MASABA RICHARD……..…..CLAIMANT

VERSUS

REGISTERED TRUSTEES
OF TORORO ACHIDIOCESE ……..……RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

The claimant filed a memorandum of claim in this court on 12/08/2015 through which he claimed 13,650,000/= being unpaid salary arrears, interest thereon, NSSF remittances/contributions, compensation for the remaining contractual period, general damages and interest thereon as well as costs. According to the claim, when the claimant complained to the Labour Officer, the respondent promised to pay the arrears and when they failed to pay the matter was referred to the Industrial Court.

In reply, the respondent filed a reply to the memorandum of Claim in which it stated that the claim was settled by the principal Labour Officer, Ministry of Gender, Labour and social development and that both parties agreed on the mode of payment, namely, by two installments. According to the respondent the first installment of 3,375,000/= would be paid by 28/11/2014 at 10.00am and the

second installment of 1,183,000/= would be paid by December 2014 at 10.am and the claimant was to pick the money from the Principal labour Officer where it would have been deposited earlier by the respondent. Although the respondent delivered the money as agreed the claimant never turned up to pick the same.

It was stated in the reply to the memorandum of claim that the claimant since 2014 kept away from the Health Centre and was not working while he kept the house he occupied inaccessible to any other worker. According to the respondent, the claimant never gave access of the accounts records to the respondent thus making auditing impossible and he committed a breach of contract by not reporting to work and locking the hospital canteen, accounts office and the house he was occupying.

REPRESENTATION

The claimant was represented by Mr. Nuwandinda Johnan Rwambuka of M/s Rwambuka & Co. Advocates and the respondent was represented by Ambassador Professor Dr. Oboth Okumu of M/s. Oboth Okumu & Co. Advocates when the matter came up for hearing at Mbale High Court circuit on 15/03/2018. Dr. Oboth Okumu raised a preliminary objection which was on 6/7/2018 not sustained by the court which ordered the matter to proceed on merits. Dr. Oboth Okumu once again raised an application for leave to appeal to the court of Appeal against the decision of the court disallowing the preliminary objection. This court in a ruling of 28/3/2019 refused to allow such leave on the ground that it would cause backlog in the Industrial court. The matter was therefore fixed for hearing. Thereafter there were lots of adjournments as both counsel tried to settle the matter outside court until on 30/06/2020 when Dr. Oboth Okumu called the Chief Judge on his phone just before he left chambers to go to court. Counsel said he could not be available for court because of Covid-19 pandemic which had caused Tororo District to be restricted in movement. He agreed with the Chief Judge that he would be available on 30/07/2020 and with this assurance the court adjourned the matter to 30/7/2020 with costs to the claimant.

On 30/07/2020 neither counsel nor the respondent was in court and the court allowed the application of counsel for the claimant to proceed exparte.

ISSUES FOR DETERMINATION

Earlier on, in a joint scheduling memorandum filed on 13/11/2019 both counsel had agreed on the following issues:

(1) Whether the claimant's employment was terminated by the respondent.
(2) Whether the claimant is entitled to the claims made and reliefs sought.

EVIDENCE ADDUCED

As already pointed out, the claim proceeded exparte, both respondent and its lawyer having failed to turn up without any reason on the date of hearing. The claimant adduced his evidence in the form of a written statement which he confirmed after taking the oath to be his own statement. By this statement the claimant testified that having been initially employed as accounts assistant on 22/5/2007 at a salary of 250,000/=, he was subsequently on 25/11/2008 appointed on permanent terms as Ag. Administrator/Accounts assistant at a basic salary of 300,000/= per month. According to him, he was selected to benefit from a scholarship of Uganda Catholic Medical bureau at UCU (Uganda Christian University) and he got the admission on 2/8/2011. He was later on asked to request in writing permission from the Chairperson Board of governors which he did on 24/5/2013 and it was endorsed on 27/5/2013 but when he reported on duty on 28/05/2013 he found the main door to his office replaced with a new padlock. After failing to get answers from both cashier and treasurer he informed the chairperson who called the treasurer and the personnel officer for an emergency meeting the next day but none of them came for the meeting. On 6/11/2014 he received a letter from the Board dated 31/12/2013 ordering him to handover the accounts office within 2 weeks which he had himself been denied access to.

SUBMISSIONS

It was submitted on behalf of the claimant by his lawyer that the claimant was locked out of his office and that this act went to the root of the contract as there was no way he could perform his duties without being in office. According to

counsel this was a fundamental breach of contract which is technically referred to as constructive dismissal.

DECISION OF COURT

There is no doubt in our minds that the claimant was employed by the respondent and that by the time misunderstandings between the two parties arose, there was an existing employer – employee relationship between the two parties. This is born out in the pleadings of both the claimant and the respondent. Whereas the claimant in his memorandum of claim pleads non-payment of his salary arrears, the respondent in reply pleads that the matter was settled by the labour officer and that the claimant failed to pick the agreed sum from the said officer's office. It is pleaded by the claimant that he was locked out of office but in reply the respondent pleads that the claimant locked the staff house he was occupying as well as the accounts records office and kept away from work since 2014.

The proceedings of the court were exparte and therefore the only evidence on the record is evidence from the claimant. The trial bundle of the respondent contains two interesting letters by the Principal Labour Officer/Inspectorate. One letter at page 6 of the bundle is dated 16/09/2015 and the other at page 9 is dated 10/11/2014. The peculiarity of both letters is that both are the same in words and expression except that the one dated 16th September 2015 has an addition just before the signature and the addition is:

> **"On 28th November 2014, the respondent reported to the office with the agreed upon installment. However, the employee did not turn to pick the said money as agreed in the meeting. Instead the office received a letter from the lawyers of the complainant dated 21/11/2014 on by the ministry of the 25/11/2014 indicating the complainant was dissatisfied with the agreed position and claiming I had no mandate to take the decision."**

If the respondent wanted court to believe the above additional statement, it should have led evidence to prove the same. There was need for someone to tell court that the agreed sum of money was dispatched and that the claimant failed

or refused to pick it as portrayed by the additional statement. We have searched the whole record but we have failed to see where an agreement between the two parties was reached and executed in the terms portrayed by the Labour Officer in both statements/letters. We get the impression that if anything, after the labour officer had listened to the parties during a mediation, she herself reached the decision portrayed in both letters. Unfortunately, such a decision reached in mediation until it is signed by both parties as a decision of both parties, it cannot constitute a decision capable of being executed. It is trite that parties in mediation can change their positions until both agree to a certain position. Consequently, in the absence of evidence that what was portrayed in the communication of the labour officer was the agreed position, we find the pleadings of the respondent that the claimant refused to pick the agreed sum of money from the Labour Officer without any merit. It was revealed in the evidence of the claimant that he formerly applied for study leave which application was forwarded by the in-charge to the Chairperson of the Board on 27/05/2013 only the next day for him, the claimant, to find his office locked with another padlock.

Exhibit C4 attached to the claimant's witness statement is a letter dated 2/10/2011 addressed to the in-charge of St. Elizabeth Hospital by the claimant, with information that the claimant had secured admission to the university and requesting for off days for the purpose of his studies. The letter was forwarded by the matron for consideration on 4/10/2011 although the stamp of the medical superintendent is dated 06/09/2011. If the medical superintendent was the in-charge (which we think is the case) then he/she could not have received the letter on 06/09/2011 before it was written. We form the view that the received stamp was wrongly dated 06TH September 2011 instead of 06 Oct 2011. **Exhibit 5**, also attached to the claimants written witness statement are minutes of the Board meeting of 28/03/2013. Under **Min. 2(a) 28/03/2013 (c)** the claimant as Ag. Administrator is said to have told the members that he would be back to University on 2/5/2013 and that the coming semester of May would be a busy one, needing more time. Under **min. 4/28/3/2013** it was resolved (among others) that the claimant be allocated 250,000/= monthly towards his tuition for 1

academic year and that he should be granted a study leave but he should officially request for it.

Exhibit C6 attached to the claimants written witness statement is a request for study leave and salary arrears. It is addressed to the chairperson, Board of Governors of St. Elizabeth Magale health Centre IV through the in-charge of the Centre. It seeks study leave of 2 years beginning 1st June 2013 and it also seeks for 3.6m/- as salary arrears. Looking at the above trend of events, it is difficult if not next to an impossibility for the court to believe the assertion of the respondent in their memorandum of reply that the claimant locked up some office premises and absconded from work.

It is apparently clear that the claimant got admitted to the Uganda Christian University with or without the knowledge of the respondent but following the information flow in the letter by the claimant to the respondent on 2/10/2011 we find that the respondent came to know about this admission and by endorsing on the letter without any reservation as to the off days requested by the claimant, the respondent agreed to the off days requested. This was in our considered opinion confirmed in the Board meeting of 28/3/2013 which approved financial support to the claimant for his academics but only asked him to officially request for study leave. We find the letter dated 3/4/2013, **exhibit C14** attached to the claimants written witness statement concerning the claimant's abscondment of duty, irrelevant and not applicable. The pleading of the respondent that the claimant locked the hospital canteen, accounts house and the hospital house he was occupying and disappeared with the keys is not sustainable in the absence of evidence to support the same. On the contrary the claimant in his written witness statement testified that it was the respondent who locked the main entrance to his office with a new padlock. We have no reason to disbelieve this evidence specially given **exhibit C7** attached to the claimant's witness statement and addressed to the chairperson Board of Directors, St. Elizabeth Magale H IV which sates:

> **"RE: LOCKING ME OUT OF OFFICE**
>
> **Greetings in the name of our Lord Jesus Christ.**

I wish to bring to your attention that yesterday 28/5/2013 I found the main door to my office replaced with the new lock and I have tried all my level effort to access the keys but all in vain.

The in-charge was not aware and my colleague in the department Sr. Grace's Phone contact is off and has not reported for work, and the askari Mr. George told me that it was locked by Sr. Grace and Mrs. Walukawo Dorothy the treasurer.

Sir, we are losing Trent in management of systems in this Health facility were same people have assumed powers and authority when not empowered.

I am appealing for your intervention also help me get my salary and salary arrears so that I can continue with my studies and complete well….”

The above letter in our considered view confirms the fact that it was the respondent who locked the office and not the claimant. It was therefore surprising for the in-charge of the St. Elizabeth Centre IV in a letter dated 31/12/2013 (**Exhibit C10**) attached to the witness statement of the claimant) to direct the claimant to open the accounts office and arrange the handover of the same office. In this letter the in-charge, Dr. Masai Wasu Steven refers to a Board of Governors meeting of November 2013 under Min. 10/11/2013. Although these minutes were not adduced in evidence, for the sake of completeness of discussion we checked in the respondent's trial bundle to ascertain the same. We did not find any minutes reflecting deliberations in November 2013. We could only find minutes of the meetings of 29/07/2014 and 25/10/2014. The claimant is not on record as having attended any of the two meetings. The meeting of July 2014 decided to break in and broke into the canteen and accounts office. The meeting of October 2014 discussed the claim of the claimant which he had already referred to the Labour Officer and took certain positions which would be discussed in a subsequent meeting on 30/10/2014. The letter of Dr. Masai Wasu Steven referred to above, relied on a Board of Governors meeting which is not reflected on the record as having instructed him to ask the claimant to handover office.

In the absence of evidence that such a meeting took place and that such a minute as **Min.10/11/2013, bullet 8** existed, we cannot be heard to say that the claimant was legally asked to arrange a handover of office as the letter suggests. Even if such a minute existed, the claimant was entitled to be heard in accordance with **Section 66 of the Employment Act**. Given that the claimants main entrance to his office was locked by the respondent and later on he was asked by the respondent to hand over the same office we find that these two acts of the respondent constituted termination and indeed we declare that the respondent terminated the claimant. Since the termination was not done in accordance with **Section 66 of the Employment Act** which provides for a hearing before termination, it is our finding that the said termination was unlawful. The first issue is therefore decided in the positive.

The second issue is **whether the claimant is entitled to the claims made and remedies sought.**

(a) <u>USHS. 13,650,000/= AS UNPAID SALARY ARREARS</u>

In his submission, counsel for the claimant relying on exhibit C9, argued that his client was earning 450,000/= per month and that the respondent started paying less salary leading to arrears in September 2012. He contended that by May 2013 the arrears had accumulated to 3,600,000/=. He argued that by December 2013 when the claimant was asked to handover, another 3,150,000/= had accumulated in salary arrears totaling to 6,750,000/=.

In his evidence, Paragraph 25, the claimant testified that his salary started accumulating from the month of September 2013 up to March 2014 when the respondent partly paid him and balances amounting to 1,350,000/= remained. If this evidence is correct (which we think it is given there was no challenge in cross-examination) then the amount owing by end of May 2013 must have been 1,350,000 + 900,000/= for April and May which comes to 2,250,000/= and not 3, 600,000/= as claimed by counsel in his submission. Consequently, when exhibit C6 of the claimant attached to his statement is read together with his evidence paragraph 25 and 26, it is discovered that the correct salary arrears by May 2013 is 2,250,000/=. Counsel argued that from June 2013-Dec 2013 the claimant was

not paid, and this amounted to 3,150,000/=. In his evidence the claimant under paragraph 26 of his written witness statement testified that from the month of April/2013 to date he had never been paid his salary arrears up to date amounting to 13,650,000/=. However, once the salary arrears by May 2013 and the salary arrears from June 2013 – December 2013 mentioned about are added up, they make much less than the claimed 13,650,000/=. Counsel correctly stated in submissions that the 13,650,000/= included unexpected and future earnings which he seemed to have correctly guessed that this court would not allow. Accordingly, we allow 5,400,000/= as salary arrears up to December 2013 when the claimant was terminated.

(b) NSSF REMITANCES/CONTRIBUTIONS

The evidence of the claimant did not disclose any unremitted NSSF contributions and neither did counsel refer to any unremitted NSSF contributions in his submissions. However, given the legal provisions in the NSSF Act relating to NSSF contributions and given that we have allowed salary arrears, the necessary deductions and additions of 5% and 10% respectively shall be effected and deposited into the NSSF account of the claimant.

(c) COMPENSATION FOR THE REMAINING CONTRACTUAL PERIOD

We do not see any basis for grant of compensation under the above heading. Nothing was submitted in respect thereto by counsel for the claimant. This prayer is denied.

(d) GENERAL DAMAGES

Relying on various cases including **Grace Tibihikirra Makoko Vs Standard Chartered Bank (U) Ltd. LDR/316/2015 whereas court awarded 1,000,000,000/=**, counsel submitted that the claimant should be awarded 80,000,000/=.

Grant of General Damages is a discretion of the court which will always depend on circumstances of a given case including though not limited to the extent of the loss, the manner in which the aggrieved party was handled, and whether or not the aggrieved party did anything to mitigate the loss. Consequently, the award of

certain amount of damages in a given case may not necessarily be a guideline in another case since no case can be with exactly similar circumstances.

In the instant case the claimant earned 450,000/= per month and according to counsel he was employed on permanent terms to retire when he was 60 years as spelt out by the employment manual **exhibit C17 at page 29**. True, by virtue of the appointment letter exhibited as C2, an attachment to the claimant's witness statement, the claimant was employed on permanent terms. Given the nature of his job and the circumstances of termination, we are of the view that general damages of 12,000,000/= will be sufficient.

(e) INTEREST

Given the inflationary nature of the currency, the claimant shall be entitled to 15% per annum as interest on the above sums awarded till payment in full.

Counsel for the claimant prayed for payment in lieu of notice, gratuity and severance allowance and vehemently submitted that the claimant was entitled. However, none of these reliefs was included in the memorandum of claim. The case of **DFCU VS DONNA KAMULI Civil Appeal No. 121/2015 (court of Appeal**) is of the strong legal proposition that prayers and submissions on reliefs not prayed for in the claim or plaint cannot be awarded as remedies by the court. Accordingly, these claims are disallowed.

In conclusion, the clam succeeds in the above terms with no orders as to costs.

Delivered & Signed by:

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

PANELISTS

1. Mr. Rwomushana Reuben Jack ……
3. Ms. Mugambwa Harriet Nganzi ……

4. Ms. Rose Gidongo ……

Dated: 23/10/2020