

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 046 OF 2015  
(ARISING FROM LABOUR DISPUTE NO. MASAKA/163/ 2015)**

**FRANCIS OUMA MUDIBO .....CLAIMANT  
VERSUS  
OAKWOOD INVESTEMENTS LIMITED.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Mugambwa N. Harriet
3. Ms. Rose Gidongo

**Award**

By an amended memorandum of claim, the claimant stated that having been employed by the respondent in the month of June 2002, and having worked diligently with promotions along the way, he was unlawfully terminated without notice on 25/10/2007. He prayed court to grant him various reliefs as listed in the amended claim.

In reply the respondent filed a memorandum in reply wherein it stated that the claimant on 16/09/2007 resigned from his job by letter, the respondent accepted the resignation, the claimant served out 1 months' notice and he left. Consequently, the claimant was not terminated according to the respondent and he has no claim against the respondent.

**Issues for determination**

No joint scheduling memorandum was filed to iron out the issues but the claimant filed his own memorandum. He spelt out issues which we think will dispose of the claim. They are:

**(a) Whether the claimant's employment was unlawfully and unfairly terminated.**

**(b) Whether the claimant is entitled to the remedies prayed for.**

### **REPRESENTATIONS**

The claimant was initially represented by Mr. Banturaki of Lugoloobi Associated Advocates but at the hearing Mr. Phillip Olupot of Elau & Ochom Advocates appeared for the claimant, Mr. Banturaki having been discharged by the court when he withdrew from representing the claimant. Mr. Mukiibi Semakula of MMAKS Advocates represented the respondent.

### **EVIDENCE ADDUCED**

In his written witness statement filed on 13/11/2017, the claimant testified that he was initially employed as helper in wiring construction at a fee of 3,500/= per day but later on it was increased to 5,5,00/= per day in addition to 30,000/= per month for accommodation and 2,000/= per day for feeding making a total of 195,000/- per month.

In his testimony, on 11/10/2007 the Assistant Managing Director one Ravi, agreed in a discussion with him to pay him an increased housing allowance of 250,000/= only on 25/10/2007 to receive a termination letter. In cross-examination the claimant denied having resigned but in re-examination he admitted to have requested for a resignation after which the Director called him and asked him to continue working.

The second claimant witness, one Magezi Abdulla testified that he worked with the claimant. His testimony was generally about working conditions of workers and according to him the claimant was terminated by one Ochola.

One Kiwanuka Tom was the last witness of the claimant who like the second witness testified about general poor working conditions.

The respondent adduced evidence from one witness, Capt. Ochola, the administration Manager of the respondent who testified that the claimant filed his resignation letter dated 16/09/2007, exhibited as **REI** and after serving his

notice on 25/10/2007 the respondent prepared to pay his terminal benefits which he rejected. According to him the claimant was never terminated.

### **SUBMISSIONS**

Counsel for the claimant submitted that the claimant wrote a resignation because he had been threatened out of the job because of his activism with the labour union. According to counsel the resignation was rejected and the claimant was advised to continue working only later to be terminated without notice or reason.

In the alternative counsel argued that the claimant was constructively dismissed. He relied on the case of **Coca cola East Africa Ltd. Vs Maria Kagai Lilaga, Civil Appeal No. 20/2012 (court of Appeal of Kenya)**. He contended that the context in which the resignation letter was written was not voluntary. It was his submission that the conduct of the employer in negotiating and failing or neglecting to improve the working conditions of the employee amounted to intolerable conduct and was in breach of the Employment Act.

In reply to the above submission, counsel for the respondent argued vehemently that the claimant on his own will resigned as indicated in **RI paragraph (e)**. He argued that even if the respondent transferred the claimant to another station, it was the respondent's duty to provide work and that this could not constitute bad working conditions.

According to counsel by **exhibit R2**, the respondent accepted the claimant's resignation and processed his terminal benefits. He asserted that the period between 16/9/2007 when the claimant resigned and 16/10/2007 was a one month's notice that the claimant served.

### **DECISION OF COURT:**

Although under **Section 65 of the Employment Act**, resignation is not mentioned as one of the methods of terminating an employer – employee relationship, based on the freedom of contract and the legal principal that an employee is free to give his labour to an employer at agreed terms and that no employee can be forced to provide labour to a given employer, resignation is considered a method

of the employee to end the relationship. Under **Section 65(c) of the Employment Act**, the contract of service may be ended by the employee with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee. This may include a resignation by the employee precipitated by the unreasonable conduct of the employer which is termed as constructive dismissal.

The case for the claimant, as we understand it, is that after resigning due to threats of the respondent over labour union matters, the resignation was rejected and he continued to work until he was terminated without any notice or any reason. In the alternative, the case for the claimant is that he was constructively dismissed since his resignation was not voluntary.

The case for the respondent, as we understand it, is that the claimant voluntarily resigned and his resignation was accepted by the respondent except that the claimant served a one month's notice after which his terminal benefits were calculated but he refused pick them.

The claimant in his evidence stated that his resignation was rejected and he continued to work till he was terminated. We have not seen any rejection of the resignation by the respondent. The claimant himself avoided mention of his resignation in his evidence until he was challenged in cross-examination. In our view, the intentional avoidance of the resignation in his evidence was a manifestation of his untruthfulness in as far as his resignation was concerned.

The resignation letter is dated 16/09/2007 and in his evidence he says he was terminated on 25/10/2007. The evidence on record is short of a termination letter which under **paragraph 19** of the written statement of the claimant is said to have been issued to him by the respondent. We do agree with the respondent that what the claimant termed as a termination letter was a letter addressed to him on 25/10/2007 about his terminal benefits. This is **annexure "F"** to the respondent's list of exhibits.

In **Nyakabwa J. Abwooli Vs Security 2000 Limited LDC 0108/2014**, this court held that in order for the conduct of the employer to be deemed unreasonable within

the meaning of **Section 65(1) of the Employment Act**, such conduct must be illegal, injurious to the employee and make it impossible for the employee to continue working. Such conduct of the employer must amount to a serious breach and not a minor or trivial incident. In **Kandimaite Alfred Vs Centenary Bank LDC 024/2014** this court held that the employee would only take advantage of **Section 65(1) of the Employment Act** if the unreasonable conduct of the employer was the reason of resigning or stopping to work.

The reasons for resignation in the instant case were clearly set out in the resignation letter. They included: Domestic issues related to the claimant's son's studies and so he could not take the transfer; management acted as if above the law; he needed rest to be with his family. We have perused the whole letter of resignation and we do not find any influence of unreasonable conduct of the respondent. The claimant did not like the transfer because of the domestic issues and we do not think this amounted to unreasonable conduct of the employer. Domestic issues are only sorted out by the employee at his/her home and they need not interfere with the performance of the employee at the work place. Considering domestic issues as a factor in deployment of an employee is only discretionary to the employer and as such no employer is by law obliged to consider them. This court would have believed the claimant if he had explained how management was above the law and how this effected his work and eventually led to his resignation.

The submission of counsel for the claimant that the claimant was technically harassed and threatened to be dismissed for engaging in labour Union activities thus causing resignation is not acceptable to us. This is because nothing close to this submission is in the resignation letter and in his evidence he avoided adducing such harassment and threats as reasons for his resignation. In cross-examination the claimant himself denied having tendered in a resignation.

It is our finding however that the claimant on 16/09/2007 wrote to the respondent a letter titled **Resignation request**.

In the case of **Cairo International Bank Limited Vs Victoria Kawoya, Labour Dispute Appeal No. 004/2019**, this court held that **in the event of an employee**

**resigning freely the presumption is that he/she is set to leave the job and it is only mutual agreement between the employer and the employee that has the effect of withdrawing the resignation and this means that the effective date of a lawful termination of the employment is the date the employee is set to resign.**

The last paragraph of the letter of resignation in the instant case provided

**“NB: I do request the company management to acknowledge the receipt of my request and process it in not less than 3 months from this date.”**

A letter of resignation is expected to include a definite and certain date on which the resignation takes effect and therefore the employment terminated. It is our considered opinion that the date of termination by resignation is as important as the date of assumption of duty by the employee.

The case of **Cairo International Bank (supra)** is of the legal proposition that once an employee decides to resign or retire prematurely, the employer is entitled to begin the process of replacing the said employee and therefore the period between the date that the letter of resignation is written and received by the employer and the date the resignation takes effect should be taken as notice for the employer to get another employee. Although the letter of resignation in the instant case did not spell out the exact date of resignation and therefore termination of services, by saying not less than 3 months, it indicated the date of resignation as 3 months or more from the date the letter was written. Termination of services between the claimant and the respondent therefore was expected to be either on 16<sup>th</sup> of December 2007 or thereafter unless there was an unequivocal agreement between the two parties revoking the resignation.

The spirit in the **Cairo International Bank Vs Victoria Kawoya (Supra)** is that change of the notice period by the employee as to when such employee is to retire did not revoke the resignation or termination of employment as earlier notified and did not place an employee back to the employment relationship but only postponed the date of resignation and the period given to the employer to seek and find a replacement. The effect of tabulating terminal benefits and actually letting the claimant go before the date in the resignation letter did not

amount to an unlawful termination but was an acceptance by the respondent of a lesser period to let the claimant leave. We do not however, accept the contention of the respondent that the claimant was only entitled to 1 months' notice which he served. In the absence of a written contract nothing revealed to us the obligation of the claimant to give notice to the respondent before terminating the employment although under **section 58 of the Employment Act the employer** is obliged to give such notice. The claimant intended and served the respondent with the date to voluntarily leave the job. If therefore the respondent needed a lesser period to find a replacement, it was incumbent upon such respondent to pay the claimant in lieu of notice of the period. Accordingly, it is our finding that the claimant was set to resign on 16/12/2007 and the mere fact that the respondent terminated the relationship before the said date did not constitute unlawful termination but entitled the claimant to payment in lieu of the lesser period.

The first issue is in the negative.

The second issue is whether the claimant was entitled to the remedies sought.

(a) **Severance Allowance**

**Section 87 of the Employment Act** provides for circumstances that warrant payment of severance. Resignation of the claimant which terminated the employment is not one of the circumstances mentioned in the law. The prayer of severance is therefore denied.

(b) **Overtime**

The claimant prayed for 771 hours of overtime equivalent to 851,886. The evidence on the record does not support this assertion. The claimant did not show how he arrived at this figure and did not prove that the 771 hours claimed in overtime were done outside his work schedule.

(c) **House Rent**

No evidence was led to show that the claimant was paid his house rent which was admitted by the respondent as his entitlement under **paragraph**

**2(b)(ii)** of the witness statement of one Cap. Ochola the only respondent witness. Although the respondent testified that this money was always paid to the claimant in cash, nothing close to a cash voucher was produced as evidence that the claimant was paid. It is our position that the claimant having claimed that he was not paid an amount not contested by the respondent, the burden of proof of such payment shifts to the respondent. The claimant claimed 22,000,000/= as house rent but he at the same time claims that he worked for the respondent for 5 years. The respondent under **paragraph 7** of the witness statement states that the claimant worked for 3 years. Under **Section 59 of the Employment Act** the employee is required to provide in writing certain particulars of engagement which (among) other things) includes:

**“(b) The date on which employment under the contract began, specifying  
the date from which the employee’s period of continuous service for the purposes of this Act shall commence.**

It is our strong opinion that even if we believed that the claimant was earning a daily wage, this fact would not exonerate the respondent from application of the above section of the law. Nothing close to the particulars mentioned was adduced by the respondent in evidence. The burden to prove that the said section of the law was complied with lay on the respondent since under **Section 60 of the Employment Act** which provides:

- “(a) The written particulars referred to in Section 59, together with any notice of change, shall be admissible evidence of the existences of the terms and conditions about which there is a dispute; and**
- (c) There shall be a rebuttable presumption that the terms and conditions of employment are accurately stated in the written particulars.**

Consequently, in the absence of compliance with both sections of the law, the statement in **exhibit RE4** that the claimant started work on 25/01/2004 to October 2007 implying he worked for 3 years is not acceptable to us. On the contrary we take the evidence of the claimant under his **paragraph 2 of the**



**written witness statement** that he started work with Iglo Foods Industries in Majanja June 2002. The respondent did not deny that IgroFoods Industries was part of the respondent. Under **paragraph12** of the respondent's witness statement the respondent denied having employed the claimant in Igro/ and or Marine Agro Processing Limited and denied transfer of employment to the respondent but such denial did not prove the terms and conditions of employment including when the claimant started work. Neither did such denial prove that the Igro Company was not part of the respondent. It is our finding therefore that the claimant started work with the respondent in June 2002 as a helper in wiring and construction at a salary of 3,500/= per day and that later on he was transferred to Marine and Agro Industries in Jinja until 27/1/2004 when he was moved to Masaka, as per his written witness statement, making it 5 years of work before he resigned in October 2007. The question for his court is **how much then was the claimant entitled to as House rent?**

Under paragraph 16 of his witness statement the claimant testified that on 11/10/2007 he met the Assistant Managing Director one Ravi who agreed to increase his Housing allowance to 250,000/= just like other employees in the same position, but on 25/10/2007 he was terminated. We do not see the basis of 22,000,000 claimed as rent since the respondent admitted 30,000/= per month and the claimant said his Housing was increased on 11/10/2007 14days before he was terminated.

Accordingly, we allow 30,000x12x5 which equals to 1,800,000/=.

**(d) Payment in lieu of leave (2007) of 195,000/=**

Leave entitlement is usually only allowed once an employee showed that he/she applied for leave and leave was refused by the employer since the employee is under a duty to show that she/he was in the first place interested in taking leave and this is in order for the employer to prepare someone to do the duties of one on leave. (see **Chandia Christopher Vs Abacus Pharma (Africa) Ltd. L.D.R 237/2016, Mbiika Denis Vs Centenary Bank L.D.C. 023/2014".**)

However, in the instant case the respondent while preparing the terminal benefits admitted, to accumulated leave of 96,250/= and we have no reason to grant more since the claimant did not show how he arrived at 975,000/= without

showing either an oral request or a written request for it and its rejection by the respondent.

### **Gratuity: of 585,000/=**

The respondent admitted to pay 165,000/= as gratuity on the basis that an employee as a policy would earn 10 days for every year of completed service and the claimant completed 3 years. However, we have already held that the claimant did 5 years. Accordingly, the entitlement shall be 5,500x10x5 which equals to 275,000/=.

### **Repatriation**

According to **Section 39 of the Employment Act** repatriation only arises:

**“(a) On the expiry of the period of service stipulated in the contract.**

**(b) On the termination of the contract by reason of the employee’s 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: and**

**(d) On the termination of the contract by order of the labour officer, the Industrial Court or any other court.”**

In the instant case the claimant terminated his own contract by resignation. This method of termination is not provided for under the above section of the law and therefore there is no entitlement to repatriation. The prayer is denied.

### **Certificate of service**

In accordance with **Section 61 of the Employment Act**, the respondent shall issue to the claimant a certificate of service.

### **General damages**

This court has in the course of this Award found that the claimant terminated his own employment by resignation. Consequently, there is no justification for general damages and so the prayer for the same is denied.

### **Salary since termination.....**

This prayer constitutes future earnings. An employer under **section 41(6) of the Employment Act** is only bound to pay salary to an employee for only work done as agreed. This section states **“An employee is not entitled to receive wages in respect of any period where he or she is absent from work without authorization or good cause except that in the case of an employee who has completed at least three months’ continuous service with his or her employer, the following shall not constitute absence without cause-**

- (a) Absence attributable to the occurrence of exceptional events preventing the employee from reaching his or her place of work or from working;**
- (b) Absence attributable to a summons to attend a Court of law or any other public authority having power to compel attendance;**
- (c) Absence attributable to the death of a member of the employee’s family or dependent relative, subject to a maximum of three days’ absence on any one occasion and a maximum of six days in any one calendar.”**

We are certain that both the fact of termination of employment and the process of litigation culminating in an Award or Judgement in favor of the employee do not constitute exceptional events within (a) above.

We are of the strong opinion that exceptional circumstances referred to above are meant to be for a short period within which an employee is unable to come to work while she or he is an employee. Therefore, once the employee ceases to be an employee by termination of whatever kind, the above section of the law ceases to apply to him or her. Thus in the case of **Simon Kapio vs Centenary Bank, L.D.C 300/2015** this Court held **“ It is well settled that the only remedy to the person who was wrongfully dismissed was damages.....therefore the claim for prospective earnings cannot stand. We are of the considered view that the**

claim for prospective earnings was speculative given that a person may not serve or complete his or her employment term because of circumstances such as death, lawful termination of employment, decision to change employment and closure of business among others” (see also *Kamusiime Arthur vs Registered Trustees of Church of Uganda L.D.R 142/2019, Rebecca Nassuna vs Equity Bank L.D.C 006/2014*).

In the instant case, the claimant was not unlawfully terminated but even if he was, because of the above reasons he would not be entitled to salary since termination and so this prayer is denied.

Consequently, and in the final analysis an Award is hereby entered partly in favor of the respondent and partly in favor of the claimant in the following terms.

- (a) The claimant was not unlawfully dismissed.
- (b) The claimant resigned from his job voluntarily and therefore terminated his own employment.
- (c) The claimant was entitled to **330,000/=** being the amount he would have earned had he not been terminated before the date indicated in his resignation request.
- (d) As admitted by the respondent the claimant shall be paid **96,250/=** as accumulated leave.
- (e) The claimant will be paid **1,800,000/=** as rent.
- (f) The claimant shall be paid **275,000/=** as gratuity.
- (g) The respondent shall issue a certificate of service to the claimant.
- (h) No order as to costs is made.

**BEFORE**

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

**PANELISTS**

- 1. Mr. Ebyau Fidel .....
- 2. Mr. Mugambwa N. Harriet .....

3. Ms. Rose Gidongo .....

DATED 10/11/2020