

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE APPEAL NO. 009 OF 2014  
[ARISING FROM KCCA/NDC/C.B/114/2014]**

**BETWEEN**

- 1. ST. KIZITO S.S.S. BUGOLOBI**
- 2. BOARD OF GOVERNORS OF ST. KIZITO TO S.S.S. BUGOLOBI.....CLAIMANT**

**VERSUS**

**ELIZABETH ODYEK .....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugamba Nganzi
3. Ms. Rose Gidongo

**AWARD**

This is an appeal from the decision of a Labour Officer sitting at Nakawa. A memorandum of appeal on the record shows the following grounds of appeal.

- 1) That the learned Commissioner of Labour erred in law and fact when he held that the respondent was unlawfully terminated.

- 2) The learned Commissioner Labour erred in law and in fact when he held that the applicants (appellants??) pay rent arrears from 1992 to 2008.
- 3) The learned Commissioner erred in law and in fact when he ignored that the matter was being heard at Nakawa Labour Office.
- 4) That it was in the interest of justice and jurisprudence in Uganda that this matter is adjudicated upon by the industrial Court.

Before the appeal could be heard on merits both parties reported that they had settled part of the appeal leaving the question of rent, leave and damages for determination by this court. Both parties applied and conceded to each other's application to adduce additional evidence in an attempt to prove or disapprove the said questions. Both parties adduced evidence and both opted for non-cross examination.

We must state from the beginning that in allowing each of the parties to adduce evidence, each of them was expected to adduce only evidence touching the questions above mentioned and only evidence that could not have been available at the hearing before the Labour Officer. However, the evidence adduced before this court was as if the case was being heard denovo which was not supposed to be the case. We will therefore only refer to only the piece of evidence that relate to the questions before this court.

Under paragraph 28 of her witness statement, the respondent claims rent for 8 months in the year 1997, for the years 1998-2004 and 2005-2008.

In his submission, counsel for the respondent seemed to rely on what he called government policy that the school ought to accommodate the Head teacher. He submitted that although the school accommodated the respondent as Head

teacher she was required and actually paid rent for the accommodation. According to counsel this was evidence adduced before the Labour Officer which the Labour Officer accepted and granted Orders for the respondent to pay the rent.

The appellant disagreed with the above submission. Referring to the school pay records submitted to this court on 10/3/2010, counsel argued that the respondent's rent was paid to her during the years 2013, 2012, 2009 and 2004-2008. Counsel for the appellant also referred this court to paragraph 18 and 22 of the respondent's evidence filed on 12/12/2017 (we have found that this evidence referred to was filed on 29/09/2016) to the effect that the respondent paid rent to the school from May 1997 till she left the school. In his submission, the respondent failed to adduce evidence that she in fact paid this rent and since she was the custodian of the school documents she ought to have produced receipts of such payments. According to counsel, the respondent was paid her rental amounts as per the documents filed.

On leave entitlement, the appellant submitted that the respondent used to set her leave days during the holidays as per the terms and conditions of service **R. 10)**. He relied on the authority of **Awio Rose Filder Vs the School Management Committee Hofman C.O.U Nursery and primary School & Another - LDR 187/2016**, for the proposition that unless the respondent proved the contrary the presumption is that for a teacher the mandatory holidays tantamount to grant of annual leave.

The respondent's counsel strongly argued that the terms and conditions of service of the appellant were contrary to the provisions of **Section 54 of the Employment Act** which provides for leave days of an employee. According to counsel, the terms and conditions of service of the appellant were null and void to the extent that they provided for forfeiting of leave not taken in a given year because **Section 4(a) of the employment Act** provides for nullity of such a provision in any contract of employment. According to counsel, the ruling in the case of **Amio Rose Fielder Vs the School Management committee Hofman** was per incurium since the law does not impose any obligation on the employee to apply for leave before getting compensated for leave not taken and therefore the respondent was entitled to compensation for leave not taken for the 17 year she served the appellant.

As to the question of damages, counsel for the appellant argued that since the respondent was paid all her dues which included gratuity, in lieu of notice, unfair termination, not being given a hearing and repatriation, she could not claim general damages since the payment restored her to the same position.

Counsel for the respondent, on the other hand argued that given the evidence adduced on medical expense under paragraph 109 of the respondent's statement and given the authority of Uganda **Development Bank Vs Florence Mufumba, Civil Appeal 24/2015** the respondent is entitled to special damages of 3,393,000/= as medical expenses and 120,684,402/= as 82 months' salary from date of termination till date of judgement. Counsel prayed for aggravated damages of 200,000,000/=.

## Decision of court

### (i) Rent Arrears

On perusal of the lower proceedings before the Labour Officer concerning rent, it is difficult to make sense out of them. There is nothing that can be properly referred to as proceedings before the Labour Officer. Communication about rent payment can only be found in documents **R26, R27, R28** filed as respondents exhibits whose effect is the contention as to whether it was possible that the respondent could earn 200,000/= as salary and at the same time pay the same amount as rent. There seem to have been a mediation out of which the Labour Officer ordered payment of “rent” arrears from 1997 – 2008 at a rate of 110,000/= and 235,000/= which the appellant contested.

There is no credible evidence on the record that the Labour officer considered to award the respondent rent arrears. After granting the respondent leave to adduce evidence on appeal it was expected that evidence relating to her entitlement to rent arrears or to her reimbursement of rent she had paid during her employment would be adduced. We agree with counsel for the appellant that no such evidence was adduced from the respondent. On the contrary the appellant produced pay records of the appellant for the years 2004, 2005, 2006, 2007, 2008, 2009, 2012 and 2013 showing payment for staff who included the respondent whereby the respondent was indicated to have been paid money for rent.

In the absence of any evidence by the respondent that money she received as rent according to the above pay records, was at the same time paid back to the appellant, she cannot be heard to complain that contrary to government policy she was paying rent for her accommodation as Head teacher. There is no legal basis for the claim of rent arrears and it is hereby dismissed.

**(ii) Leave entitlement**

It was contended for the appellant that as head teacher the respondent got all her leave days during holidays and that this was in accordance with her terms of employment. It was also contended for the appellant that even if the holidays did not constitute leave days, the respondent never applied for leave and she was never denied leave on application making her claim baseless.

The respondent contended that the right of leave provided under **Section 54 of the Employment Act** could not be overrun by any contractual obligation between the parties and by any terms and conditions of service and that any court decision to the contrary would only be per incurium.

We perused carefully the submissions of both counsel. The terms and conditions of service of the appellant exhibited as respondent's "R10" provided

**" 15.0 Leave**

**Annual leave**

**15.1. Every employee engaged on fulltime shall be entitled to annual leave of thirty (30) calendar days on full pay.**

**15.2. If annual leave is not taken within the current year, it shall be forfeited.**

**The Head teacher shall have power to recall an employee on leave when**

his or her services are required. An employee who is recalled under this clause shall not forfeit their remainder of his or her leave.....”

Section 54 of the Employment Act provides

“54 Annual leave and Public holidays

(a) An employee shall, once in every calendar year, be entitled to a holiday with full pay at the rate of seven days in respect of each period of a continuous four months’ service, to be taken at such time during such calendar year as may be agreed between the parties.....”

When confronted with a similar situation this court in **Awio Rose Filder Vs The School Management Committee Hofman C.O.U Nursery and Primary school and Registered Trustees of the Cura of God East African (Uganda National Education Secretariat)** had this to say;

“Section 54 of the Employment Act provides that an employee is entitled to annual leave. However, the annual leave is expected in a given year to be granted to the employee at an appropriate time convenient to the employer so that the leave of a given employee does not disorient the whole organization. The employer must find alternative source of manpower to do operations of the employee who is on leave. Consequently, one has to apply for leave and the employer has to fix the date for the employee to go on leave. In the absence of evidence that the employee applied for leave and it was rejected by the employer, such employee would not be entitled to payment in lieu of leave. There is no evidence on the record that the claimant applied for leave and that the respondent denied her leave. It is a general practice that teachers go on

holiday with their students and this culminates in their days of annual leave. Unless the claimant proved the contrary, the presumption would be that as a teacher the mandatory holidays tantamounted to grant of annual leave to the claimant. For these reasons, the prayer for payment in lieu of leave is rejected.”

We do not accept the submission of counsel for the respondent that the above decision was taken per incurium. As is clearly noticed, the court considered **Section 54 of the Employment Act** as it expounded on circumstances when an employee may go on leave given that the section provides for an agreement between employer and employee as to when such employee can go on leave within a given calendar year. Consequently, until this decision is overturned by a superior court, it will remain the legal position.

In the instant case, the respondent having been the Head teacher ought to have applied for leave in the course of each calendar year for her employer to consider and it would be only if the employer refused within the calendar year to grant her leave that she would be entitled to payment in lieu of leave.

Accordingly, the claim is rejected.

### **(iii) Damages**

This court granted the respondent leave to file a cross appeal on 12/8/2016. However, it appears that no cross appeal was filed because the parties continued in negotiations in a bid to settle the whole appeal. Eventually a settlement was reached leaving out the issue of damages as unsettled.



In Netis UGANDA VS WALAKIRA, L.D. Appeal 2016 and in JESSICA Namayanja Vs Raphael Hospital Nsambya , L.D. Appeal 019/2015, this court was emphatic on the fact that a labour officer has no jurisdiction to grant a remedy of damages and that his/her jurisdiction is limited to what is provided for under **Section 78 of the Employment Act**. Therefore, no Labour officer can be faulted on appeal for having failed to grant a remedy of general damages although such a Labour officer has a right to refer the issue of damages to this court.

The issue of damages did not originally arise from the present appeal. It only arose as a result of **Civil Miscellaneous Application No. 36/2016** for leave to file a cross appeal out of time which was granted by this court in a ruling delivered on 12/08/2016. The application sought to file a cross appeal on the Labour officer's failure to rule on the issue of damages.

However, despite the court's grant of the above application, no such cross appeal was filed in this court, although both parties agreed to address the court on the same issue.

In the absence of a cross appeal on the court record we find it very intricate to discuss the issue of damages and eventually give a ruling on it. In our considered view it was erroneous on the part of both parties to address the court on the issue when it was neither raised in the memorandum of appeal nor in a Cross Appeal. We decline to make any orders.

Before we conclude this appeal, we would like to discuss the submission of counsel for the respondent on the amount paid to the respondent under settlement.

According to counsel the calculation of the agreed sum was short by 5,389,739.05/= which the appellant ought to pay to the respondent. He contended that the appellant paid 23,197,036/= against 28,586,775.05/=.

Although the court record does not contain any signed consent settlement by both parties as to how much was payable to the respondent, it is clear on the record that the appellant paid the respondent 23,197,036/= as revealed by Mr. Emurwon, counsel for the appellant on 14/11/2017 as he informed court:

**“Parties were advised to settle on 31/07/2017 we paid the respondent 23,197,036/=...”**

This is despite the fact that earlier on 19/05/2017 Mr. Emurwon is on record as said:

**“There was a consent which was signed on the issues agreed. Her client has refused to sign the consent. I have discussed with my clients. They are willing to transfer the amounts agreed upon pending her signing the consent. The only issue is that the claimant wants more money. I have discussed with the Board of Governors. They have agreed to add 7,000,000/= on top of the amount agreed to enable settle the matter. The total would be 30,000,000/=. However, on rent and leave, my client says she was paid.”**

From the above submission, it may not be exactly true as counsel for the respondent seems to suggest, that the computation of 35,368,762/= by the commissioner labour was agreeable to the appellant. It is not possible from the court record to conclude as counsel for the respondent concluded, that it was

agreed to calculate gratuity at 17 years of service and that the appellant calculated entitlement and PAYE wrongly giving a deficit of 5,389,739.05/=.

There is nothing on the record to suggest that there were any agreed items onto which the respondent was under paid. However, since the appellant agreed to pay the respondent 30,000,000 UG SHS but paid less by 6,802,964 UG SH, we form the opinion that the appellant ought to pay this much and it is so ordered.

In the final analysis, the appeal succeeds with a declaration that the respondent failed to prove entitlement to either rent, leave payments or damages although she is entitled to the full amount the appellant agreed to pay her. No order as to costs is made.

**Delivered & signed by:**

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

**PANELISTS**

1. Mr. Ebyau Fidel .....
2. Ms. Harriet Mugamba Nganzi .....
3. Ms. Rose Gidongo .....

Dated: 11/09/2020