

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE NO. 139/2020

ARISING FROM KDLG/LC/07/2020

JANE NYIRAMUGISHACLAIMANT

VERSUS

KILEMBE MINES HOSPITAL

STAFF SACCO RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MS. ADRINE NAMARA**
- 2. MS. SUSAN NABIRYE**
- 3. MR. MICHEAL MATOVU**

AWARD

BRIEF FACTS

The Claimant brought this claim for declarations that; the Respondent in breach, terminated her contract of employment, she is entitled to 1 months' salary in lieu of notice of termination, the Respondent unlawfully refused to pay her salary for April and May 2020, an order compelling the Respondent to pay her outstanding salary, General damages and costs of the suit.

When the matter came up for hearing on 5/10/2020, the Claimant and her lawyer were absent with no explanation. We were satisfied that the Claimant was properly served by court and she received service through her lawyers. The matter was therefore dismissed for want of prosecution, with no order as to costs.

The Respondent however had a counter claim and prayed for the following:

1. A declaration that the counter Respondent suspended herself from employment with the counter claimant.
2. A declaration that the conduct of the counter Respondent of suspending herself from working with the counter claimant and never to return constitutes a termination of the contract of employment at the option of the employee
3. An order that the counter Respondent pays the costs of the counter claim.

REPRESENTATION

According to the record the Claimant was represented by M/s Byamukama, Kaboneke and CO. Advocates, Kampala and the Respondents by Mr. Michele Goefrey of M/s Bagyenda and Co. Advocates Kasese Municipality.

THE COUNTER CLAIM

A counter claim is a cross action and unlike a set off, it may be continued even if the action is stayed or discontinued or dismissed. However, it must be one in which the Respondent could maintain a separate action.

In the instant case, in its Counter- claim, the Respondent relied on matters which were stated as grounds of its defence to the Claimant's claim. A perusal of the grounds of defence and the counter- claim in our considered view,

showed that there was no distinctive feature between the two. We found no distinction between the Counter-claim, the evidence adduced by the Respondent through its Manager a one Muhindo Richard in support of the Counterclaim and the Respondent's defence against the Claimant's claim. The Counter-claim therefore did not meet the conditions of a Counter-claim as provided under order 8 of the Civil Procedure Rules, because the Respondent did not establish a separate action against the Claimant.

In the Circumstances, having dismissed the main claim, this Counter-claim cannot stand. It is therefore disallowed with no orders as to costs.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. ADRINE NAMARA

2. MS. SUSAN NABIRYE

3. MR. MICHEAL MATOVU

DATE: 13/OCTOBER/2020