

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 103 OF 2016
[ARISING FROM LABOUR COMPLAINT NO. KCCA/ND/LC/036/2016]

BETWEEN

MBONYI JULIUSCLAIMANT

VERSUS

APPLIANCE WORLD LIMITED.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Beatrice Achiro
3. Ms. Rose Gidongo

AWARD

Brief facts

The claimant filed a claim in this court on 07/7/2016 claiming that having been employed by the respondent on 15/6/2015 by contract ending 15/6/2017, the respondent on 11/12/2015 without lawful justification and without any notice or following the process terminated the contract of service with immediate effect. According the

claimant, he was coerced to sign for one month less pay as notice. The claimant prayed for various remedies as listed in paragraph 16 of the claim.

In reply the respondent, stated that the claimant was terminated in accordance with the law and that therefore he was entitled to none of the prayers. The respondent contended that the claimant did not want to serve his notice period of six weeks in accordance with his employment contract and the respondent agreed to forego it but paid the claimant (2) two weeks' pay.

REPRESENTATIONS

The claimant was represented by Mr. Patson Arinaitwe of Messrs. Signum Advocates while the respondent was represented by Mr. Dusman Kabega of M/S Tumusiime, Kabega & CO. Advocates

Issues

The issues as stipulated by the claimant are:

- 1) Whether the claimant's termination was unlawful/unfair?**
- 2) Whether the claimant is entitled to remedies prayed for**

Evidence

On 19/08/2019, the claimant adduced evidence and was cross-examined by counsel for the respondent after which the case for the claimant was closed. At the instance of counsel for the respondent, the matter was adjourned to 1/11/2019 for the respondent to open their case. On this date court did not sit but on 2/12/2020 one Brian Kabafunzaki appeared for the respondent and stated that they were not aware of the case but Mr. Arinaitwe Patson for the claimant asserted that on being served the law firm representing the respondent informed them that they no longer had instructions whereupon Mr. Kabanfunzaki said he was not aware that instructions had been

withdrawn. The matter was re-fixed for hearing on 13/1/2021. On this date court did not sit but on 19/2/2021, the case was called for hearing and we were satisfied that the respondents had been served for that day. The application to expunge the evidence of the respondent from the record and allow the claimant to file submissions was allowed.

Submissions

It was the submission of the claimant that the termination was contrary to what is provided for in **Section 68 of the Employment Act** and that this made it unlawful. Relying on the authorities of **Benson Kanyangonga & 2 others Vs Bank of Uganda LDR 080/2014** and **Mary Pamela Vs Public Procurement of Assets Authority HCCS 063/2012** counsel reiterated the position in the latter case that an employer cannot unreasonably and without justification terminate the contract of an employee just because there is a clause in the employment contract that allows for payment in lieu of notice.

It was counsel's contention that the memorandum in reply of the respondent did not provide any answer to the claimant of unlawful termination, apart from bare denials.

Decision of Court

In his evidence the claimant asserted that his contract was for 2 years from 15/6/2015 with a probationary period of 3 months which he completed and was confirmed. In cross-examination the claimant insisted that he was not terminated while on probation although he had no letter confirming him after probation. He agreed that at the time of termination he had not completed 12 months on the job. He informed court in cross-examination that he signed a document foregoing notice pay because he had not been paid for November and that he was "yawning for 2 months without pay".

In re-examination, the claimant clarified that having begun work on 15/06/2015 he was on probation for 3 months from this date and that after this date there was no review of his performance.

We have no doubt that the claimant was employed by the respondent on 15/06/2015 on probation for 3 months.

Section 67 of the Employment Act provides

(1)

(2) *The maximum length of a probationary period is six months but it may be extended for a further period of not more than six months with the agreement of the employee.*

(3) **An employer shall not employ an employee under a probationary contract on more than one occasion.**

The contract of the claimant provided for 3 months' probation even though the law gave an allowance for 6 months.

The probationary period of the claimant was therefore expected by both parties to end on 15/09/2015 unless it was extended in accordance with **Section 67(2) of the Employment Act** as above mentioned. In the case of **M/s. Akello Beatrice vs World Vision Uganda, HCCS No. 072/2007** where the plaintiff had been placed at a 3 months' probationary period, His Lordship Remmy Kasule, (High Court Judge, as he then was) held:

“The above stipulation, in the considered view of this court, places upon the defendant an obligation to expressly inform the plaintiff, after the three months' probation period had expired, that his performance was not satisfactory and his probation period was being extended for another period and find out from her whether or not she agreed to the extension. In the

absence of that express communication, the plaintiff was entitled to assume, and to carry on her duties on the assumption that after the expiry of the three months' probationary period, she was now a regular, full time, employee subjected, like all other confirmed employees to annual performance reviews....”

Unless the probationary period is extended in accordance with the Section of the law above mentioned, an employee is presumed confirmed in appointment. This means that such employee will begin to enjoy benefits and privileges accorded to an employee under the Employment Act and such benefits include termination of employment only and only after due process of the law.

This court in the case of **Florence Mufumba Vs Uganda Development Bank, LDC 138/2014** held that whether an employee was terminated or dismissed from employment he/she was entitled to a justification as to why the employer was contemplating getting rid of him/her. **Section 68 (2) of the Employment Act** is very clear that the employer has to prove the reason for termination/dismissal. It provides

“The reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal genuinely believed to exist and which caused him or her to dismiss the employee.”

The supreme case of **Hilda Musinguzi Vs Stanbic Bank (U) Ltd., SCCA 05/2016** held that

“The right of an employer to terminate a contract cannot be fettered by the court so long as the procedure for termination is followed to ensure that no employee's contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation.”

In our interpretation the procedure referred to in the above Supreme Court case is the one embedded in **Section 66** and **Section 68 of the employment Act** which when not followed the termination will be at the unacceptable whims of the employer.

The Supreme Court decisions is a total reflection of the provisions of the **Termination of Employment Convention No. 58 of the International Labour Organization** to which the government of Uganda is a signatory and which convention was ratified by the government. The convention particularly stipulates that no employee should be terminated unless there is a valid reason connected with such employee's conduct or work based on the operation standards required of him under the contract. It is clear that in the instant case, there having been no extension of the probation contract, the claimant was presumed to have been confirmed from September 2015 and therefore before termination in Dec 2015, Sections 66 and 68 of the employment Act should have been applied.

Since the procedure of termination was flouted by the employer, the resultant termination/dismissal was not only unlawful but unfair and it is so declared.

REMEDIES:

The claimant abandoned prayers in paragraph 16(b), 16(d), and 16(h).

General damages

We appreciate the inconvenience, mental torture and emotional distress suffered by the claimant as he unlawfully lost his job. He had been employed for less than 6 months at a salary of 1,900,000/= net, according to his evidence. He occupied the office of Human Resource. Given the nature of his job and the time he had spent working and the salary he was getting. We consider 11,000,000/= sufficient as general damages.

Severance allowance

Section 87 of the Employment Act provides

“87 when severance allowance is due

subject to this Act, an employee shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more..... ”

Since the claimant was in the service of the employer for 5 months and 11 days, he is not entitled to severance. This prayer is therefore denied.

Punitive damages:

We have not found any circumstances that warrant punitive damages. We disagree with the contention of counsel that making the claimant wait for a day and making him return on another day for his entitlements called for punitive damages. The prayer is denied.

Wages of Ugandan shillings 980,000

The Claimant argued that he earned 1,900,000/= per month yet at termination he was paid 2,883,000/= which was only close to six weeks’ wages and sufficient only for payment in lieu of notice without the two weeks’ wages. In the submission of counsel for the claimant his client was entitled to 917,000/=

Regarding notice periods Section 58 provides

“58 Notice periods

1)

2)

3) The notice required to be given by an employer or employee under this section shall be –

a) Not less than two weeks, where the employee has been employed for a period of more than six months but less than 1 year.”

The Section does not provide for a requirement of notice where an employee has been employed for less than 6 months. After careful perusal of the contract of employment we did not find any terms relating to notice periods. Since the claimant was employed from 15th June 2015 to 11/12/2015 making 5 months and 11 days and in the absence of a clause in the contract for different notice periods section 58(3) is applicable to the effect that he was not entitled to notice. Accordingly, this prayer fails.

In the final analysis we find that the claimant has proved his case on the required standard and an Award is hereby entered in his favor in the following terms:

- 1) It is declared that the termination of the claimant was not only unfair but unlawful as well.
- 2) The claimant shall be entitled to 11,000,000/= as general damages.
- 3) The above amount shall carry interest of 15% from the date of this Award till payment in full.
- 4) No order as to costs is made.

Delivered & signed by:

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Beatrice Achiro
3. Ms. Rose Gidongo

Dated: 16/04/2021