

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 049/2020
ARISING FROM LD/015/2020(MUKONO)

ALLEN NAMUYIGA **CLAIMANT**

VERSUS

EXPORT TRADING CO. LTD **RESPONDENT**

BEFORE:

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

PANELISTS

- 1.MR. EBYAU FIDEL**
- 2.MS. HARRIET MUGAMBWA NGANZI**
- 3. MR. FX MUBUKE**

AWARD

BRIEF FACTS

The Claimant was employed by the Respondent Company in 2011 under the Exports/Documentation department, under the Coffee department. She initially earned Ugx. 880,000/- per month. According to her, by the time of her termination her salary had increased to a gross Ugx. 1,117,143/- per month. On 7/4/2015, she developed pregnancy complications and fell sick leading to her admission in Hospital. On 27/04/2015, she returned to work after sick leave, and found that her position in the coffee department had been given away to

another officer. She was transferred to the Accounts department, but no duties were assigned to her. As a result she left employment and according to her, this amounted to unlawful dismissal.

ISSUES

- 1. Whether the Claimant was lawfully dismissed?**
- 2. Whether the claimant is entitled to remedies sought?**

EVIDENCE

The Claimant testified on her own behalf and through CW2, Ms. Nabukenya Nicky and the Respondent adduced evidence through Stella Asiimwe(RW1) the Respondent's Contracts Manager and Opira Dennis(RW2), her quality controller.

It was the testimony of the Claimant that although she commenced employment with the Respondent in January 2011, the contract of employment was issued to her on 26/08/2011 and this was the only contract she ever signed. She said that, in 2015, she developed bleeding complications during her pregnancy and was admitted in hospital. It was her testimony that, she informed a one Hemisch about her sickness and he advised her to see a doctor. She later informed him and her colleagues about her admission by phone. She was admitted in hospital for 2 weeks. She was however, shocked when Hemish demanded an explanation about her absence yet he was already aware. She sent her explanation about her absence to him via email and copied in her superiors in Kenya. She also produced a copy of a medical report marked "B2" on the record, which she gave him. It was her testimony that on 10/01/2015, her laptop was brought to her in hospital for her to reply to Hemish's email. She was discharged from Hospital on 23/04/2015, and she reported back to work about 25/04/2015. On return however, She was prohibited from sitting in the coffee office where she

previously worked. She was told to sit in the Accounts department instead. She was assigned no duties and told to sit there until she gets tired. She said an email was circulated to the effect that she no longer belonged to the coffee department and when she inquired, Hemisch confirmed the information in the email and told her that if she wanted, she could keep coming but there was no work for her at the Company.

It was also her testimony that previously, another staff had experienced similar circumstances, which made her realize that, she could not change the situation so she stopped coming to work on 30/04/2015. She then reported the matter to the labour office. By the time she left, she had served the company for 4 years and 2 months, earning Ugx. 1,117,143 gross pay per month, her salary having been increased in 2013. While at the labour office, she established that she was entitled to payment of overtime at the rate of 1.5 which she had never received, yet she always worked beyond the stipulated working time of 5 pm. She also said that she was denied leave although she requested for it orally. She produced a certified copy of her sickness in place of exhibit "B2", which she had filed earlier. She also said that, was never given a termination letter but she left because she had nowhere to sit at and she was never assigned any duties in the Accounts department.

CW 2 Nabukenya Nicky testified that she was employed by the Respondent in January 2012 as a receptionist. She was introduced to the Respondent by the Claimant but she left employment in 2013. She said she was replaced by another person when she went on a 1 month's maternity leave. She continued to report for work after her maternity leave, and after 1 week of reporting, she was told she had no job. The Claimant informed her about this claim.

Sharon Stella Asiimwe, RW1, testified that, she joined the Respondent around January 2014, as Contracts Manager and she was in charge of all contracts. She said that, her work involved interacting with all departments of logistics and documentation and at the time, there was no Human Resource body, but she knew that the Claimant was working at a senior level as an executive in the coffee department. It was also her testimony that all staff had 1-year contracts. She said that, she was aware that the Claimant fell sick in April 2015 and she was on and off duty. she also got to know about the claimant's admission in hospital and she learned about it from the Claimant's immediate supervisor. She was also aware that the Claimant would take 2 weeks leave because of the sickness. She did not know about the email communications between the Claimant and Hemisch, but she knew that the claimant was sick. She could not remember for how long the claimant was absent from work, but she as aware of the email dated 29/04/2015, which stopped the Claimant from working in the coffee department, although she could not remember when she was actually stopped working there. It was her testimony that by the time the email dated 19/05/2015 was written to the claimant, she was no longer coming to work and she did not know whether the Claimant could access her e-mail. She did not know whether the Claimant was paid her salary, overtime or whether her NSSF was remitted.

Opira Dennis (RW2), testified that; he was he was employed as a quality controller in 2014 and by then, Allen was already working at the Respondent, under the coffee department. When shown ID bearing the Claimant's name, he confirmed that the ID was issued by the Respondent but she was not Export Manager as it stated. It was his testimony that, he had never seen the Claimant's contract and he did not now the terms of therein. He also stated that by then there was no Human Resource department, so Hemisch was the appointments

officer. Currently the Respondent has a Human Resources department headed by a one Ziatuni who also doubles as Bond Manager.

He stated that he learnt about the Claimant's sickness through an email which was circulated to all staff and according to him no one went to visit her in Hospital. It was his testimony that, when she returned, she was verbally transferred to the Accounts department but no duties were assigned to her, although they were going to allocate her duties. He said the Country manager, Mr. Ashish was responsible for assigning her work but she left before he allocated her any duties. He was not sure why she left. He said that, it was the policy that, absence from work for 6 days without notice was penalized with termination.

REPRESENTATION

The Claimant was represented by Ms. Wakabala Susan Sylvia of Wakabala & Co. Advocates, Kampala and the Respondent's by Joshua Musinguzi of Associated Advocates, Kampala.

SUBMISSIONS

Counsel for the Claimant submitted that, the Respondent was aware that the Claimant developed pregnancy complications leading to her absence from duty. She stated that, in accordance with section 55(2) of the Employment Act, the Claimant notified Mr. Hemish her immediate supervisor about it by phone, and he advised her to seek medical treatment. She contended that, contrary to section 55 the Claimant's contract only provided for 6 days sick leave, but the Claimant returned to work with a medical report which she presented to Mr. Hemish. Although the Respondent denied ever receiving any report, she contended that in the absence of systems at the time, it was not possible for

such evidence to be provided to Court. She however relied on the testimonies of RW1 and RW2 who admitted that they were aware that, the Claimant was sick and on the email exchanges between the Claimant and the Respondent about her said sickness. She also relied on the testimony of Nabukenya Nicky CW2, who stated that she was also replaced after she took a 1 month's maternity leave. Counsel insisted that the Respondent did not tolerate employees who had any issues.

She refuted the allegations by the Respondent that, the Claimant had signed a 1 year contract in 2014, subsequent to the 26/08/2011 contract, which was open ended because, the Respondent did not adduce evidence of the original copy of the purported 1 year contract. She contended further that, the terms of the contract and particularly the salary stated in the 2014 contract was lower than the one in the 2011 contract. Whereas, the 2011 contract provided that she would receive a net pay of Ugx. 880,000/-per month, the 2014 contract provided that she would receive a gross pay of Ugx. 880,000/- per month, which would mean she would earn a net pay of about 500,000/- per month. She also argued that the Claimant's NSSF statement indicated that her gross earning per month was Ugx. 1,117,143/-, therefore her initial contract was more authentic. She argued that her initial contract corroborated the claimant's evidence that she was earning a net salary of Ugx. 880,000/- after deductions were manually done having received salary in cash. According to Counsel, the fact that, her salary had been increased was confirmed by RW1 who testified that, the Claimant was working at a Senior level and her net salary was increased to a net of about 1 million and sometimes she received Ugx. 940,000/-

Counsel also refuted the email which was purportedly sent to the Claimant on 5/05/2015 demanding her whereabouts, 6 days after her boss issued an email

informing all staff that she was no longer a member of the coffee department because this email was only intended to show that the claimant breached her contract by being absent from duty for more than the 6 days stipulated in her contract whereas not. It was her prayer that, Court should find that the Claimant was unlawfully dismissed.

In reply Counsel for the Respondent, citing section 73 of the Employment Act which provides that, a termination shall be unfair if it is done for any of the reasons stipulated under section 75 of the same Act, submitted that, the Claimant failed to prove that she notified her boss about her threatened abortion via phone. This is because, she did not adduce printouts of the phone calls she purportedly made on 7/04/2015, as evidence. It was also his submission that, she failed to prove her sickness because she did not adduce medical evidence and the letter which was signed and stamped by the doctor in absence of certification by the Hospital Authorities was insufficient. He contended that, the said document was not authentic and should be treated as such. He argued that, the Claimant was off duty from 7/10/2015 and she only communicated by email on 10/4/2015. Although he did not deny that, she was asked to sit in the Accounts department, when she returned to work, he argued that she stopped coming to work after sitting there for only a few days. According to him she returned to work on 27/04/2015 and she stopped working on 2/05/ 2015, therefore she worked for only 5 days. By the time the Respondent wrote the email dated 19/05/2015 she had already filed a complaint before the labour officer on 13/05/2015, which was served on the Respondent on 22/05/2015. According to him this complaint was filed prematurely because the Respondent was expecting her to return to work. The Respondent was therefore, denied the opportunity of giving her a hearing before the dismissal.

It was further his submission that there was no indication that she was dismissed by the Respondent and the fact that she was no longer a staff of the coffee department or that she could not access the department's email, did not mean she had been removed from the entire Company. In any case, she was given a desk in the Accounts department. He contended that her contract did not stipulate that she would only work in the coffee department and nowhere else. He insisted that, the Respondent had discretion to assign her any work and she had not demonstrated that, there was any demotion in rank or reduction in payment to construe her case as constructive dismissal. In addition, she also did not demonstrate that the work became complicated and unbearable for her to continue working at the Company. He cited **Nyakabwa Abwooli J vs Security 2000**, in which this court held that, for an employee to justify termination under section 65(1) (c), such employee must show that the employer was guilty of conduct that went to the root of the contract of employment which the Claimant in this case did not show. He also relied on the South African case of **Eastern Cape Tourism Board vs Commission for conciliation , mediation and Arbitration & 2 others**, in which the Court's holding was to the effect that to succeed in constructive dismissal, the employee had to show that he or she resigned because of coercion duress or undue influence of the employer. He insisted that the Claimant in the instant case, did not demonstrate any of the above and she did not show that she exhausted all internal mechanisms available before raising this complaint. The emails she shared show that the communication was between Hemish and herself, but there was nothing to show that he was chasing her from the Company or making her work unbearable. He also relied on **Murray vs Rock a vill Shelfish Ltd (2002) 23 ELR 331**, to support of this argument.

It was further his argument that the Claimant signed a 12 month's contract from 1/04/2014 to 31/03/2015, therefore it had expired by the time she filed the complaint.

It was his prayer that Court dismisses the Claim with costs, for being in Court prematurely.

DECISION OF COURT

It is well settled that an employer's right to dismiss or terminate an employee cannot be fettered by the courts, provided that the employer follows the procedure for termination or dismissal as provided under Sections 66, 68 and 70(6) of the Employment Act, 2006. It is mandatory that before the dismissal or termination takes place, the employer must explain to the employee the reason he and she is considering for the employee's dismissal or termination and to provide the employee with an opportunity to respond to the reason/s in the presence of a person of the employee's choice. This could be done either in writing or physically before an independent and impartial disciplinary tribunal or committee. The employer is also required to prove the reason/s for the dismissal or termination. However, proof of the reason or reasons, need not be beyond reasonable doubt, but they must be justifiable. Therefore, it is expected that the reasons must be but based on facts known to the employer at the time of the decision to dismiss or terminate is made. (see Section 66 of the Employment Act, 2006).

The Contract of employment can also be ended by an employee, in accordance with Section 65(1) (c) of the Employment Act which provides that:

- 1) Termination shall be deemed to take place in the following circumstances-*

a)...

b) ...

c) where the contract of service is ended by the employee with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee ...”

However, an employee can only succeed in a claim arising from termination under Section 65(1), if he or she proves fundamental breach by the employer, as a consequence of the unreasonable conduct on the part of the employer such as withholding tools of employment, not giving the employee work, changing the terms and conditions of the contract unilaterally, demoting an employee without giving them any reason among others.

An analysis of the evidence adduced by the Claimant in the instant case and the testimony of the Respondent's witness indicates that, there it is not disputed that the Claimant was taken ill in April 2015 and she was absent from duty because of this illness/sickness. It is also not disputed that she informed her boss and her colleagues about the sickness. Both RW 1 and RW2 testified that, they were aware that the Claimant was sick and admitted in hospital. Counsel for the Respondent also submitted that the Respondent was notified about it, on 10/4/2015, by e-,mail. The evidence further shows that when she returned to work on 27/04/2015, she was asked to sit in the Accounts department, yet she was working in the coffee department prior to her illness. In fact, an email was circulated to all staff stating that she no longer belonged to the coffee department. However, when she moved to the Accounts department, she was not given any work.

What was in dispute was whether she was terminated and whether her termination was lawful. The status of her employment contract was however disputed, therefore we must resolve first.

The Contract of service

According to the evidence on the record, the Claimant commenced her employment with the Respondent in January 2011, and she signed a contract of Employment with the Respondent on 26/08/2011. According to this contract she would be working in Exports/Documentation at a net pay of Ugx. 880,000/- per month, after the deduction of the rates for PAYE and NSSF. The duration of the contract was open ended unless it was terminated in accordance with provisions thereunder. It also provided that, sick leave would be 6 days. The Respondent claims that, she signed another contract effective 1/04/2014 to 5/03/2015, marked RE1 on the record. The purported new contract however, makes no reference to the earlier contract signed on 26/08/2011. Its duration is stated as 12 months, the salary is stated as gross pay per month of Ugx. 880,000/-, subject to statutory deductions as per the ruling rates of PAYE and NSSF, sick leave is 3 days and termination would be at the expiry of 12 months.

The Employment Act provides under Section 59 that, it is the role of the employer to draw a contract of service which stipulates the particulars of employment. This Court's holding in **Akonye David Vs Libya Oil LDC No. 082 of 2014**, is to the same effect and adds that, where the contract is drawn by the employer, any ambiguities in the contract should be construed against the party who drew the contract. As already stated above the Contract which the Respondent purports was entered into by the Claimant in 2014, does not make any reference to the one signed by the parties on 26/08/2011. It also has no clause repudiating the 2011 contract which was an open-ended contract,

moreover with better terms. Section 60 provides that where there is any dispute between an employer and employee concerning the terms and conditions of employment, the written particulars of the contract **with any notice of change**(emphasis ours), shall be admissible evidence of the existence of the terms and conditions about which there is a dispute. In the absence of any notice that the 2011 contract was replaced by the purported 2014 contract, the 2011 contract shall be taken to be the contract governing the Claimant's employment by the time of her termination. In any case, it is incomprehensible that the Claimant could have agreed to vary the terms of her contract for less favourable ones in 2014. There is no evidence that she agreed to the terms and conditions under the 2014 contract. We believe that the principle established in the Kenyan case in **Waithera Catherine Rukorio and Anor vs Mediamax Network Limited industrial cause No. 12 97 of 2011**, that, an employer cannot vary agreed terms of payment unless the employee was agreeable to such variation, equally applies to the variation of other terms and conditions of an employment contract. It is our considered opinion that an employee must agree to the variation of his or her terms and conditions of his or her employment and the variation must be more favourable to him or her.

We are therefore not convinced that the Claimant agreed to vary the open-ended contract she signed on 26/08/2011, for a 1-year fixed term contract with less favourable terms and conditions of service in 2014, as the Respondent would want this Court to believe. We strongly believe that this contract is not valid because as stated by Counsel for the Respondent it expired in March 2015.

The Claimant fell sick in April 2015 and returned to work after sick leave on 27/04/2015. She was transferred to the Accounts Department and no reference was made to the purportedly expired contract. The Respondent went further to

question her absence by email dated 19/05/2015, without making any reference to the said contract. Clearly the Respondent was not relying on the 2014 contract, but the 2011 contract otherwise, she would not have entertained any matter concerning the Claimant's absence after the contract is said to have expired in March 2015.

We reiterate that that in the absence of any notice of change as provided under section 60 (supra) the contract which the Claimant entered into with the Respondent on 26/08/2011 as the valid contract of Employment. Having resolved the basis of her employment with the Respondent we shall now proceed to resolve the issues.

1. Whether the Claimant was unlawfully dismissed?

Section 55 of the Employment Act which provides for sick pay, states as follows:

"(1) An employee who has completed not less than one month's continuous service with an employer and who is incapable of work because of sickness or injury is entitled to sick pay as follows-

(a) For the first month's absence from work he or she is entitled to full wages and every other benefit whether his or her family or himself or herself stipulated in the contract of service: and

(b) If at the expiry of the second month the sickness of the employee still continues, the employer is entitled to terminate the contract of service on complying with all the terms of the contract of service up to the time of termination of employment.

(2) for the employee to be entitled to sick pay as referred to in subsection (1) the employee shall-

(a) notify or cause to be notified as soon as is reasonably practicable, his or her employer of his or her absence and reason for it and

(b) produce, if requested by his or her employer and at intervals of not less than one week, a written certificate signed by a qualified medical practitioner certifying his or her incapacity for work and duration of the incapacity...."

We have already established that, the Claimant notified the Respondent about her sickness through her immediate supervisor Hemish's Dave and he acknowledged receipt of this information, by his email to her dated 10/04/2015 marked RE2. The email reads in as follows:

"Allen ,

Firstly, thanks for your message, albeit it come late with none of us having knowledge of your whereabouts over the past week.

Secondly- I see no need for you to copy GVA desk and shareholders into your off -duty request emails . it's happened before as well and you've been told to respect the local structures in place.

Lets get straight – Iam your immediate reporting head, and we have Uganda wide country structures headed by Mr. Anish, which you need to begin to follow and respect.

Get well soon

Rgds

Hemish"

In light of this response, we do not accept the submission by Counsel for the Respondent that, the Respondent was not aware that the Claimant was sick.

Secondly, whereas her contract provided for 6 days of sick leave, Section 55(1)(b)(supra) entitled her to a maximum of 2 month's paid sick leave and she was absent from work from 7/04/2015 to 27/04/2015, which was about 3 weeks absence. She was therefore still within the legally accepted period of absence due to sickness. She was also notified by Hemish via email dated 10/04/2015 at 15.47, also marked RE2, , that, during her absence, her duties were assigned to another officer and indeed when she returned to work, she found that her position in the coffee department had not only been taken over by a one Sharon Stella, but by email dated 27/04/2015 at 17.12 marked RE3, Sharon was also directed to continue carrying out the duties of the Claimant, despite her having returned to work on the same date. RW1 and RW2 both testified that there was an email which was circulated to all staff informing them that, the Claimant was no longer a member of the coffee department and RW2 further testified that she was transferred to the Accounts department, but she was not given any duties. He said that this notwithstanding the Claimant continued to report to work until she stopped.

Section 40 of the Employment Act provides that, it is the responsibility of the employer to give the employee work in accordance with the contract of service and during the period for which the contract is binding. The Claimant in the instant case was employed to work in Export/Documentation. She was assigned to the Coffee department where she worked for 4 years and 2 months, before she got pregnant and fell sick. On return after sick leave she was placed in the Accounts department and given no work. Her duties in the Coffee Department were given to another person without giving her any reason and her email in the Coffee department was disabled. In our considered opinion, this conduct went to the root of her contract of employment because she was dispossessed of the tools of employment and rendered redundant when she was placed in another

department with no duties assigned to her. In our considered opinion this amounted to a fundamental breach on the part of the employer, the Respondent. Even if the employer has a right to transfer his or her employees within his or her organisation, the expectation is that the transfer must be done in accordance with the terms and conditions of employment in the contract of service. Otherwise the transferee could be rendered incompetent if transferred to a position outside the said terms and such a transfer could be considered an unfavorable variation of the terms of the contract, which is unacceptable.

A unilateral variation of the terms and conditions of service of an employee, in our considered opinion is a fundamental breach of the contract between the parties which can entitle an employee to terminate his or her contract without notice in accordance with section 65(1) (supra). Such an employer will succeed in a claim of constructive dismissal. Also See (**Section 65(1)(c) of the Suzanna Haarbosh vs Kamtech Logistics LDC 233 of 2015 and Nyakabwa Abwoli vs Security 2000 Ltd LDC No. 108 of 2014**).

The Conduct of the Respondent in the instant case, as already stated goes to the root of her contract of service because it was a violation of section 40 of the Employment Act (supra) and therefore it was a fundamental breach of her contract by the Respondent.

We do not agree with the submission by Counsel for the Respondent that she needed to exhaust all avenues before reporting to the Labour officer because she had already been warned that she had to limit her complaints to Hemish, her immediate supervisor and Anish the Country Manager and the 2 were responsible for her unfavourable re-designation.

In the circumstances the Claimant was entitled to terminate her service in accordance with section 65(1)(supra) because of the unreasonable conduct on

the part of the Respondent and the termination amounted to constructive dismissal which is unlawful termination.

2.whether the Claimant is entitled to remedies sought?

Having established that her dismissal was unlawful, she is entitled to some remedies as follows:

I. Payment in lieu of notice

She prayed for payment in lieu of notice which was denied to her when she was terminated. It is her case that, in accordance with section 58(2)(b) of the Employment Act, she was entitled to 1 month's salary of Ugx. 880,000/-as payment in lieu of notice, having worked for the Respondent for 4 years and 2 months. We have no reason not to grant it. It is awarded accordingly.

II. Penalty for not holding a hearing.

It is well settled that the only remedy to a person who is unlawfully dismissed is damages and remedies prayed for under the Employment Act. The Claimant terminated her own employment in accordance with section 65(1)(c) which is constructive dismissal, therefore, she was not entitled to a hearing as provided under section 66 of the Employment Act. This claim therefore fails, it is denied.

III. Compensation for unfair termination under section 78(1)

This provision applies to remedies granted by the labour officer and not the Industrial Court. See Edace Micheal vs Watoto Child care ministries LDA No. 16/2015.

IV Payment in lieu of accumulated leave

She argued that her contract of service did not provide for annual leave but for 6 days of sick leave and therefore complaints about the need to take leave were always disregarded by the Respondent. She prayed that her leave is granted in accordance with section 54 (1)(a) and 54(5) which provides for payment in lieu of untaken leave. Indeed section 54(1) (a) of the employment Act binds an employee to grant his or her employees rest days every calendar year. The Section provides as follows:

1) Subject to the provisions of this section-

(a) ***"An employee shall once in every calendar year be entitled to a holiday with full pay at the rate of 7 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."*** (Our emphasis).

2) In **Mbiika vs Centenary Bank LDC No. 023/2014**, this Court's holding is to the effect that, it is mandatory for an employer to grant his or her employees leave or rest days. It is also the responsibility of the employer to put in place a mechanism through which staff can apply to take leave/rest days for the convenience of both parties. Court went further to state that the absence of such a mechanism cannot be visited on an employee. Therefore, where such a mechanism is absent, and given that annual leave is an entitlement, upon termination the employee would be entitled to payment in lieu of leave untaken during the period of service. Section 54(5) states as follows: ***"... An employee is entitled to receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation in lieu of the holiday..."***.

We have already established that, the Claimant's contract did not provide for annual leave and in the absence of any evidence of a mechanism

through which she could apply for leave, she is entitled to payment in lieu of leave untaken for the 4 years amounting to 4 month's salary, at Ugx 880,000/-per year, amounting to **Ugx. 3,520,000/-**

IV. Severance pay

She prayed for severance pay in accordance with the holding in **Donna Kamuli vs DFCU Bank Ltd LDC No. 002/2015**. Having established that she was constructively dismissed and constructive dismissal is unlawful, under section 87 of the Employment Act, she is entitled to severance pay, which according to section 89 should be agreed between the employee and the employer. Her contract of service did not make any provision for the calculation of severance pay therefore, we shall award it in accordance with **Donna Kamuli (supra)**, at 1 month per year served. She served for 4 years and 2 months and her Salary was Ugx. 880.000/- per month. Therefore she is awarded **Ugx. 3,520,000/-** as severance pay.

V. Overtime pay

There was no evidence of computation of overtime pay and in any case she only realised that she was entitled to overtime pay, when she complained to the labour office. We therefore have no basis to make this award. It is therefore, denied.

VI. General Damages

Damages are awarded at the discretion of Court and are intended to return the Claimant to as near as possible in monetary terms to the position he or she was in before the injury inflicted by Respondent occurred. We take cognizance of the fact that, the loss of employment is loss of a source of livelihood to the detriment of the Claimant.

Having established that the Claimant was constructively dismissed and the dismissal was unlawful, and given that she had served the Respondent for 4 years and 2 months with a clean record, she entitled to an award of general damages. We think that, **Ugx. 15,000,000/-** is sufficient as general damages.

She is awarded interest of 15% on all the pecuniary awards from the date of judgement until payment in full.

No order as to costs is made.

Delivered and signed by:

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MR. EBYAU FIDEL

2.MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

DATE.....22 April 2021

