

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE No. 024 OF 2015**  
**[ARISING FROM MGLSD/LD/01/2018)**

**BETWEEN**

**GEORGE JOHNSON OJOK & 87 ORS.....CLAIMANT**

**VERSUS**

**TORRES ADVANCED ENTERPRISES SOLUTIONS LLC.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuuke

**AWARD**

**Brief facts**

The claimants were security guards who under contract were employed by the respondent. Before signing contracts with the respondent, some of them had been employed by the US Defence System LLC before being employed by 3C International Limited or Triple Canopy as it was popularly called.

The claimants case is that having been previously employed by 3C International Limited, they transferred their services to the respondent company without breaking their service in employment and that upon being terminated by the respondent they were entitled to remedies as per their continuous service.

The respondent's case is that it was a different company from 3C International Limited and contracted the claimants as Security guards independent of their former employer and that there was nothing like continuous service.

**REPRESENTATIONS:** All the respondents were initially represented by Prof. Barya of Barya , Byamugisha & Co. Advocates but later on 26 of them withdrew instructions and were represented by M/s. Erisata & Erisata Advocates.

#### **Agreed Issues**

- 1) Whether the claimants were in continuous service between Tipple Canopy (3C International Limited) and the respondent.
- 2) Whether the claimants' dismissal was lawful
- 3) Whether the claimants were entitled to remedies claimed.

#### **Evidence**

Evidence was adduced from 6 witnesses for the case of the claimants and from one witness for the case of the respondent.

It was the evidence of the first claimant, Ojok George Johnson by his written witness statement that he was transferred from the US Defence system LLC to 3C International Limited which also transferred him to the respondent. He went on to testify in his additional witness statement that having been informed by the respondent, that he and the rest of the claimants would undergo a transition if they chose to stay working for them, they chose to remain and never interrupted their contracts. It was his evidence that all incumbents were informed by the respondent that 11/10/2013 midnight was the deadline to process them for the transition otherwise it would be assumed that they were not to pursue continued employment.

The second witness for the claimant's case testified via a written witness statement as Peter Obonyo in the same terms as the first witness emphasizing that he was handed over to the respondent by his former employer on 15/10/2013 and given a new contract (annexure "D").

The third piece of evidence for the claimants' case by written witness statement was from one Agatori Sserumaga who testified that he started work with 3C International Ltd. on 8/8/2020 and was transferred to the respondent and given a new contract.

The fourth piece of evidence was from one George Gudu whose written witness statement was to the effect that, just like the others he was first employed by the US Defence System LLC, transferred to 3C International Limited and lastly he was transferred to the respondent company.

Another piece of evidence came from one Okello Moses who in a written witness statement informed court that having been employed by the respondent as a security guard he was dismissed on 6/3/2014 without any reason or any hearing.

The last piece of evidence was from one Onsesmus Ondi who testified in Chief via a written statement that corroborated the evidence of the other witnesses.

The respondent adduced evidence from one Randy Baham, its Country Director. In a written witness statement, he testified that the claimants were not in any continuous unbroken employment since 1986, 1996 or 2011.

According to him, the respondent was procured by the United States Government's State department to provide local Guard Forces in Uganda under a contract on 15/7/2013.

Following this award of contract, the respondent ran an advert in the New Vision for applications. The claimants applied and after successful interviews they were recruited under fresh contracts.

He testified that the respondent did not at any time have prior relationship with the former contractor or employer and did not inherit any of the former employer's employees, its business, nor did it take over its contract. According to him all necessary NSSF contributions were remitted to NSSF as required by the law.

## **SUBMISSIONS**

Relying on the evidence of especially George Johnson Ojok, counsel for the claimants argued that there was unbroken service and continuous contracts between Triple Canopy and Torres.

Counsel particularly referred to annexure “A” to the witness’s additional Statement at page 26 of the claimants’ trial bundle which according to him stated that **“as part of this transition, wages will not decrease and uninterrupted health care coverage will be continued as a requirement of the contract”**. Counsel pointed out events as they unfolded and as revealed by the first witness which included: an address by Triple Canopy to the claimants in a general letter of 1/8/2018 informing them of the award of the contract to the respondent; and an address by the respondent on 11/10/2013 that the claimants would transit from canopy by midnight of 14/10/2013.

Counsel submitted that the claimants did not apply for jobs with the respondent company but were taken over from Triple Canopy with new contracts providing for a continuation from the initial contract. He contended that although the new contracts provided for training no such training occurred because the claimants were already competent guards with Triple Canopy.

In response to the above submissions and relying on **Section 82 of the Employment Act**, as well as the decisions of this court in **Uganda Local Government Association Vs Kibira and Others, LDA 026/2016** and **Charles Lwanga Vs Bank of Uganda LDC 142/2014**, Counsel for the respondent argued that since the claimants had different employers in the course of their employment, they were never in the continuous service of Triple Canopy and the respondent.

In rejoinder, counsel for the claimants argued that **Sections 82 and 83(1) of the Employment Act**, should not be construed in isolation.

According to counsel **Sections 83(4) of the Employment Act**, provides a safety valve and the claimants were taken away from Triple Canopy by the respondent. Without providing the distinguishable nature of both authorities cited by counsel for the respondent, counsel for the claimants asserted that the **Uganda Local Government Association Vs Kibira Vincent and Others**

(supra) was distinguishable and the authority of Charles Abigaba Lwanga Vs Bank of Uganda (supra) was cited out of context.

### **Decision of court on whether there was continuous service**

**Section 83 of the Employment Act** provides:

#### **“83 Definition of continuous service**

- (1) Subject to the provisions of this Section “Continuous service” means an employee’s period of uninterrupted service with the same employer.**
- (2) There shall be a rebuttable presumption that the service of an employee with an employer shall be continuous, whether or not the employee remains in the same job.**
- (3) Any week or part of a week in which an employee is employed for sixteen hours or more shall count in calculation as a period of continuous service.**
- (4) Consecutive periods of employment with two successive employers where the successor has taken over the business of the former employer as receiver, liquidator, personal representative, or heir, or upon transfer of the whole or part of the business shall be deemed to constitute a single period of continuous service with the successor”.**

It was the respondent’s submission that having been awarded a contract by the state department of the United States Government it advertised and conducted interviews for the local guard force and that the claimants having been successful they were given contracts of employment. The respondent contended that prior to this engagement with the claimants, it did not have any prior relationship with any former contractor or employer of the claimants including United States services, Triple Canopy (TC3) and did not inherit any of TC3’s former business or take over any of its contracts.

Counsel for the respondent argued strongly that under **Section 82 and 83(1) of the Employment Act** the claimant is required to have uninterrupted service with the same employer and that claimants George Johnson Ojok, Onesmus Ondi, George Gudu, Agatori Serumaga, Okello M and Obonyo P. having been employed by more than 1 employer before joining the respondent did not qualify under the said section of the law. He relied on the case

of Uganda Local Government Association Vs Kibira and Others, LDA 026/2016 which according to him ruled that both sections of the law deal with uninterrupted service in the employment of the same employer. According to counsel for the respondent, **Section 83(4) of the Employment Act** provides for a situation where the successor company assumes the position of receivership liquidation or succession which was not the case with the respondent having been awarded a contract by the United States government department of state on 15/7/2015. It is noted that the said contract award exhibited by the respondent as annexure “B” at page 6 of the respondent’s trial bundle is dated July 15,2013

Counsel cited the authority of Abigaba Charles Lwanga Vs Bank of Uganda LDC 142/2014 in relation to the relevance of **Section 81 of the Employment Act**. This section of the law deals with circumstances under which collective termination is done.

Although the respondent argued strongly that the jobs were advertised and the claimants were interviewed, the evidence on the record is insufficient to convince this court that this was the case. The advert contained at page 7 of the respondent’s trial bundle leaves a lot to be desired. From its text, we form the opinion that it was or should have been a newspaper advert but it does not show the name of the newspaper nor the nature of the advert. It only reveals that M/s. Kashilingi Rugaba & Associates have been instructed to invite applications; it specified qualifications of applicants and the nature of the job. This court is not able to determine whether it was a draft or an actual advert in the press. Moreover, the respondent in its submission did not elaborate on how the advert reached the claimants since nothing suggested that any of them was interviewed. Neither is there any evidence of Training as alleged.

In cross examination the only witness for the respondent testified that the claimants applied for the jobs although there was no evidence of the applications on the record. Although he testified that the claimants were interviewed, he did not personally interview them.

Given the advert as it appears at page 7 of the respondent’s trial bundle, and given that there was no evidence of the application or interviews as alleged by the respondent it is our finding that the claimants joined the service of the respondent without being interviewed and without being trained immediately before or after joining the service.

It is true that the respondent was incorporated as a separate organization from Triple Canopy, the former employer of the claimants. From a letter of offer to the respondent (annexure B, page 6 of the respondent's trial bundle) the claimants were part of the local guards of the United States embassy at Kampala. The United States department of state, Washington, DC was responsible for engaging qualified entities to provide security services to the Embassy. The letter of offer to the respondent provided for a 90 days transitional plan to be made by the respondent. The offer having been dated 15/07/2013 meant that 90 days would be over by 15/10/2013 at Midnight. In our understanding of the contents of the offer, the respondent was expected to complete all transitional issues by midnight of October 2013.

Earlier, on 15/03/2012 a letter from the Embassy to all mission guards (annexure "A" to additional Statement of Ojok George Johnson at page 26 of the claimants' trial bundle) informed them about the selection process of identifying a new contractor and stated inter alia that that

**"Please note that as part of this transition wages will not decrease and uninterrupted health care coverage will be confirmed as a requirement of the contract ....."**

In a communication dated 11/10/2013 (Annexure "C" to additional witness statement of George Ojok Johnson) the respondent informed all personnel that by midnight of 15/10/2013 they should have done everything necessary to transition to the respondent company. The communication in paragraph 7 stated

**"Torres Uganda accepts all qualified personnel currently employed under the U.S. Embassy contract who fail to process with Torres by midnight of October 14/2013 as exercising their right of first refusal and not wanting to pursue continued employment under the U.S Embassy contract."**

A letter dated 29<sup>th</sup> September which was addressed to each of the claimants and which was an offer of appointment termed as **"Service Agreement with Torres Advanced Enterprises solutions – Uganda"** provided (inter alia) that

**“Upon acceptance of this offer of employment, this contract shall continue from the initial contract with Torres-Uganda (Oct 16<sup>th</sup> 2013) and thus terminal benefits, redundancy benefits or leave days that may have accrued will be carried forward.”**

In the submission of counsel for the claimants, all the written communication above mentioned showed that the claimants chose to continue working and never interrupted their contracts between the two employers.

We appreciate the fact that the respondent was a separate entity from Triple Canopy, the previous employer of the claimants. We appreciate that the claimants were engaged under new contracts by the respondent as employer. We at the same time appreciate the circumstances under which the claimants were transitioned into the respondent company.

Ordinarily before transitioning to the respondent company, the former employer would have terminated the services of the claimants. It would be this termination and the terms under which the termination occurred that would properly determine the next course of action by the claimants.

The former employer only informed them that the contract had been awarded to the respondent with effect from 16/10/2013 and that it was preparing to support transition activities including scheduling meetings during **“non-duty time to eliminate impact to your important work in securing the Embassy, property and residences”**.

The previous employer, US Defence Systems LLC formerly terminated services of the claimants, at least from the termination letter of Ojok George Johnson at page 10 of the claimants’ trial bundle. The termination letter provides (inter alia):

**“.... You will be paid December 2010 before you start the new contract with the new contractor.”** The new contractor was Triple Canopy. In our view, this termination completely severed the relationship of the employees who were working with US Defence System and opened a new chapter with Triple Canopy. The question to be answered is: **would failure by Triple Canopy to terminate the claimants establish a continuous relationship with Torres?**



**Section 83(4) of the Employment Act** in our view establishes a continuous service where

- 1) Employment is with two successive employers.**
- 2) Employment is for consecutive periods**
- 3) Either the successor has taken over the business as a result of the former employer being in liquidation or, as personal representative or, as heir. OR**
- 4) Upon transfer of the whole or part of the business from the former employer to the successive one.**

The mere fact of non-termination of employees by the former employer may not necessarily establish a continuous service with the current employer, but it may be a pointer to the same. Where there is no termination of the existing contract between the employees and their former employer, and the successor employer in the same business takes over the employees to do the same job, without informing them about the fate of their previous contracts thus not giving them time to take action before engaging them, there is an inevitable conclusion that the whole or part of the business of the former employer has been transferred to the successive employer.

In the instant case, the claimants were employed initially by Triple Canopy as local force guards of the Embassy of the United States. Through the various communication modes mentioned earlier in this Award and more as mentioned in the claimants' trial bundle, the claimants were informed on the pending transition from Triple canopy to the respondent without any mention of the fate of the previous contracts. The impression created was that the claimants as security guards would be taken over (and indeed they were) by the respondent. The last communication was on 11/10/2013 which warned them that should any of them not have processed the transition by 14/10/2013 midnight, he or she would be assumed not to have wished to continue with employment under the US Embassy contract.

In our opinion, the 90 days transition plan required by the United States department in the offer letter of 15/7/2013 to the respondent should have included the fate of the contracts of the claimants under the previous employer.

The letter of the respondent offering jobs to the claimants dated 29/9/2013 at page14 of the claimants' trial bundle is in our view vague. It is vague in the sense that it is dated 29<sup>th</sup> September 2013 yet it speaks of the contract continuing

**“From the initial contract with Torres-Uganda (Oct 16<sup>th</sup> 2013) and thus terminal benefits, redundancy benefits or leave days that may have accrued will be carried forward.”**

The evidence on the record suggests that the transition from Triple Canopy to the respondent took place at midnight of 15/10/2013 meaning that the terminal and other benefits mentioned in the letter must have been reflective of the previous period before the transition. We therefore agree with the submission of counsel for the claimants that the initial contract referred to in the letter of appointment dated 29/9/2013 must have been the contract of triple Canopy.

In conclusion on the first issue, it is our finding that despite the respondent having been a separate entity from Triple Canopy, and despite the contracts entered into by the claimants with the respondent, all circumstances surrounding this case indicate that the claimants were in consecutive employment with both Triple Canopy and the respondent. We do find that by conduct of the respondent and the United States department of state which gave the contract to the respondent there was a transfer of business from Triple Canopy to the respondent.

Accordingly, in accordance with **Section 83(4) of the Employment Act**, the claimants were in a continuous service between the two entities. The first issue is decided in the positive.

The 2<sup>nd</sup> issue is **whether the claimants' dismissal was lawful.**

The contention of the respondent was that the claimants were terminated summarily under **Sections 58(a) and 69(3) of the Employment Act**. The justification for the dismissal according to counsel for the respondent was **“for the severity and sensitivity of the work and any infringement of security protocols.”**

**Section 69(3) of the Employment Act** provides

**“An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.”**

The claimants were engaged as local guards of the Embassy of the United States of America. Nothing on the evidence suggests that any of the guards had exhibited conduct indicating fundamental breach of duties of guarding the embassy.

Whereas we agree that the nature of the job of the claimants was sensitive, without showing how insensitive the claimants were, we cannot find any reason as to why they would be terminated under **Section 69(3) of the Employment Act**. The general submission of counsel for the claimant that

**“Under rule 3(5) the schedule makes specific provision for cases of serious misconduct and infringements such as theft or willful damages to property of the employer, willful endangering if the safety of or physical assault of the employer, a fellow employee or a member of the public and inability to perform work by reason of intoxication”** is misplaced in the instant case since no such evidence was adduced by the respondent. Indeed, we agree with the submission that any infringement of Security protocols related to the state Embassy and other Embassy installations and entities where the claimants were detailed to work could cause dismissal of the claimants. But again no such infringement by the claimants was adduced before this court.

Consequently, the dismissal of the claimants under **Section 69(3) of the Employment Act** was not justifiable and was wrongful.

**Section 58(a) of the Employment Act**, provides for notices before termination.

This court has time and again dispelled the contention that notice periods under this **Section of the law per se** constitutes a lawful termination. The court has emphasized that before termination of employment, the employer must give reason in accordance with **Section 68** as to why he/she contemplates dismissal of the employee, and notice periods do not constitute reason as stipulated by **Section 68 of the Employment Act**. (See; Benon H. Kanyangoga & Others Vs

**Bank of Uganda, LDC 080/2014; Florence Mufumba Vs UDB LDC 130/2014; Charles Abigaba Lwanga Vs Bank of Uganda LDC 142/2014).**

The case of **Okou R. constant Vs Stanbic Bank, LDC 12/2017** emphasized the fact that the exit clause in the contract (which is about notice periods) by itself was not sufficient to terminate an employment contract. Accordingly, the termination of the claimants under **Section 58 of the employment Act** was not justifiable and was therefore wrongful.

The 2<sup>nd</sup> issue is consequently decided in the negative.

The third and last issue is **whether the claimants were entitled to remedies claimed.**

**(a) Payment in lieu of notice**

Whereas we agree with the submission of counsel for the respondent that summary dismissal under **Section 69(3) of the Employment Act** requires no notice, having ruled that the dismissal under the said section of the law was wrongful such submission is not acceptable. It follows that the dismissal was not in law a summary dismissal but unlawful dismissal without notice or being heard.

Accordingly, we allow the prayer for payment in lieu of notice in respect to all the claimants as provided for under **Section 58 of the Employment Act** as from date of employment by Triple Canopy.

**(b) Payment in lieu of leave**

Whereas leave days are provided for under **Section 54 of the Employment Act**, this court has held that in order for an employee to get entitled to payment in lieu of leave after termination, such employee must prove having applied for leave and his/her employer having denied him/her the leave. (see **Kangaho silver vs Attorney General L.D.C 276/2014**).

In the instant case no evidence was led to show that the claimants applied for leave and that such application was rejected.

However, the addendum service agreement dated 11/10/2013 at page 19 of the claimants' trial bundle provides

**“As a new employee, there is no scheduled annual leave for the first 12 months of the contract. The employee's annual leave shall begin after the one-year anniversary of employment with Torres....”**

This was directly in conflict with the provisions of **Section 54 of the Employment Act** which provides for an entitlement to annual leave of every employee. The claimants were by virtue of this illegal provision in the contract prohibited to apply for leave during the first year of their employment. Although it may be possible that even in the subsequent years the claimants were denied the opportunity to apply for leave, this court needed evidence to this effect which was not sufficiently brought out. Accordingly, we shall allow payment in lieu of leave for the first 12 months as provided for under **Section 54 of the Employment Act**. Each of the claimants shall be paid 4 weeks' wages as payment in lieu of leave.

**(c) Severance pay**

This court having held that the claimants were in continuous service of both Triple Canopy and the respondent and having held that the termination of the claimants was unlawful, the submission of the respondent that they are not entitled to severance pay is not acceptable. As continuous service employees they shall be entitled to a one month's pay per year of work from the date of Employment with Triple canopy to the date of termination, as provided for in **Donna Kamuli Vs DFCU Bank LDC 02/2015**.

**(d) Repatriation**

**Section 39 of the Employment Act**, provides

- (1)** An employee recruited for employment at a place which is more than one hundred Kilometers from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases:

- 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 of any other court.

Although the claimants may have been born from the various districts of Uganda, the legal provision above speaks of having been recruited 100kms from his or her home. In our opinion for an employee to benefit under this provision there must be evidence that he/she moved from his/her home for the purpose of recruitment. No such evidence was available.

Secondly the employee must satisfy the 4 circumstances specified under **Section 39 of the Employment Act** relating to the nature of termination. In our view the nature of termination in the instant case does not satisfy any of the four circumstances. Consequently, this prayer is denied.

**(e) NSSF Contribution**

It was the submission of counsel for the respondent that 26 of the claimants (as shown in his written submissions at page 9) were paid their NSSF subscriptions as shown on their respective pages of the NSSF statement in the claimants' trial bundle.

We have looked at the respective NSSF statements of the claimants. Whereas the column of contributions indicates the amount, the column of payment to beneficiary indicates 0. In our interpretation whereas the column of contributions indicated the amount owing as contributions to the NSSF account, the column of actual payment indicated nonpayment of the same. In cross-examination the only witness from the respondent could not tell whether there was actual evidence of remittances to NSSF.

Accordingly, given the evidence available on the record, nothing suggests that the respondent remitted NSSF contributions which is mandatory under the NSSF Act. It is hereby ordered that all the due contributions as envisaged under the column of “**contribution amount**” be paid into the respective NSSF accounts of the claimants.

**(f) Compensatory order**

The claimants, relying on **Section 78 of the Employment Act** prayed for compensatory orders for unfair termination. Under this Section of the law, a labour officer is given power to grant an unfairly terminated employee a basic order of compensation for 4 weeks’ wages. In our considered opinion, this provision is specific to Orders made by a labour officer and does not refer to Orders made by this court which has the jurisdiction to award general damages, which, unlike under **Section 78 of the Employment Act** are not limited. Since an order of damages by this court necessarily constitutes compensation for unfair termination, we do not find it necessary to grant the prayer under this section.

**(g) General Damages**

The claimants having been unlawfully terminated are entitled to general damages for inconvenience of loss of the job and generally loss of income for sustenance of self and family. Although each of them was being paid differently (from the NSSF statement), given the nature of their work and their salary, we consider 4,000,000/ for each of the claimants sufficient for general damages.

**(h) Interest**

The claimants shall be entitled to interest of 15% per year on all the amounts awarded from the date of this Award till payment in full.

**(i) Certificate of service**

In accordance with **Section 61 of the Employment Act**, the respondent shall provide a certificate of service to each of the claimants.

**(j) Compensation for Discrimination**

In the absence of a medical report on the record or evidence from a medical practitioner who declared the five claimants “**unfit**” and given the admission of the respondent that the five claimants were dismissed on medical grounds, we are certain that this was a clear case of discrimination.

We do not accept the contention of the respondent that dismissal was because the claimants could not measure up in physical fitness required of the jobs of a local guard since they had been in the same job before with Triple Canopy and no evidence of physical training or re-training was available. We offer an extra one million shillings to those discriminated against as compensation for the same.

In conclusion, it is our finding that the claimants have proved their case on the required standard and an Award is hereby entered in their favor in the above terms with no order as to costs.

**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 Mugambwa Nganzi .....
3. Mr. F. X. Mubuuke .....

Dated: 14/05/2021