

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL No.003 OF 2020
[ARISING FROM No. MGLSD/LC/141/2018]

BETWEEN

JOSEPHINE KITAKA.....APPELLANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITYRESPONDENT

BEFORE

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

PANELISTS

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

AWARD

This is an appeal arising from the decision of a labour officer, a Commissioner of labour sitting at the Ministry of Gender, Labour and Social Development, Kampala.

The Background of the appeal is that the appellant was employed by the respondent on 2/12/2011 on temporary terms **“until the position assigned to be substantively filled”**.

On 24/05/2017, she was redeployed from the Health and Environment Protection Directorate to the Directorate of Public Health and Environment on the same terms.

On 15/9/2017 she was given a fresh appointment effective 18/09/2017 ending 31/12/2017. There after she was given short term appointments which included 1st Jan 2018 – 30th April 2018 and 1st May 2018 – 31st August 2018.

On 23/8/2018 she was informed of the pending expiry of her appointment and she was advised to handover all operational materials on 31/8/2018 and wished best luck in her future endeavours.

The appellant considered this information as an unlawful termination and lodged a complaint to the Commissioner of Labour who decided in favour of the respondent hence appeal.

Grounds of Appeal

- 1) The learned Commissioner of Labour erred in law and fact when he arrived at a decision before the parties had concluded the filing of submissions.
- 2) The learned Commissioner of Labour erred in law and in fact when he arrived at a decision without any consideration being given to the submission of the parties.
- 3) The learned Commissioner of Labour erred in law and in fact when he held that the termination of the appellant's employment was lawful.
- 4) The learned Commissioner of Labour erred in law and in fact when he held that the appellant was not entitled to the remedies sought.

SUBMISSIONS

It was the contention of the appellant in arguing ground 1 and 2 that the Commissioner contravened **Article 28 of the Constitution** which provides for a fair hearing when he arrived at a decision without the respondent's submissions, making it illegal and erroneous to proceed to make an Award.

In Counsel's view the Commissioner had a predetermined mind to decide in favour of the respondent.

Counsel for the appellant on grounds 3 argued that the Commissioner ignored the submission of the appellant that she was employed for 6 years and 8 months when he, the Commissioner, held that the termination was lawful because the employment was limited to 4 months yet in the same Award, according to counsel, the Commissioner agreed that the appellant was employed for 6 years and 8 months. Counsel insisted that the termination contravened **Section 69 (2), 58 (1) and 58 (3) of the Employment Act**.

On the Forth ground, he argued that no contract could be terminated without notice in accordance with Section 58 of the Employment act and that therefore it was not proper for the

Commissioner to deny payment in lieu of notice simply because the last contract of the appellant provided for expiry date of 31st August.

According to counsel the appellant had 65 days of accrued leave amounting to 2,226,745 since her pay was 7,534,416 per month culminating into 342,473 per day, yet she was awarded 16,324,568/=.

Counsel strongly argued that the claimant was entitled to severance allowance and outstanding loan since she was unlawfully terminated. In the same vein according to counsel, the claimant was entitled to general damages, interest and costs.

In reply to the above submission the respondent in response to ground one, argued that although the appellant filed her submissions late contrary to the directives of the respondent, the Award was made 37 days after such filing.

In response to Ground 2, it was argued that the labour officer considered submissions of the respondent as acknowledged by counsel in his own submissions at page 4.

On ground 3, counsel argued that the Commissioner appreciated rightly that the appellant was employed on short term contracts the last of which expired without any option of renewal and this could not be termed as unfair termination.

On ground 4 about reliefs, Counsel contended that the appellant was not entitled to payment in lieu of notice and that in absence of evidence of applying for leave and the application being rejected, she could not be paid leave allowance.

Relying on **Uganda Local Government Association Vs Kibira Vicent & 4 Others, Labour dispute Appeal 26/2016**, Counsel argued that continuous service under **Section 83 of the Employment Act** did not constitute short term contracts and therefore the last contract of the appellant which was of 4 months did not qualify for severance under **Section 87 of the Employment Act** which provides for 6 months' employment.

Counsel contended that no evidence was tendered about recommendation or guarantee of the loan by the respondent and therefore it could not be a responsibility of the respondent.

According to counsel no evidence of overtime claims was adduced and the Commissioner rightly found so.

Decision of court:

We have perused carefully the proceedings and the Award of the Commissioner of Labour. We have also perused carefully the submissions of both counsel.

We shall consider the 1st and 2nd grounds together.

Final submissions of parties to a claim are meant to be a summary of the case of each of the parties. They are an attempt to convince the court that given the evidence and the law, an Award should be in favour of one of the parties. The court does not rely on the submissions of counsel to deliver judgement but on the evidence and the law as applied on the facts before such court. Consequently, although the submissions from counsel are helpful to court in reaching a decision, failure of court to consider the submissions may not necessarily amount to an unfair hearing contrary to **Article 28 of the Constitution** as the appellant seems to suggest. It is only when the submission in question raises a significant point of law or an aspect of evidence impacting on the decision that such submission is relevant. The idea that the court must always refer or consider every aspect or any aspect of the submission of counsel before making a decision is superfluous.

Consequently, the appellant in the instant appeal had a duty to inform this court what aspects of her submissions were not taken into account but which should have reversed the decision of the Commissioner had he taken them into account. Consequently, both grounds 1 and 2 fail.

Ground 3 concerns the lawfulness of the termination. There is no doubt on the evidence adduced that the appellant was engaged on temporary terms and that she signed acceptance of those terms.

Counsel for the appellant faults the Commissioner of labour for stating that the termination of the appellant was lawful because his employment was limited to 4 months after which the contract would automatically expire requiring no notice. According to counsel this was a misdirection since the appellant was employed for 6 years and 8 months which the Commissioner himself acknowledged.

On perusal of the whole evidence it is clear that every contract signed by the appellant had an expiry date and consequently they were fixed term contracts.

Section 65(1) provides that termination is deemed

“Where the contract of service, being a contract for a fixed term or task, ends with expiry of the specified term or completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee.”

Granted that the appellant had worked for 6 years and 8 months but in this period she had short term contracts separate from each other with specific contractual periods.

The last contract ended on 31/8/2018 and having been a fixed contract, termination was deemed as provided under **Section 65(1)(b) of the Employment Act**. The contract ended by operation of the law and therefore the Commissioner was right in holding that the termination was lawful. The third ground fails.

The fourth and last ground related to the remedies.

As already discussed above, the termination of the appellant was by operation of law and therefore the notice under **Section 58 of the Employment Act** did not apply. Consequently, the appellant was not entitled to any notice or payment in lieu of notice.

There is no evidence on the record to suggest that the claimant had 65 days of accrued leave. Although leave is a right of an employee, this court has held in a number of cases including **Kangaho Silver Vs Attorney General LDC 276/2014** that such a right can only be exercised by application for leave and only when it is refused will the employee be entitled to payment in lieu.

In the instant appeal, nothing has been shown in the evidence before the commissioner that the appellant applied for leave and that the application was rejected.

However, in the notice of expiry of contract, the respondent conceded to 20 days’ work of leave which would be paid into the appellant’s bank account which is hereby granted.

The rest of the remedies are not applicable since we have upheld the decision of the labour officer that the termination was lawful. He was entitled to deny the appellant the remedies and therefore ground No. 4 fails except for the 20 days’ payment in lieu of leave.

All in all, the appeal fails with no orders as to costs.

BEFORE

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2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

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Dated: 19/2/2021