THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL NO. 43 OF 2015
[ARISING FROM LABOUR DISPUTE COMPLAINT NO KCCA/KWP/LC/098/2019.

BETWEEN

MAKERERE UNIVERSITY.....CLAIMANT

VERSUS

FRANK KITUMBA……RESPONDENT

BEFORE

1. Hon. Judge Ruhinda Asaph Ntengye
2. Hon. Judge Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Fx. Mubuuke
3. Ms. Harriet Muganbwa

AWARD

This is an appeal against the decision of a labour officer M/s. Ruth Kulabako Namaarwa, sitting at Kampala City Authority.

The background of the appeal is well spelt out in the award of the labour officer as follows:

"Brief facts

The complainant was employed by the respondent as a director, Directorate information and Communication Technology Support (DICTS) on a five-year contract effective 1st December 2012 subject to renewal upon satisfactory performance following an appraisal. Upon expiry of the contract, it was extended for three, then two months until 30th April 2018 with no performance appraisal conducted by the respondent. This aggrieved the complainant who claims to have legitimately expected employment following a fair, regular and prompt appraisal leading to renewal of his employment contract due to his satisfactory performance but was not done.

When government enhanced salaries for science teachers in all public universities by 30%, all the respondent's DICTS staff were left out and the complainant raised this complaint to Ministry of Public Service. The Permanent Secretary (PS) clarified to the respondent university Secretary that; officers deployed to handle computer technology related jobs are considered to be scientists hence paid in a science scale. The PS advised that the job description of the complainants be verified to determine their job content in relation to computer science and the respondent takes appropriate action.

Effective January the respondent complied and enhanced salaries for DICTS staff, but the complainant further demanded for science money arrears for all the years since government sent science money to the University as well as its accrued gratuity but in vain and declined vacating the university house until it's paid despite eviction threats by the respondent hence the complaint.

According to the respondent, renewal of the complainant's contract was not automatic; they reserved the right not to renew the same and were not barred from advertising the position, and appointing the best suited person and when the complainant applied, he was unsuccessful.

The complainant's gratuity claim was being verified and if found that any sum is due to him, he would be advised accordingly.

Basing on the clarification of the Permanent Secretary (PS) Ministry of Public Service Ref: ARC 6/293/02 dated 6th September 2012, the complainant was not classified as a scientist to get science money because he was appointed in an administrative capacity."

Representations:

Mr. Gonzaga Mbalangu of Makerere Directorate of legal affairs represented the appellant while Mr. Okecho from GEM Advocates was for the respondent.

No oral evidence was adduced before the labour office but both counsel presented documentary evidence and written submissions which the labour officer relied upon to decide the matter and deliver her Award. The labour officer decided in favor of the respondent and granted the following reliefs:

(1) Three month's pay in lieu of notice	-	18,935,874/=
(2) Five month's pay as severance	-	47,339,685/=
(3) One month's pay as basic compensatory order	-	9,467,937/=
(4) One month's pay as additional compensation	-	9,467,937/=
(5) Salary arrears (science money)	-	90,426,744/=
(6) Accrued gratuity	-	33,292,440/=

The labour officer in addition ordered that the appellant should transport the respondent and his family back home and that he should not be evicted from the appellant's house until his entitlements were fully paid.

The appellant not being satisfied with the above Award lodged an appeal and filed 8 grounds of appeal which constituted both facts and law but through Misc. Application. No. 44/2017 most of the grounds were struck out by this court for being filed without leave of court, leaving one ground:

The labour officer failed to evaluate the evidence on record and reached a wrong conclusion.

This ground of appeal was saved relying on the authority of the court of Appeal in **Baingana John Paul Vs Uganda, Criminal Appeal No.** Vs **08/2010.** Counsel for the respondent relying on the High Court decisions of **Olanya James Otti Tom & 3 Others, HCCA 64/2017 and Zeresire Tereza Vs dauda Rwakasenyi & Anor HCCA No. 50/2017**, contended that the appeal be stuck out because the only ground of Appeal offended **Order 43 r 1 and 2 of the Civil Procedure Rules.**

This submission is surprising to us since it relies on High Court decisions and yet our decision relied on a court of Appeal decision. Secondly, this court having exercised its power to maintain the first ground in an application that was heard inter-parties, the respondent was not in order to raise the same issue in the same court. In our view it was res-judicata. The prayer to strike out the appeal is therefore overruled.

Submissions

Counsel for the appellant contended that clause 4 of the respondent's contract of service should be read to together with **clause 10** which makes the **Makerere Human Resource Manual 2009** as amended, applicable to the contract and requires the respondent to read the manual carefully.

He argued strongly that the labour officer restricted herself to clause 4 thereby unanimously holding that the appellant unjustifiably neglected, refused or failed to

perform its obligation of appraising the respondent's performance prior to renewal. According to counsel the labour officer should have addressed herself to the responsibility of the respondent to initiate the process of appraisal.

Counsel relied on **Section 2.4(v) of the Human Resource Manual.** In his submission, the appraisal should have been subsequent to the respondent's expression of interest for re-appointment which the respondent did not do. Consequently, according to counsel, it was wrong of the labour officer to penalize the appellant for breach of contract.

Counsel for the appellant strongly submitted that the labour officer unanimously concluded that automatic renewal of the respondent's contract implied that his performance was satisfactory and that he was most suitable for the position and that therefore advertising for the job was not necessary.

It was the contention of counsel that the appellant reserved the right not to renew the contract and that **clause 4** in the contract calling for appraisal of the respondent did not bar the appellant from advertising the position and appointing the most suitable person.

Counsel contended further that the contract in contention being the one that started on March 1st 2018 ending on April 30th 2018, ended by effluxion of time under **Section 65 of the Employment Act.** This being the case, and according to counsel, the labour officer was wrong to fault the appellant for not giving reasons to justify the renewal of the two contracts and not communicating its intention not to renew the same.

According to counsel all the three contracts were distinct and fixed contracts. He relied on the cases of **Emau Jimmy & 5 Others Vs Ketron Development Services Ltd, LDR 179/2017; Elizabeth Nabatanzi Lugudde Katwe Vs Attorney General, HCCS 279/2008 and Green Boat Entertainment Ltd. Vs City council Kampala HCCS 580/2003** for the legal proposition that the appellant was not under any obligation to give any reason as to why the contracts were not to be renewed. The contracts having expired, according to counsel, there was no need of a notice or disciplinary hearing since the contracts were terminated by operation of **Section 65 1(b) and 2(b) of the Employment Act.**

In relation to the science money, counsel contended that the respondent as an employee in an administrative position as Director in the Directorate information and communication Technology Support (DICTS) was not entitled to the science

money. He relied on **Public Service Circular Standing instruction No. 1/2012** communicating salary structure for financial year 2012/2013. According to counsel, the Ministry of Public Service in a letter dated 6/9/2012 clarified on salary enhancement which excluded the respondent. In counsel's submission it was upon review of the job description of the respondent and the advice of the Permanent Secretary in a letter dated 24/10/2016 that the appellant started paying the respondent science money. According to counsel, this was a policy shift by Ministry of Public Service in considering the nature of the position of the respondent and the appellant at the conclusion of the verification exercise effective 1/10/2017 paid the respondent and others in the same category. Counsel vehemently argued that the respondent was not entitled to science money before the verification and policy shift. Consequently, according to counsel, the labour officer failed to evaluate this evidence leading to the holding that the respondent was entitled to science money arrears and gratuity for the period before the policy shift.

In response to the above submissions, counsel for the respondent, relying on Action Aids Uganda Vs David Mbarekye Tibekinga, LDA 28/2016 and other High Court precedents, argued that the appellant was not entitled to rely on the Human Resource Manual which had not been part of the evidence in the labour office. He contended that admission of the evidence tantamounted to trial by ambush since according to counsel it was evidence from the Bar contrary to rule 12(1) of the Labour Disputes (Arbitration & Settlement) Industrial Court Procedure) Rules 2012 which require evidence to be on oath or affirmation. Counsel relied on the authorities of Formula Feeds & Amor Vs KCB Bank Uganda Limited & 2 Others, HCMA 208/2020 (execution division) and Energo Project Niskogrannja Joint Stock Company Vs Brigadier Kasirye Gwanga & Commissioner for Land Registration HCMA 186/2009 for the legal proposition that evidence from the bar is not admissible. According to counsel all arguments based on the Human Resource Manual ought to be struck out and expunged from the record.

In the submission of counsel for the respondent, and relying on the distinction between "**contract extension**" and "**contract renewal"** as defined by the **Black's law Dictionary 9th Edition at page 662, and page 1410 respectively**, the contract of the respondent was for a fixed period of 5 years and it was extended for 3 months making it 5 years and 3 months. According to counsel when it was extended **"until a substantive appointment"** it remained for 5 years and 3 months until whatever time it would take for the appellant to appoint a substantive director, making it a continuous service.

According to counsel, even if the court was to interprete the extension of the contract as a "**renewal"** it would mean that the five year contract expired and the appellant entered into a new contract with fresh terms of a 3 months period and subsequently another contract for an indefinite period until a substantive director was appointed.

According to counsel, the appellant wrote to the respondent extending his contract and therefore the argument that there were 2 separate contracts was inconsistent with the wording of the contract and against the intention of the parties.

He submitted that the contract did not end by effluxion of time but by the unlawful termination since according to him, the appellant breached its obligation by not giving reasons for termination of the respondent's contract which was done without going through the process of appointing a substantive Director as notified in the letter of extension. For this submission counsel relied on the authority of **Emau Jimmy & 5 Others Vs Ketron Development Services Ltd. LDR 17R 179/2017 (which counsel for the appellant also relied on).**

Counsel contended that the contract having been renewable upon satisfactory performance following an appraisal, the appellant had to consider the performance of the applicant while making the decision to either renew or not to renew the contract. For this submission counsel relied on **Andrew Kilama Lajul Vs Uganda Coffee Development Authority & Anor HCMA 270/2019** at page 11.

Finally counsel submitted that in as far as the appellant did not give notice of termination to the respondent; did not inform the respondent of the decision not to renew the contract and did not appraise the respondent before termination, the same was against **Sections 2 and 58 of the Employment Act** and therefore unlawful.

In rejoinder counsel for the appellant argued that no new evidence was introduced on appeal since evidence pertaining to the application of the Huma Resource Manual, 2009 as amended was in **clause 10 of the contract of service**. In counsel's submission, all arguments based on the Human Resources Manual were rooted in clause 10 of the contract. Relying on Stephen Semwanga Kavuma Vs Barclays Bank Uganda Limited HCMA 0634/2010 which relied on Verschures Creameries Ltd. Vs Hull & Netherlands Steamship Co. Ltd. (1921) 2KB counsel strongly argued that the respondent could not invite court to consider clause 4 of the contract that confers upon the respondent rights and at the same time disregard provisions that confer

upon him the obligation to initiate contract renewal under clause 10 of the same contract. According to counsel the **Steven Seruwagi case** is for the legal proposition that one cannot approbate and reprobate at the same time; no party can accept and reject the same instrument at the same time.

Counsel argued that since the respondent did not dispute the provisions of the Human Resource Manual as cited in submissions, as a general rule it is taken to be admitted.

Counsel reiterated the submission that the respondent served three distinct contracts as opposed to a continuous period of over 5 years as submitted by counsel for the respondent. According to counsel at the expiration of the initial contract, the respondent was paid all his outstanding gratuity conclusively determining the contract and allowing no claim whatsoever under the same contract.

Counsel contended that whereas on March 6, 2018 the appellant wrote to the respondent communicating a fresh contract from March 1, 2018 "**until a substantive Director is appointed", on April 6/2018** a clarification was written notifying the respondent that the contract was effective March **1, 2018 to 30, 2018**.

Consequently, counsel argued, the allegation that the appellant extended the contract for an indefinite, indeterminate, indistinct and imprecise period of time and that the termination of the contract on 9/4/2018 was without appointing a substantive Director, was not true. Counsel strongly argued that having been notified of the contract expiry date and having participated in the search for a new Director, the respondent neither required a termination notice nor did he hold any expectation of employment.

In counsel's submission in rejoinder, the instant case was distinguishable from the authority of Andrew Kilama Lajuli Vs Uganda Coffee Development Authority & Dr. Emmauel Lyamulemye Niyigingira M.C. 270/2019 in the sense that as opposed to the current case, in the ANDREW KILAMA case the applicant wrote to the Chairman of the Board of Directors of 1st Respondent through the second respondent expressing his desire to have his contract renewed after its expiry on 30/9/2019 as required under his employment contract and the performance measurement system in the Human Resource Manual.

Counsel contended that the appellant was squarely to blame for the failure of the appraisal process to take off because of his omission to initiate the contract renewal process.

Decision of Court

This is a first appeal from the decision of a labour officer and this court derives the power to entertain the Appeal from **Section 94 of the Employment Act** which provides.

"94. Appeals

(1) A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may Appeal to the Industrial Court in accordance with this section.

(2) An appeal under this Section shall lie on a question of law, and with leave of the Industrial court on a question of fact forming part of the decision of the labour officer.

(3) The Industrial court shall have power to confirm, modify or overturn any decision from which the appeal is taken and the decision of the Industrial court shall be final.

In determining an appeal from the Labour officer under the above section, we take cognizance of the fact that the parties have no right of a second appeal to the court of Appeal.

Both council in the instant appeal have correctly alluded to the legal obligation of this court as a first appellate court i.e. to review the evidence of the case before the labour officer without disregarding the Award of the labour officer but carefully weighing and considering it so as to reach our decision on the issues of fact as well as of law before the labour officer.

We have carefully perused the submissions of both counsel and the authorities cited therein. This decision is therefore reflective and takes into account the said submissions and the authorities cited.

The only ground of appeal for this court to consider is**: "The labour officer failed to evaluate the evidence on record and reached a wrong conclusion"** which both counsel argued as:

"Whether the labour officer erred in law and fact when she failed to properly evaluate the evidence on record thereby reaching an erroneous decision which occasioned a miscarriage of justice".

It seems to us that the above issue was wrongly framed during the submissions of counsel. In our considered opinion the issue arising from the only ground of Appeal ought to have been and is:

"Whether the labour officer failed in law and in fact to properly evaluate evidence on record thereby reaching an erroneous decision."

As already pointed out the evidence before the labour officer constituted documentary evidence. The documents that were considered or ought to have been considered (for the respondent) were

(a) The employment contract.
(b) Extensions of contract dated 4/12/2017; 6/03/2018 and 6/4/2018.
(c) Permanent Secretary's advice to respondent: request for exposition and instruction on failure to implement the science money.
(d) University bursars letter to Senior Asst. Bursar salaries, approving payment of DICTS:- remuneration of information and Technology employees dated 13/2/2018.
(e) Complainant's letter of request for payment of his gratuity and science money dated 31/12/2018.
(f) Notice and reminders to complainant by respondent to vacate University house dated 22/2/2019 and 09/04/2019.
(g) Makerere University contract staff pay roll salary from November 2017 to April 2018.

The documents for the appellant (excluding the above)were

a) Circular letter no. 1/2017 by P.S. Public Service dated 16/3/2017.
b) Salary structure for 2017/2018financial year.
c) Payment transaction report for the respondent's gratuity for December 2012 – November 2017.
d) Respondent's pay lists for January 2017-April 2018.
e) Respondent's letter of house allocation dated 2/10/2013.
f) The Senior and junior cumulative water Bills from April – July 2019.
g) Verified water bills balanced of the respondent dated 16/08/2019.
h) Respondent's (Fig tree 138) wall bill since 2014.

We intend to resolve the appeal by considering and resolving the following questions:

1) Whether on the evidence available the labour officer was right to hold that the respondent was in breach of contract by terminating the employment of the appellant?
2) Whether on the evidence available the labour officer was right to hold the respondent responsible for payment of science salary arrears before January 2017 including gratuity thereon?

   The initial appointment of the respondent dated 13/11/2012 provided under paragraph 4
   "**Your appointment shall be on <u>Contract</u> for a period of <u>five years</u> effective <u>1st December 2012</u> and may be renewed subject to satisfactory performance following appraisal".**

Under paragraph 8, the appointment letter provided for gratuity at the end of the contract equivalent to 25% of consolidated salary earned yearly during the period of the contract.

By letter dated 4/12/2017 the respondent was informed that the appellant had "**authorized extension of your contract for three (3) months, effective 1st December 2017 to 28th February 2018 until a substance Director is appointed."** The terms and conditions as per expired contract were to remain unchanged.

By letter dated 6/04/2018, the appellant while referring to the letter of 6/3/2018, informed the respondent that "**You contract extension as Director, … be effective 1st March 2018 to 30th April 2018".**

There's no doubt and both counsel in their submissions agree that contracts that have a definite period do not necessitate giving notice of termination except that the respondent qualifies the position by insisting that the employer notifies the employee of the decision not to renew the contract.

Unless otherwise provided for in the contract of service it is our strong opinion that when a contract is for a definite period, renewal or non-renewal of the contract is always in the discretion of the employer. Thus **Section 65 of the employment Act** provides:

"65 Termination.

(1) Termination shall be deemed to take place in the following instances:

a. …

b. Where the contract of service, being a contract for a fixed term or task, ends with expiry of the specified term or the 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 less favorable to the employee.

c. …

d. …

e.

(2) The date of termination shall, unless the contrary is stated, be deemed to be:-

(a) …

(b) In circumstances governed by sub-section 1(b) the date of expiry of the fixed term or completion of the task.

Given the above provision the initial contract of the respondent dated 13/11/2012 having been for 5 years effective 1st December 2012 ended on 31st of April 2017. A provision of satisfactory performance in the contract although a condition precedent to renewal was not necessarily a condition for the appellant to subject the respondent to an appraisal before the renewal. We do not read into the contract an intention of the parties to keep the respondent on the job until an appraisal is made. Rather we read into the contract the intention that once an appraisal is made by the appellant for purposes of renewal of the contract, then the respondent must pass the appraisal before such renewal.

The letter of "**extension**" of the 5 year contract was dated 4/12/2017, only 3 days after expiry of the previous contract. After such expiry, we do not appreciate the submission of counsel for the respondent that the previous contract was extended for a further 3 months. It can only make sense, following the line of argument of the respondent, that despite using the word "**extension"** the contract was in fact **"renewed"** after expiry.

Consequently we reject the submission of counsel for the respondent that the intention of the parties was to extend the contract beyond the initial 5 years. Instead the contract having expired, was renewed for 3 months up to 28/02/2018.

It follows that when by letter of 6/3/2018, the appellant **"extended"** the same contract effective 1/3/2018 **"until a substation director was appointed"** it was a separate and a new contract after the expiry of the previous one.

By this contract the respondent was expected to keep his job until a substantive Director was appointed. However on 6/04/2018 only one month after renewal of the contract, the respondent was informed that the contract was in effect until 30/4/2018.

At the receipt of this letter the respondent had a right to object and only show acceptance of the terms of the letter dated 6/3/2018 **"extending"** his contract until **"whatever time the appellants would take to appoint a Substantive Director"** as counsel for the respondent put it. The respondent instead did not raise any objection to the letter giving a definite period of the end of the contract. We consider the failure to object and the continued performance of the duties by the respondent despite the change or **"clarification"** as counsel for the appellant put, as acceptance of the terms as amended by the letter of **"clarification"**. The respondent could not ignore the contents of this letter as if it did not exist and as if it did not affect his contract in any way since it specifically referred to the contract that had been extended indefinitely. Therefore by this letter the intention of both parties was that the contract would lapse on 30/4/2018.

From the facts revealed to us and from the submissions of both counsel, it is not disputed that the respondent worked as Director until 30/4/2018. Nothing suggests on the record that he worked beyond this date with or without the consent of his employer.

Before we conclude the issue relating to breach of contract, we would like to return briefly to the significance of appraisals in employment matters.

An appraisal system is a system instituted by an employer to guide in assessing the performance of an employee for purposes of retention of the employee if the assessment is good, or terminate him/her if he/she is found lacking. The appraisal system is also for the purpose of guiding the employer on whether to promote the employee or assign him other duties within the frame work of the contract. In other instances, depending on the intention of the parties, an appraisal system may be for the purpose of guiding the employer on whether to renew or extend the contract.

An employee may be retained, promoted, or assigned other duties within the framework of the contract without being subjected to an appraisal system. If this is within the period the appraisal is required to have been done, the presumption is that the employee satisfied the expectations of the employer in performing his/her duties during the period of the supposed appraisal.

Consequently, in the instant case, the respondent having had his contracts renewed or "**extended"** without any appraisals, the appellant was satisfied with the performance of the respondent.

It is only in the event that the appellant was not satisfied with the performance of the respondent that the provision relating to appraisals in the contract would come into play.

Clause 4 of the contract provided for renewal subject to satisfactory performance following an appraisal and clause 10 of the same contract provided

> **"You appointment will be governed by the provisions of the Human Resource Manual. You are therefore required to read it carefully and understand its provisions …"**

We agree with the submission of counsel for the appellant that given both clauses of the contract, the Human Resource Manual was part of the contractual relationship between the parties.

Consequently the provisions in the manual relating to appraisals were applicable to the respondent.

Nonetheless, since the appellant decided to renew or **"extend"** the contracts without subjecting the respondent to an appraisal, the question as to who was responsible to initiate the appraisal process or why no appraisal was done is irrelevant and not applicable.

The submissions and the facts reveal that the respondent answered the advertisement and sat for interviews of the same job but was not successful and lodged a complaint over 1 year later. Having participated in the interviews without any reservation, we find that the respondent had no right to turn around and claim that his job was erroneously advertised without appraising him and later given to another contender. The lodgment of the complaint one year after the interviews in our view smacks of a second thought.

In conclusion on the first issue, it is our finding that that initial contract as well as the subsequent **"extensions"** were separate from each other with distinct definite dates of expiry and should have been treated as such by the labour officer. The appellant was not obliged to appraise the respondent before contract renewal or **extension"** of each of the contracts. Although the performance of the respondent was satisfactory given the renewal of the contracts, this by itself did not preclude the appellant from advertising the position since in our view it had not only fallen vacant by lapse of time in accordance with **Section 65(1) and (2) of the Employment Act** but the respondent himself recognized this by participating in the search process of his own replacement when he sat for the interviews. The labour officer's failure to appreciate all this led her to come to a wrong conclusion that the appellant unjustifiably refused to appraise the respondent prior to contract renewals which in her view constituted a breach of contract.

The second leg of the appeal is whether the labour officer was right to hold that the respondent was entitled to payment of salary arrears.

The respondent was appointed and worked as a **"Director, Directorate of Information and Communication Technology Support (DCTS), Makerere University.**

On 6/09/2012, a letter from Public service to public Universities, referring to Circular Standing Instruction No. 2/2012 of FY 2012/2013 from the same source and reacting to a request by the Public Universities for clarification on the implementation of the salary enhancement, clarified that the appellant had been allocated a wage Bill of 31,421,250,000/= out of which was to be 3,142,125,000/= for general salary enhancement for scientists (30%). Under paragraph 8 of the letter the Ministry of Public Service stated

> **"Any staff qualified as a scientist but is currently performing administrative duties by appointment, does not qualify to be paid as a scientist. However, in cases where staff undertake part-time teaching, they may be paid a teaching allowance from non-wage in consultation with the Ministry of Public Service".**

On 9/1/2016, a letter from the permanent Secretary of Public Service addressed to all Permanent Secretaries and other accounting officers, while revoking circular letter No. 3/2016 stated:

"In order to recruit and retain scientists in the Public Service, Government enhanced their salaries in F/Y 2010/2011. A new salary scale band (SC) was created under circular instruction No. 3 of 2010 to cater for scientists. The scientists referred to above were categorized as below:

i. ..
ii. ..
iii. …
iv. ..
v. Computer science/information Technology
vi. ..
vii. …
viii. ..
ix. ..

The categorization was based on key functions of a job and not educational qualifications. This implies that any job outside the above categories is not considered as a scientist job until the service is advised otherwise as was the case from Public Universities and Post Primary Institution under circular standing instruction No. 1 of 2012."

A letter from Public Service dated 24th October 2016 addressed to the University Secretary upon a complaint by the Directorate of ICT (DICTS) authored by the respondent relating to payment of science money, stated

"According to the circular standing instruction No. 3 of 2010 (a copy is attached for ease of reference) officers deployed to handle computer technology related jobs are considered to be science, hence paid in a science scale.

The purpose of this letter is to bring the complaint logged by the Director DICTS to your attention and to advise you to verify the job description of the complainants to determine their job content in relation to computer science and take appropriate action….."

Finally on 13/2/2017, the University Bursar of the appellant, following the appellant's management decision communicated to his assistant that the Information Technology staff were scientists and entitled to earn as such beginning 2017, January.

It was the contention of the appellant that following a clarification from Public Service that Scientists performing administrative duties did not qualify as scientist, the respondent having been employed in an administrative position was not entitled to science money as at the time of the clarification (which was 06/09/2012) and payment of the same would have been ultra vires and contrary to the directive of Public Service.

Counsel contended that it was only after the 24th October 2016 directive from public service, and after verification of the job description of the respondent that he was entitled to the same and hence forth paid. According to counsel for the appellant there was a policy shift by Ministry of Public Service from considering the nature of the position to the substantive job description of a scientist. In other words the respondent was not paid the science money at the time because he was not classified as entitled.

What is interesting is that the same public service in a letter dated 9/1/2016 indicated that while enhancing salaries in F/Y 2010/2011 and creating a new salary scale under circular instruction 3 of 2010, the category of computer science/information Technology was one of the beneficiaries. The letter of 24/10/2016 which the appellant relied on to **"verify"** the job description of the claimant **"referred to Circular instruction 3/2010."**

In our considered opinion by referring to enhancement of salaries in F/Y 2010/2011 and Circular instruction 3/2010, the intention of government through Ministry of Public Service was to put the Computer Science Information Technology Category in the bracket of scientists beginning with the F/Y2010/2011.

Consequently, the fact that the same Ministry of Public Service had earlier on excluded persons performing administrative functions did not preclude the appellant from paying the respondent science money.

The reference to 2010/2011 F/Y by the Ministry of Public Service, in our view, put the computer science/information Technology category in the same class of scientists who were classified as such at the beginning of the 2010/2011 FY. It follows therefore that the appellant's management decisions communicated by the University bursar in a letter dated 13/2/2017 should have considered the information Technology staff entitlement beginning F/Y2010/2011 and not January 2017.

Consequently, and in conclusion of the second leg of this appeal, we agree with the labour officer that the appellant after receipt of a letter from the Ministry of Public Service upon which it relied to verify the job description of the respondent, it ought to have effected payment from when the respondent was recruited, since by the time of his recruitment science money was already in the 2010/2011 F/Y budget.

We do not accept the contention of the appellant that payment of the respondent Science money before January 2017 would constitute the appellant's acting ultra vires, illegally and contrary to the Directives of Public Service since through the letter of 9/1/2016 the same Public service indicated that while enhancing salaries in F/Y20210/2011, the respondent and his staff were one of the beneficiaries.

The labour officer granted 90,426,744 as science money arrears from December 2012 to 2016, presumably on the basis of a letter addressed to her dated 22/10/2019 (page 140 of the record of Appeal) which stated the said amount as owing. Since there was no contention as to the amounts in arrears, we take this figure as admitted by the appellant.

We have perused a payment transaction at page 128 of the record of appeal in connection with the submission of counsel for the appellant that gratuity in respect to the initial contract was paid. The transaction reflects payment of 56,782,939 for gratuity of December 2012-November 2017 which leaves us in no doubt that the gratuity was in fact paid

For the rest of the contract each of the parties blamed the other for failure of calculation and subsequent payment of gratuity. For completeness, we shall derive into determining this gratuity.

Whereas the respondent in submissions claimed 33,252,440/= as accrued gratuity he did not exactly spell out how he arrived at the same.

The record of appeal contains the respondent's salary slips of 28th/8/2017 up to 28/42018 and the basic salary is shown to have been 8,487,708/=.

The second contract was for 3 months, from 1/2/2017-28/2/2018 at basic pay of 80,487,708/=.

Although this was a very short contract, the fact that it was under the same terms and conditions as the expired contract meant that the respondent was entitled to gratuity at the end of the 3 months.

Therefore the entitlement was 25% of the yearly salary divided by 4, which translated into 6,365,781/=.

The last contract was from 1st March to 3/4/2018, meaning that he earned gratuity for 1 year which was 25% of the yearly salary translating into 25,463,124/=.

In the final analysis the appeal partly succeeds with the following orders/declarations:

(1) The Labour Officer wrongly held that the respondent terminated the contract and that the termination was in breach of contract.
(2) The contracts of the respondent were distinct and separate from each other with definite periods and each of them ended by effluxion of time in accordance with **Section 65(i) and (2) of the Employment Act.**
(3) The holding of the labour officer reflecting remedies of two month's pay in lieu of notice; two months' pay as severance, one month's pay as compensation, one month's pay as additional compensation is hereby set aside.
(4) The holding of the labour officer that the respondent is entitle to accrued gratuity is upheld but the amount of gratuity is hereby substituted for 31,828,905/=.
(5) The holding of the labour officer that the respondent was entitled to 90,426,744/= as salary arrears (science money) is upheld.
(6) The total sun awarded shall carry an interest of 12% per year from the date of this Award until payment in full.
(7) No order as to costs is made.

DELIVERED & SIGNED BY:

1. Hon. Judge Ruhinda Ntengye ……
2. Hon. Judge Linda Lillian Tumusiime Mugisha ……..

PANELISTS

1. Mr. Ebyau Fidel …….
2. Mr. Micheal Matovu ……
3. Ms. Harriet Mugambwa ……..

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