

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE No. 211 of 2016**  
**ARISING FROM LD 432/2016**

**SAMUEL SERUNJOGI** ..... **CLAIMANT**

**VERSUS**

**INTERNATIONAL JUSTICE MISSION** ..... **RESPONDENT**

**BEFORE:**

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

**PANELISTS**

- 1.MS. JULIAN NYACHWO**
- 2.MR. PATRICK KATENDE**
- 3. MR. BWIRE ABRAHAM**

**AWARD**

**BRIEF FACTS**

On 3/12/2007, the Claimant was employed by the Respondent Company as investigative specialist until the termination of his employment on 2/11/2015.

According to him he was “witch hunted” at work and forced to resign after being falsely accused for misrepresenting the Respondent. He was forced to sign an acceptance of resignation and severance agreement, non-disclosure agreement

and separation agreement and release between the Respondent and himself without being accorded a fair hearing.

The Respondent on the other hand alleged that the Claimant committed acts of misconduct by misrepresenting the Organisation. He was investigated and after the investigations he opted to resign from his employment.

### **ISSUES FOR DETERMINATION**

- 1. Whether the Claimant resigned his employment?**
- 2. If not, whether the Claimant was rightly dismissed from employment?**
- 3. Whether the Respondent discharged all its obligations to the Claimant before termination of his employment?**
- 4. What remedies are available to the Parties?**

### **EVIDENCE**

#### **REPRESENTATION**

The Claimant was represented by Mr. Agaba James of M/S Byaruhanga & Co. Advocates Kampala was for the Claimant Mr. James Zeere of Sebalu and Lule Advocates, Kampala.

#### **SUBMISSIONS**

It was submitted for the Claimant that his dismissal was coerced to resign or he would be fired. According to Counsel on 3/11/2015, the Claimant was presented with a Separation and Release Agreement, Acceptance of Resignation and Severance agreement and a Non-disclosure agreement, all of which were dated 2/11/2015 and pre-signed by the Respondent's field Director, for him to sign without according him a fair hearing. According to Counsel these were false documents and they were presented to the Claimant at once. He contended that whereas they were to him for signing

on 3/11/2015, they were prepared on 2/11/2015 a day before he is purported to have resigned. Therefore it was not a voluntary resignation.

It was his submission that the Claimant was not charged with any form of disciplinary offence or any gross misconduct. He refuted RW1's testimony which was to the effect that he had shared the findings of the investigation carried out by the Respondent, regarding the Claimant's misconduct with the Claimant in a meeting with the Human Resources Officer Marian Murewa and a one Kathryn Wilkes, because the said report was not presented to Court. Counsel insisted that the Documents were false having been prepared on the 2/11/2015 and they were never discussed with the Claimant. He insisted that when the Claimant met with the Human Resources officer, his supervisor (RW1) and the Field Director, was he was they were prepared on 2/11/2015, a day before the purported resignation therefore, Court should find that, the resignation was coerced.

In reply Counsel for the Respondent submitted that the Claimant was suspected of giving inaccurate and inadequate information about his whereabouts regarding his work on 11/08/2015. Investigations were conducted to establish what had transpired and during the investigations the Claimant was interviewed and he was also informed that he would be subjected to disciplinary proceedings but he had the option to resign. He choose to resign by entering Separation agreement with the Respondent, in which he agreed to receive certain terminal benefits in consideration of releasing the Respondent from any liabilities whatsoever, arising from his employment with her.

He insisted that the employment relationship between him and the Respondent was terminated by a Separation Agreement which amounted to

a resignation by the Claimant. According to Counsel the Claimant was paid Certain Separation benefits including Salary for the months of November and December 2015, which he was not otherwise entitled to and the Claimant accepted them.

He contended that contrary to the assertion that he was coerced to sign, the Claimant freely and without duress consented to the Separation Agreement. He also refuted the assertion that the Respondent had a preconceived mind to dismiss the Claimant and stated that, had he rejected to sign the Separation Agreement, the Respondent would have provided him with a fair and impartial disciplinary hearing. It was further his submission that, had she failed to do so then the Claimant would be entitled to redress under the Employment Act.

Counsel argued that the Claimant was aware of his right to a disciplinary hearing but he admitted that he took advantage of the benefits of the Separation Agreement and received the pay made to him for the months of November and December 2015, despite the termination having taken place on 3/11/2015 before the end of the Month.

He contended that, his claim was an afterthought having been filed it before the Labour officer, 5 months after entering into the Separation Agreement and enjoying the benefits from it. But this notwithstanding, it does not remove the fact that he entered the Separation Agreement and enjoyed the benefits thereunder.

Relying on **Chitty on Contracts: Vol. 1; General Principles, Sweet& Maxwell. Chapter 12 at 907 and 908**, Counsel submitted that where an agreement has been signed by 1 or both parties, *“it is well established that the party signing will ordinarily be bound by the terms of the written agreement whether or*

*not he has read them or whether or not he is ignorant of their precise legal effect”*

Citing **State of Punjab & Ors Vs Dhanjit Singh Sandhu, Supreme Court of India N0s.5298-5699 Of 2009**, he argued that a separation agreements binding and enforceable by virtue of the doctrine which postulates that where one knowingly accepts the benefits of a contract, he is estopped from denying the validity or binding effect of the contract on him. In essence one cannot approbate and reprobate.

He insisted that the Claimant admitted that he signed the Separation Agreement and he proceeded to enjoy the benefits thereunder. He cannot turn around now and claim he did not consent to the Agreement. Therefore, Court should find in the affirmative.

## **DECISION OF COURT**

### **1. Whether the Claimant resigned his employment?**

This Court’s holding in **Etuket Simon Vs Kampala Pharmaceutical Industries (1996) Ltd LDC No. 272/2014**, is to the effect that resignation is a method through which an employment relationship can be terminated at the instance of an employee. It can be provided for under the contract of employment or under the Human Resources Manual, as one of the methods for terminating the employment relationship/contract. However, where neither provides for resignation, it is assumed that the employee can exercise his or her inherent freedom of contract to terminate the contract of employment by resignation.

Therefore even if the Employment Act, makes it mandatory for an employer to follow the correct procedure for termination as provided under section 66, to the effect that, the employer must give an employee a reason he or she is

considering for termination or dismissal a justifiable reason and an opportunity to respond to the reason before the termination or dismissal occurs, it does not bar an employee from terminating his or her employment contract by resignation. Where the termination is by resignation the employee is not under any obligation to give the employer reasons for his or her resignation.

Termination of employment can also be by mutual agreement of the parties to the employment contract and irrespective of who initiates the termination, good practice requires that an interview to define the termination package and the date of termination is important.

Therefore, resignation can only be considered a dismissal, where it is as a result of a fundamental breach by the employer, or as a consequence of the unreasonable conduct on the part of the employer such as withholding tools of employment or demoting an employee without giving them an opportunity to be heard. See **(Section 65(1)( c) of the Employment Act, Muyimbwa Paul vs Ndejje University LDR No. 222 of 2015 and Nyakabwa Abwoli vs Security 200 Ltd LDC No. 108 of 2014).**

In his evidence during cross examination, the Claimant admitted that, on 3/11/2015, he was presented with a Separation and Release Agreement, among other documents relating to his separation/ termination from the Respondent organisation. His contention is that the documents were all pre-signed by the Respondent's field Office Director and were dated 2/11/2015 a day before he signed them. It was his testimony that he reluctantly signed them because, it was the only alternative to dismissal which would have tainted his career and not because agreed to end his contract with the Respondent. It was his testimony that he under a lot of pressure and he was given an option to resign

*as “a safe landing instead of being dismissed because it would taint my career and hence be blocked from future employment...”*

The Respondent did not deny that after she carried out investigations into the conduct of the Claimant, she gave him the option to resign or be dismissed. In fact the Respondent’s witness Mr. Claver Byamugsha, testified that the findings of the investigation were shared with the claimant in a meeting between him as his supervisor, the Human Resources Officer and the Field Director and he was given the option to be subjected to a disciplinary hearing or to resign and “... he decided to resign... he chose to take the benefits and he resigned and relinquished his formal relationship...to me the evidence of dishonesty was overwhelming....”

The Claimant in his evidence in chief stated that he was willing to undergo disciplinary action, but in cross examination he stated that:

*“... yes on 3/11/2015 I was given 3 documents labeled c1, c and c2, ...yes I signed C1/REX8, the separation agreement. I signed the respondents copy marked REX8... I did not agree to end my contract with the IJM, yes the provisions gave me benefits...”*

Although Counsel submitted that he was coerced to sign the Separation Agreement, no evidence was adduced to prove that he was forced to sign it or that he took steps to protest the document. The only evidence on the record was that he was given 2 options were presented to him, he opted to undergo the disciplinary hearing but he was forced to resign. We do not think that merely because the Respondent presented him with a pre- signed Separation agreement for him to sign, or that they were prepared a day before he signed them, amounted to coercion. He did not deny that he was given 2 options; an option to resign or to be faced with disciplinary action and be dismissed and he

chose to resign. We find no basis to find that he signed the separation Agreement because he was under pressure to sign, yet he had the option to undergo a disciplinary hearing without any evidence to prove that he was being pressured. If it was his intention to undergo disciplinary action, he had the option to refuse to sign the documents and insist on a disciplinary hearing but he opted to resign instead. The Employment and Labour Relations Court of Kenya **Marilyn Nyambura Mbutha vs Safaricom Limited , Industrial Cause No. 1413 of 2016**, held that : “... *A mutual separation agreement is characterized by the aspects of choice and if this is missing it cannot qualify to be such...*”

In the instant case, although the separation agreement was prepared and pre signed by the Respondent on 2/11/2015, when it was handed to him on 3/11/2015, a day after it was prepared and signed by the field Director, the signed it. As already stated, there is no evidence that he was forced to sign it. We therefore, associate ourselves with the submission of Counsel Zeere for the Respondent that, by signing the Separation Agreement, the Claimant agreed to be bound by the terms and benefits of the agreement, therefore he is estopped from denying its validity. We are further persuaded by the holding in **State of Punjab & Ors Vs Dhanjit Singh Sandhu, Supreme Court of India N0s.5298-5699 Of 2009**, which Counsel relied on, to support of this argument, that:

*“...Law does not permit a person to approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid and then turn round and say that it is void for the purpose of securing some other advantage....”*



In the circumstance, having found no evidence to show that the Claimant was coerced by the Respondent to sign the separation agreement and attendant documents, we have no doubt in our minds that he opted to terminate his contract by the virtue of the Separation agreement, as “*a soft landing*” to preempt the disciplinary proceedings which were likely to result in his dismissal. We reiterate that he is estopped from claiming that the termination was invalid because he was not accorded a hearing.

It is our finding therefore, that the Claimant terminated his contract by virtue of the Separation agreement which he voluntarily signed and this amounted to resignation by mutual agreement which was is genuine resignation and termination of the employment contract. This issue is resolved in the affirmative.

**2.If not, whether the Claimant was rightly dismissed from employment?**

**3.Whether the respondent discharged all its obligations to the Claimant before termination of his employment?**

Having resolved that by opting to resign by mutual agreement, the Claimant terminated his own contract and having found that the resignation was genuine, it did not amount to a dismissal but a termination by resignation, which was a lawful termination. We therefore found no basis to discuss the submissions of both Counsel on issues 2 and 3, they are resolved in the affirmative.

**4.What are the Remedies available to the parties?**

Having found that the Claimant terminated his contract by resignation and mutual agreement, he is not entitled to any of the remedies sought.

In conclusion this claim fails with no order as to costs.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE** .....

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA** .....

**PANELISTS**

**1.MS. JULIAN NYACHWO** .....

**2.MR. PATRICK KATENDE** .....

**3. MR. BWIRE ABRAHAM** .....

**DATE: 9/04/2021**