

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO.150 OF 2014
ARISING FROM HCT-CS-268

STEPHEN BYEKWASO **CLAIMANT**

VERSUS

ATTORNEY GENERAL **RESPONDENT**

BEFORE:

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

PANELISTS

1.MR. EBYAU FIDEL

2.MS. JULIAN NYACHWO

3. MR. KATENDE PATRICK

AWARD

BRIEF FACTS

In 1993, the Claimant was employed in the Ministry of Public Service as a Stores Assistant Grade II. He rose through the ranks to the position of Senior Supplies Officer at the Ministry at salary scale U4.

The Secretary Ministry of Public Service issued Circular Standing Instruction No.2 of 2003 which according to him, placed his salary at scale U3. In October 2007 however, he received a letter purporting to promote him but it actually demoted him two levels below his rank, thus reducing his salary to the base of scale U4. On 3/09/2009, he received another letter abolishing his office, and reliving him of his duties. According

to him, the Respondent demanded that he refunds salary amounting to Ugx. 4,299,592/-, which he obtained between 2003 and 2007, pursuant to Circular Standing Instruction No.2 of 2003.

He contends that the actions of the Respondent were wrongful in law for which he claims special damages, general damages, terminal benefits and costs of the suit.

ISSUES FOR RESOLUTION

Each party framed their own issues for resolution. However we have consolidated them as follows:

1. Whether the Claimant's appointment to the position of Senior Assistant Supplies Officer at Salary scale U4 was lawful?
2. Whether the termination of the Claimant at a U4 scale was lawful?
3. Whether the Claimant is entitled to remedies prayed for?

REPRESENTATION

The Claimant was represented by Mr. John Matovu (SC) assisted by Mr. Kakenga Emmanuel of Matovu and Matovu Advocates and the Respondent by Ms. Imelda Adongo Senior State Attorney, Attorney General's Chamber, Ministry of Justice and Constitutional Affairs.

SUBMISSIONS

Counsel for the Claimant did not make any submissions on issue 1.

It was his submission on issue 2 that, section (F-T) of the Public Standing Orders Disciplinary Action and **Simon Dragulu vs Moyo District Administration, HCCS No. 0006 of 2008**, which are to the effect that, a Civil servant cannot be demoted unless he or she is undergoing punishment by the Public Service Disciplinary Committee. It was his submission that the Claimant and the Respondent's only witness corroborated

this position of the law and no disciplinary records against the Claimant were brought to court. He contended that, the Claimant's termination/retirement at a scale below his earlier appointment was a demotion and it was unlawful and the order for him to refund the monies which he was paid under scale U3 was equally unlawful.

In reply to issue 1, Counsel for the Respondent restated the facts of the case as summarised above and stated that, the Claimant was appointed on promotion to Senior Assistant Supplies Officer at salary scale U4 under Minute PSC MIN No 107 of 2007, of the Public Service Commission, after the rescission of PSC Min No 555 of 2002 which had erroneously offered him appointment on promotion, to Senior supplies officer at salary scale U4. According to Counsel, on 28/03/2007, the Permanent Secretary/Secretary to the Treasury issued him with a letter appointing him to the rightful position of Senior Assistant Supplies Officer. He was notified about the abolition of the same office by the Ministry of Finance Planning and Economic Development, in a letter dated 3/09/2009. According to the letter, the office was abolished in accordance with Establishment Notice No.2 of 2003 therefore, he had to retire from public Service on those grounds. According to her, when he retired, he was paid his benefits and continues to earn a monthly pension in accordance with the Public Standing Orders, Circular Standing Instruction No. 4 of 1998 and Pensions Act Cap 286.

In response to the questions, he raised regarding his salary and job title, in his letter dated 23/9/2009, the Permanent Secretary Ministry of Public Service in a letter dated 10/02/2010, informed him that his job title was erroneously quoted as Senior Supplies Officer, consequently it had been rescinded to correct the anomaly, to the correct position of Senior Assistant Supplies officer. The same letter waived the requirement for him to refund the salary he had been overpaid as a result of the mistake.

Counsel argued that Regulation 41 of the Public Service Regulations, empowered the Commission to review its decisions, on discovery of any new and important matters of evidence which were not within its knowledge or could not be produced before it at the time the decision was made.

Counsel for admitted that the Claimant was initially appointed to the post of Senior Supplies Officer Scale U4 on the basis of the submission of the Responsible Officer at Ministry of Works, but the Clearance from Ministry of Public Service indicated the minimum academic qualifications for the job as a Diploma holder therefore the correct designation was Senior Assistant Supplies officer scale U4 and not Senior Supplies Officer. She stated that Public Service Commission rescinded PSC Minute No. 555.2 of 2002 which appointed the Claimant and 3 others to the position of Senior Supplies Officers and appointed them to the correct designation of Senior Assistant Supplies Officer scale U4. This is evidenced by the Public Service Commission's letter to the Permanent Secretary Office of the Prime Minister dated 30/11/2006.

She argued that, correction of an error is not unlawful because the Commission has powers to review its decision, where there is important information which was not in its knowledge at the time, it was making the decision. she insisted that the correction was not a demotion as perceived by the Claimant, but a correction of the error which was made. she prayed that Court finds as such.

DECISION OF COURT

1. Whether the Claimant's appointment to the position of Senior Assistant Supplies Officer at Salary scale U4 was lawful?

After carefully perusing the evidence adduced in court and on the record, we found that indeed, in 1993, the Claimant was appointed to the position of Stores Assistant grade II as indicated in his letter of appointment Ref: No CP.58962 dated 13/05/1983

marked Annexure "A" on the Claimant's witness statement. On 17/10/2002, he was appointed to the position of Senior Supplies Officer, Scale U4 vide PSC Minute No.555.2 of 2002. (annexure "B", on the Claimant's statement). On 7/11/2002, the Permanent Secretary, Ministry of Works issued him with the terms and conditions of service. On 23/03/2007, he was offered appointment on promotion to the position of Senior Assistant Supplies Officer Scale U4, which was 2 levels below his previous job. On 10/10/2007 he was notified about the readjustment of his salary and job title. The letter stated in part as follows:

"Reference is made to your Appointment on promotion to senior supplies officer scale U4 under PSC Minute No. 555 of 2002, which was corrected under corrigendum on promotion of PSC Minute 107 of 2007 which rescinded the earlier appointment to Senior Assistant Supplies Officer scale u4.

You will note that the Ministry of Finance Planning and Economic Development had issued New appointment letter as your mother Ministry, copies of which you have received.

I would like to inform you that the above changes resulted into adjustment of your salary from U3 for Senior Supplies Officer as prescribed in the single spine salary structure to scale U4 of the Senior Assistant supplies officer...."

The record also showed that, on 20/11/2003, the Permanent Secretary Ministry of Public Service issued a memo clarifying Circular Standing Instruction No. 2 of 7/7/2003, regarding reforms on salary conversion, overlapping salary scales and processing of payroll changes for persons to holder. The memorandum was to the effect that, changes were made regarding to staff positions and salary structure. Paragraph 1. of the memo stated that a single spine salary had been implemented in September 2003 and under paragraph 4, regarding overlapping Salary scales, stated in part that, scales

U4-U3 were converted to U4, save for salary levels that, were at U3, which were maintained on personal to holder basis. The circular however further stated that Accounting Officers with such staff were supposed to make pay change reports to that effect. The Claimant at the time was still holding the position of Senior Supplies Officer at scale U4. However, on 10/10/2007, he was informed that, his appointment to the position to Senior Supplies officer scale U3, vide PSC Minute No. 555 of 2002, was rescinded by PSC No. 107 of 2007 which designated him to the position of Senior Assistant Supplies Officer Scale U4. His salary was subsequently adjusted from U3 to U4.

In our considered view, this notice made him aware of the redesignation and the rescinding of the earlier position. We fortified by his letter dated 23/09/2009, marked "R6" on the record, in which he stated that, his position was downgraded to Senior Assistant Supplies officer, as a result of the Public Service reforms. It was also his testimony that, his position was downgraded to Senior Assistant Supplies officer, which was placed at scale U4. He did not adduce any evidence to indicate that a pay change report regarding his status under U3 had been maintained at personal to holder basis as stated in the memo to Accounting Officers explaining Circular standing Instructions No.2 of 2003.

This Court has taken Judicial notice that Public Service Reforms were undertaken and such reforms caused wide-ranging structural changes, including downgrading and abolition of certain positions in the Public Service structure. The Claimant does not dispute that there were reforms in the Public Service, neither did he adduce any evidence to indicate that the reforms which resulted in his being redesignated to a lower position, were done contrary to the law.

It was the submission of Counsel for the Respondent, that the Ministry of works which made the submission to the Commission intended the position to be filled by Diploma

holders and not degree holders hence the designation was wrongly stated as Senior Supplies officer instead of senior Assistant supplies officer. This fact was later brought to the attention of the Commission after the claimant had been appointed to the position of Senior Supplies officer. The Claimant did not adduce evidence to show that, he was qualified to maintain the position of Senior Supplies Officer as opposed to that of Senior Assistant Supplies Officer to which he was redesignated. He also did not provide any evidence to show that he formally complained about his redesignation, save for his complaint dated 23/09/2009, which was made 2 years after the redesignation.

Although he testified that, he made a verbal complaint about the redesignation, we do not believe him, because the redesignation fundamentally changed his terms and conditions of services, warranting a formal complaint, rather than a verbal one as claimed. It seems to us that the Claimant was aware that he had been promoted to the wrong position hence his silence about it until 2009 when the position to which redesignated was abolished and he was asked to retire on abolition of office.

We therefore, have no reason to doubt the submission that, the Respondent erroneously appointed him to the position of Senior Supplies Officer scale U4 in 2002 and rescinded the appointment in order to correct the error. In any case, following the redesignation in 2007, the Claimant served under the new position and salary scale U4, as Senior Assistant Supplies Office scale U4, without making any formal complaint until he was retired on abolition of Office. Therefore, he cannot turn around now and demand that he was retired under the wrong terms at salary scale U4.

We have established that, Regulation 41 of the Public Service Regulations, does empower the Public Service Commission to review its decision and make any other decision, on discovery of any new and important matter of evidence which was not within its knowledge at the time it made the decision. As already discussed above, the

Respondent submitted that Ministry Works intended the positions to be filled by diploma holders Diploma holders and not degree holders therefore, the position was wrongly stated as Senior Supplies Officer because it required degree holders. The commission was therefore, correct and within its mandate to rectify this error when it rescinded the Claimant's earlier appointment to the Position of Senior Assistant Supplies Officer.

As already discussed, the Claimant did not adduce any evidence to indicate that he possessed the qualifications required for the position of Senior Supplies Officer, to warrant this Court to declare that, his redesignation to the position of Senior Assistant Supplies officer was a demotion. Therefore, having accepted the redesignation and served under the new terms from 2007 to 2009 he accepted the new position. In the circumstances, his claim was an afterthought which cannot stand. This issue is therefore, determined in the affirmative.

2. Whether the Claimant's termination at scale U4 was lawful?

Having determined issue 1 in the affirmative, issue 2 is also determined in the affirmative.

3. Whether the Claimant is entitled to remedies prayed for?

It was submitted for the Claimant, that, of Ugx.4,299,592/-, which he was directed to refund as salary overpaid when he was erroneously placed at scale U3, should be refunded to him.

In reply Counsel for the Respondent submitted that the claimant did not adduce any evidence to show that he actually refunded the said money. she cited **Onyango Joshua Okumu HCCS No. 0153 of 2014**, for the legal proposition that, the burden of proof of all allegations lies on the person who makes the allegations. It was her submission that the requirement for the claimant to refund the money in issue was waived by the letter

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dated 10/02/2010 and he confirmed this during cross examination. Therefore, his claim cannot stand.

We did not find any evidence to support the Claimant's assertion that Ugx. 4,299,592/- was deducted from the benefits paid to him when he was retired on abolition of office. In any case the letter by Salome Nyamungu, for the permanent Secretary Ministry of Public service, the dated 10/2/2010, marked "R4" on the record waived the requirement for him to refund the money. We therefore had no basis to make an order for its refund to him. This prayer is denied.

Other Remedies sought

Having already established that he was lawfully redesignated to the position of Senior Assistant Supplies Officer scale U4, he was lawfully terminated by abolition of office, at the same scale. He is therefore not entitled to any other 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.MR. EBYAU FIDEL
- 2.MS. JULIAN NYACHWO
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DATE.....11/9/21.....

