THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 031 OF 2015
[ARISING FROM HCT.CS NO. 149/2011]

BETWEEN

STANLEY HENRY KIJJAMBU……..CLAIMANT

VERSUS

WAMALA GROWERS CO-OPERATIVE UNION LTD……RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

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

AWARD

Brief facts

The claimant initially was employed by the respondent as assistant accountant effective 10/11/1979. Subsequently and overtime he was elevated to and eventually confirmed in the positon of Union Secretary on 1/12/1993. As a result of an on-going restructuring process, the claimant was by letter of 17/2/1997 assigned duties of the Chief Internal Auditor. By letter dated 30/9/2002 the claimant was terminated due to staff rationalization and the letter indicated that he would be invited to provide a service whenever there would be need. The supplementary trial bundle of the claimant at page 76 indicates that the Board of the respondent sat on 28/2/2002 and under min. 3 recognized that the claimant as Union Secretary had been recalled together with 3 others. Earlier on 26/11/2002,

the same Board in the absence of the claimant under minute 25/02/2003, item 4, had resolved that management was to continue pursuing its mandate.

It was not in dispute that the claimant in 1993 contested for the post of chairperson LCIII and held the post as full time LCIII chairman until 2006. On 25/6/2010 as part of restructuring the office of the Union Secretary was abolished.

Issues

1) **Whether at the time of termination of employment the claimant was an employee of the respondent.**
2) **Whether the claimant's termination was unlawful.**
3) **Whether there are any remedies available to the parties**.

Evidence

The claimant adduced evidence from himself alone while the respondent adduced evidence from 3 witnesses. The claimant testified that having been appointed to the post of Union Secretary in 1992 he was confirmed in 1994. He testified that he was later assigned the position of Chief Internal Auditor for which he was entitled to salary payment. He testified that his claim of 96,341,220/= was up to 30/6/2010 from 2002. His evidence by additional witness statement was that his services were not terminated in 2002 since the Board sat and under min. 25/02/03 resolved that management should continue working and he possessed an identity card that was valid up to December 2010.

The first witness of the respondent, one Fred E. Mwesigye in a written witness statement testified that as a registrar of cooperatives he on 18/5/2010 received a proposed new salary structure and Directors allowance for approval and among other reviews he abolished the post of Union Secretary because due to low levels of staffing the post was no longer necessary.

The second respondent witness, one Mutyaba John in a written witness statement informed court that, the claimant was terminated in 2002 and was paid and he ceased to be on the payment Roll of the respondent.

The last witness for the respondent was one Christopher Kuteesa who in a written statement informed court that the claimant was the Union Secretary who later on acted as Chief Internal Auditor and because the latter post was junior he could not get acting allowance. According to the witness, the claimant after termination in 2002, would be invited for his expertise whenever the need arose and would be paid in peace meal for work done.

Representation

The claimant was represented by Mr. Bazira Anthony of M/s. Byenkya, Kihika & Co. Advocates while the respondent was represented by Mr. Gumisiriza Francis of M/s. F. Gumisiriza & Co. Advocates.

Submissions

On the first issue, counsel for the claimant strongly submitted that at the time of termination the claimant was employed both as Union Secretary and chief internal auditor. He referred the court to the testimony of the claimant and to the evidence of the respondent witnesses in cross-examination as well as Exhibit 4 at page 9 of the claimant's trial bundle that assigned the claimant another office of the Chief Internal Auditor.

Counsel strongly contended that after the staff rationalization of 2002, in subsequent meetings, management was allowed to serve. Counsel referred us to Exhibit N at pages 92-96 of the claimant's supplementary trial bundle where the Board meeting of the respondent held on 26/11/2002 under min. 25/02/03 resolved that management which included the claimant should continue to pursue its mandate.

Counsel also relied on minutes of the Board meeting of 28/2/2003 under min. 33/02/03 that resolved that the recalled staff be issued with appointment letters and the recalled staff included the claimant.

He contended that exhibits REX1, REX2, REX3 and REX4 were claims of the claimant as Union Secretary, and the claimant was paid as such. It was counsel's submission that the issue and renewal of the identity card of the claimant by the respondent

from March 2002 to 31st 2007 and from 3rd December 2007 to 31st December 2010 showed that the claimant was an employee of the respondent. Counsel argued that the respondent created a legitimate expectation when it treated the claimant as Union Secretary. He relied on the authorities of Andrew Kilama Lejul Vs Uganda Development Authority M.C. 270/2019 and Bank of Uganda Vs Joseph Kibuuka & Others, Civil Appeal 281/2016.

It was the contention of counsel that by referring to the claimant in various correspondences as the union Secretary as shown in Exhibit O at page 101-102 of the claimant's supplementary bundle and Exhibits on page 10 of the claimant's trial bundle, the respondent was estopped from denying that he was in fact a union Secretary by the termination date having been re-engaged after 2002.

In response to the above submissions, counsel for the respondent contended that the claimant having been elected to the post of Chairman LCIII in 1993, he ceased to lawfully occupy the position of Union Secretary. Counsel relied on **Section 19(1) and (19(2) of the Local Government Act.** He also relied on the authority of **Makula International Ltd. Vs His Eminence Cardinal Emmanuel Nsubuga** and **Rev. Fr. Dr. Kyeyune Civil Appeal 4/1981/92.**

In rejoinder, on the first issue, counsel for the claimant strongly opposed the contention that the claimant was supposed to have resigned from the post of Union Secretary before he was elected as LC III chairperson. Relying on **Articles 175 (b), 257, 172 and 275 of the Constitution**, counsel submitted that while serving with the respondent as Union Secretary and as Chief Internal Auditor, the claimant was not a public officer or a civil servant having been appointed by the Board of Directors of the respondent and his salaries and emoluments having emanated from the respondent Union directly as opposed to public servants whose emoluments emanate from the consolidated fund or from funds authorized by Parliament.

On the second issue, counsel for the claimant, relying on the authority of Kamusiime Arthur Vs the Registered Trustees of Church of Uganda LDR No. 142/2019**,** submitted that since the claimant's employment was subsisting by the 30/6/2010 when he was notified that the office of the Union Secretary had been

abolished without subjecting him to the process as espoused under **Section 66 of the Employment Act,** the termination was unlawful. Counsel strongly argued that the Registrar of co-operatives had no powers to abolish the office of Union Secretary. Counsel relied on **Section 2(2) of the Cooperative Societies Act** and R**egulation 27 & 28 of the Co-operative Societies Regulations, S.1 112-1.** Counsel also relied on the authority of Nathan Nandala Mafabi & 3 others Vs Attorney General, Constitution Petition No. 46/2012 at page 134**.**

Counsel strongly submitted that in the absence of amendment of the Bye-laws of the respondent union and in the absence of a resolution of a General Meeting, the abolition of the office of the Union Secretary was illegal. Counsel further submitted that the termination was illegal for failure to conform with **Section 58(3)(d) of the employment Act** which required the respondent to give 3 months' notice to the claimant before termination of his employment.

In reply to the above submission on issue 2, counsel for the respondent strongly argued that the service of the claimant was ended by letter of 30/6/2010 informing him about the abolishment of the office of the Union Secretary. According to counsel, the termination was without malice since it was as a result of poor business performance that had previously led to rationalization of staffs in September 2002 leaving members of staff to keep working on voluntary basis.

Counsel reiterated that the letter of 30/09/2002 stated that the respondent would invite the claimant for his expertise whenever need arose and according to him the letter provided notice to the claimant and indicated an end of the tenure of the claimant with no plans of a renewal or extension unlike in the case of Kamusiime Arthur Vs Registered Trustees of Church of Uganda (supra) relied on by the claimant. In his submission the claimant was lawfully terminated on 30/9/2002 in line with **Section 68 of the Employment Act.**

In a rejoinder to submissions on issue No. 2, counsel for the claimant reiterated that the claimant having been laid off with others in a restructuring of the year 2002, he was recalled and continued working on the same terms and conditions as before rationalization until he was informed in the termination letter that this office had been abolished.

DECISION OF COURT

Whether at the time of termination of employment, the claimant was an employee of the respondent.

There is no doubt on the evidence and it is not in dispute, that the claimant was an employee of the respondent beginning with the year 1979 and that he rose through the ranks to the post of Union Secretary in which he was confirmed in May 1994. It is not in dispute, and it is not denied, that in 2002 as a result of a restructuring and a rationalization of staff, the claimant with others were laid off and the claimant was paid all his benefits as at that time.

A letter dated 30.9.2002 and attached to the response to the memorandum of claim and identified as **"D"** in respect to the rationalization and termination of the claimant in 2002 stated (among others)

"Consequent to the Board of Director's /staff members meeting of 24 September 2002, it was resolved.

(i) That payment for your services to the Union be terminated on 30/09/2002.
(ii) That payment of your outstanding salary arrears will be effected in instalments until all is cleared.
(iii) The outstanding amount as at 30th September is Shs. 12,246,472/= (Twelve million two hundred forty-six thousand for hundred seventy-two only).

The Union Board of Directors wishes to register its tribute to you for all the services you have rendered to the Union during your tenure of office.

There will be no hesitation to invite your expertise whenever the need arises in the Union service.

On 28/02/2003, in a Board meeting which the claimant attended, under minute 33/02/03 item 3, after the meeting was informed that the recalled employees were not yet issued with re-instatement letters, a committee handling the matter was requested to issue reinstatement letters to the recalled employees, after meeting with them and the names of recalled employees included the claimant.

In an earlier Board meeting held on 26/11/2002 and in the absence of the claimant, the meeting under minute 23/02/03 **"the treasurer thanked the committee elected to oversee the staff retrenchment exercise. The meeting resolved that management should continue to pursue its mandate."**

The question for the court is: **Whether in the absence of a letter of reinstatement, the claimant was recalled to perform his duties on the same terms as before the rationalization that terminated his services in 2002**.

Counsel for the claimant relied on various cases for the legal proposition that the claimant having been allowed to work as Union Secretary after being laid off, the respondent would be estopped from denying that he was an employee on the same terms as before he was laid off.

In Kamusiime Arthur Vs Registered Trustees of Church of Uganda LDR 142/2019, the contract of the claimant ended on 31/5/2017 but he continued working on the same terms and conditions. This court held that "**the admission of the respondent that they did not remind the claimant about the end of the contract and their continued engagement of the claimant for an extra 9 months in our view constituted a renewal of the contract.**

In Ogwang David & 99 others Vs Attorney General Civil Appeal 138/2015 (court of Appeal) at page 20 of the lead judgement of Justice Remy Kasule AG. JA (as he then was) it is stated

"**Further it is not in dispute that the appellants were part of the lot of other employees who had been previously employed by Uganda Spinning Mills Ltd before the care taking period.**

The rest of the employees having been discharged and granted their terminal benefits, it is reasonable to infer that those who were retained in the care taking capacity were also entitled to terminal benefits.

In such circumstances, entitlement to terminal benefits was one of those terms that were implied in the contracts of engagement to work during the caretaking period.

As for those employees that continued working as caretaker staff, but were not issued with letters of appointment, their having been employed by Uganda Spinning Mills Ltd previously and their employment having not been expressly terminated with the rest of the terminated employees by 28/02/1995, it was right for the learned judge to conclude that their employments continued inforce during the caretaking period …. Therefore, the argument of the respondent that the employment law required the appellants to have in their possession letters of appointment so as to be able to prove that they were lawful employees of Uganda Spinning Mills ltd during the caretaking period has no validity at all."

The legal principle expounded in the **Kamusiime Arthur Vs Registered Trustees for Church of Uganda (supra**) is that where after the end of a contract an employee continues in employment under the same terms and conditions as the expired contract the continued engagement of the claimant in employment constitutes a renewal of the contract.

The legal principle in the case of **Ogwang David & 99 Others Vs Attorney general**, (supra) is that where an employee is trained to work in a transitional period after his colleagues were terminated and paid terminal benefits, the retained employee is as well entitled to terminal benefits such entitlement having been an implied term in the contract of re-engagement during the transition period.

Another legal principle from the Ogwang David case is that where employees continue working in a transitional period without any appointment letters or contracts, the fact that they were previously employed by the same employer under a contract of service is sufficient proof that they were employees before and during the transition period.

In the instant case the claimant was terminated during a restructuring and was paid all his benefits. The letter that ended his employment with the respondent clearly stated that in the event the employer needed his services, they would seek his expertise. It is therefore fair to conclude that when the Board sat on 26/11/2002 and resolved that management should continue to pursue their mandate, it was referring to this expertise that was contained in the letter ending the employment. Although the Board sat again on 28/02/2003 and requested a committee

concerned to issue reinstatement letters to the recalled employees, no such letters were issued and in spite of this, the claimant continued to offer his services to the respondent. **Were these services offerd on his original terms and conditions before the 2002 restructuring?**

In the Kamusiime Arthur case (supra) the employer continued to pay salaries and other benefits to the employee for the services rendered after the contract had ended.

The claimant in the instant case was never paid any salary for the period 2002-2010 and there is no evidence that he ever raised the issue of non-payment of his salary to the Board or to any other senior manager of the respondent until his office was formally abolished. In the case of **Kabi Geofrey Vs National Union of Protection and *Agricultural Workers Union, LDC No. 52/2015*** when this court was considering a claim for salary arrears it stated

> "**It is our opinion that the claimant needed to do more than claim that he was not paid in 1998 and he continued working without pay until July 2010 when bad blood started oozing from both claimant and respondent. This state of affairs without further explanation is not believable by this court."**

In the above case the question of the claimant having been an employee was not in dispute. The question was whether the demand for salary arrears was justified. The question in the instant case is whether the claimant was re-engaged on the same terms as before. Given that the letter ending his employment specifically stated that once his expertise was needed he would be asked to come to offer his service, we form the opinion that it was upon the claimant to adduce further evidence that he was re-engaged not to offer a service once in a while as an expert but on fulltime and on a salary as before the rationalization. Evidence of his demand for salary during the period or evidence of payment of a salary for one, two, or 3 months would have sufficed. A letter written by the Chairman of the Board of Directors of the respondent addressed to the registrar of Cooperative which is an attachment to the witness statement of RW1, E. Mwesigye Marked "A" in its opening paragraph states

"Since 30th September 2002 declaration of staff redundancy due to the then prevailing Union's declining status, a few staff have been serving on a more or less voluntary basis."

In the circumstances of this case we do not consider Exhibits REX 1, REX 2, REX 3, REX 4, REX 5, and REX 6 as evidence that the claimant was re-engaged on the terms that existed before rationalization. These are exhibits that showed claims of the claimant for transport and days worked during the months of Dec 2009 and throughout October. For example, the claim of Dec 2009 states days worked as 12 days and the claimant for this month was paid 48,000/=. For the month of January 2010, the claimant claimed for 15 days and he was paid 60,000/=. The other claims are for days worked in March, April, May and June. He was paid lunch and transport for the days worked.

In the absence of evidence that he was entitled to more than what he claimed and was paid for, and given the express provision in the letter of rationalization that he would be called upon as and when he was needed, this court is entitled to accept the submission of the respondent that the claimant was terminated by the letter of 2002 and that he was not re-engaged on the same terms as a fulltime Union Secretary entitled to a salary. The reference to the claimant as Union Secretary by the Board members or by anybody else did not, in our view, imply that he was being recognized as a fulltime Union Secretary entitled to a salary. The same applies to the identity card that was offered to him. We form the opinion that these measures were meant to facilitate his work as and when he was called upon to perform certain duties for which he was paid. Consequently, by the time the office of the Union Secretary was formally abolished, the claimant was not an employee of the respondent within the meaning of **Section 2 of the Employment Act.**

Was the claimant employed as Chief Internal Auditor and if so was he entitled to payment as such?

It was argued strongly for the claimant that he was substantively appointed to both the position of Union Secretary and Chief Internal Auditor and that he was only paid for the duties of the office of Union Secretary.There is no doubt on the evidence adduced that the claimant was confirmed as Union secretary in 1994.

It is not in doubt that on 17/2/1997 he was asked to offer his service as a Chief internal auditor. The letter dated 17/2/1997 provided (among other things).

> **"Consequent to the Union's restructuring programme, in addition to your duties as the union Secretary, you have been assigned to take over the office of the Chief Internal Auditor immediately…."**

The letter did not specify the terms and conditions under which the claimant was to offer his services but only referred to the job description in the Manual and the fact that he was to report on a daily basis to the General Manager certain aspects of the office of the Chief Internal Auditor. As Union Secretary the claimant was in hierarchy higher than the Chief internal auditor. Indeed, he had been promoted from the rank of Acting Chief Internal Auditor to that of Union Secretary. Ordinarily all subordinate officers report to their superiors and are accountable to their superiors. The office of the Chief Internal Auditor was accountable to the office of the union Secretary. Consequently, it is not conceivable that the addition of duties in internal audit to duties of Union Secretary constituted a substantive appointment calling for a separate salary and separate benefits due to the claimant. Neither could it be said to constitute an Ag. position in the office of the Chief Internal Auditor so as to call for an allowance since the Ag. capacity could only be in a position that was higher than that occupied by the one appointed to act. The only logical conclusion is that in the management of the restructuring the General Manager saw it fit to use the knowledge of the claimant in auditing to perform duties in the claimant's original lower position as he performed duties of his substantive post. The letter of 17/2/ 1997 assigning him such duties therefore could not be said to have been his confirmation in the position of Chief Internal Auditor as counsel for the claimant intended us to believe. Assignment of duties to a junior by a senior is an ordinary way of doing business and until a complaint is raised as to the nature of assignment and its remuneration, the assignment can only be taken to have been either voluntarily acceptable by the employee or to have been in the ordinary course of such employee's employment.

The claimant having been assigned work that ordinarily would have been done by his junior and he having raised no complaint as to the nature of the assignment or

its remuneration and the assignment having not specified special terms and conditions of performance, this court was entitled to hold that the assignment was not a distinct appointment with distinct entitlements.

The second issue is whether the claimant's termination was unlawful.

Having resolved that the claimant was not an employee within the meaning of **section 2 of the Employment Act,** his termination by virtue of a letter dated 25/6/2010 informing him of the abolishment of the post of Union Secretary was of no legal consequence. Consequently, discussion of the issue as to whether the office was legally abolished is for academic purposes and we do not intend to do this. There was nothing unlawful asking the claimant to leave the abolished office which he was occupying as and when required either at the leisure of the respondent or voluntarily after the retrenchment package of 2002.

The last question is whether there are any remedies available to the parties

Having found that the claimant was not an employee of the respondent at the time of the termination and that the termination was not unlawful, hardly can we find any remedies available for him. However, as the letter informing him of the abolishment of the post he was voluntarily occupying states, the outstanding dues, if any, as reflected in the letter, shall be calculated and paid to him.

In the final analysis the claim fails and an Award is entered in favor of the respondent in the above terms. No order as to costs is made.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye ……..

PANELISTS

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

Dated: 14/01/2022