

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO.224 OF 2018**  
**ARISING FROM MGLSD/LC/019/2018.**

**MULEMA MAWADIRI FIONA** ..... **CLAIMANT**

**VERSUS**

**STANBIC BANK KAMPALA** ..... **RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. ROSE GIDONGO**

**2. MS. HARRIET MUGAMBWA NGANZI**

**3.MR. JACK RWOMUSHANA REUBEN**

**AWARD**

**BRIEF FACTS**

The Claimant was an employee of the Respondent from October 1996 to 17/05/2018. According to her, due to her excellent performance, she rose through the ranks, and even worked at the Parent Company in South Africa. On her return from South Africa, she entered into a fixed term contract with the Respondent as Manager Projects, at the level of SGB-13, a position she expected to hold until her retirement in June 2031. In July 2017, she was temporarily assigned to the Credit department as head of Business support recoveries and Rehabilitation for 1 year, which she was informed was at the same position and with the same terms and conditions as her previous position at SGB-13. She was also informed that; she would be heading a team of about 34 employees. However, she later discovered that the position was not only lower in rank, but she had only 1 person

under her supervision as opposed to 34 persons. She contacted her CEO to express her dismay over these circumstances and to seek clarity on what would happen after the completion of the assignment and proposed to the CEO that, if the Bank was not interested in a long-term employment relationship with her, she could offer her monetary compensation instead. In response , the Respondent suggested mutual separation terms which she rejected.

On 17/05/2017, her services were terminated on grounds that she had agreed to mutually end her employment with the Respondent, whereas not, hence this claim.

## **ISSUES**

- 1. Whether the Claimant's separation from the Respondent's employment amounted to illegal and unlawful termination of her contract or constructive resignation from the Respondent?**
- 2. What are the remedies available to the parties?**

## **RESOLUTION**

- 1. Whether the Claimant's separation from the Respondent's employment amounted to illegal and unlawful termination of her contract or constructive resignation from the Respondent?**

It is a settled position that, an employer reserves the right to assign employees work and to determine how and where the work should be executed. To this extent the Claimant does not dispute that, she had a running fixed contract with the Respondent and the Respondent reserved the right to assign her any duty or attach her to any department in the Bank and as a practice these were considered short assignments, which had no effect on the underlying fixed term contract.

Her claim as we understand it is that, when she returned from South Africa where she was working in a position at the level of SBG 13, She entered into a fixed

term contract as head of Market Personnel SBG13, a position which she expected to hold until her retirement in June 2021. However, in July 2017, she was given a temporary assignment as head of Business Support Recoveries for 1 year. She was assured that, the assignment was similar in ranking with her previous position of SBG 13 and that she would be head of department supervising over 34 staff, but 9 months later she discovered that, the position was and SBG 11 and therefor lower in rank and she was supervising 1 as opposed 34 staff. It was however her testimony that the assignment did not affect her stay at the Bank or her terms of employment.

It is also not in dispute that she proposed a mutual separation with the Bank but declined to conclude the same because the compensation terms she had proposed had not been met by the Bank. She expected her compensation to cover her loan obligations with the Bank. We established that , although she raised concerns about the terms of her temporary assignment, R5 in which provided for its terms of the temporary assignment to the PBB Credit Department, indicated that after the assignment a decision would be taken *“either for retention in the role or another role comparable to the position you previously held prior to the assignment where possible...”* R5 clearly indicated that the Bank would decide where to deploy her after the assignment and in a position comparable to her previous position.

In fact the CEO’s email to her marked “F” at page 21 of the Claimant’s trial Bundle indicated that, he was surprised that, she thought her services were no longer needed after she had served the Bank for over 22 years. Given the wording of her email dated 16/04/2018, it seems to us that the Claimant was intent on leaving the Bank and her primary concern was to receive compensation which would clear her indebtedness with the Bank. The email read in part as follows:

*“... Dear Partick,*

... I did position with you that after working for nearly 22 years with Stanbic Bank in Uganda and with Standard Bank South Africa,- Johannesburg, I was given a one year job offer – dated 21<sup>st</sup> July, 2017 ending 21<sup>st</sup> July 2018 as the acting manager of Business solutions and recoveries in Credit (attached ) a position which according to the organogram(attached is an SBG 11 grades role, average monthly salary of about Ugx. 5.4 mn as compared to my current SBG 13 grade-I have been at SBG 13 for 12 years and current monthly... is at 27.4 mn.

After some introspection I came to the conclusion that the Bank is not looking for a long term employee relationship with me and has no long term plans for my growth or retention, the short term assignment in itself has caused me untold frustration and uncertainty to the extent that I approached you with a view to strike a compromise where I leave the bank in exchange for monetary compensation.

... I thank you for allowing this two- way dialogue

I met the HRPB- Doreen she informed me that management was open to releasing me on a Monetary compensation basis. Through her you made offer of 90mn which was subsequently increased to Net 120mn. I reverted through her that I needed to have a further dialogue with yourself because my thinking that whilst I have not met the 50 year age mark where an early retirement would be considered according to the Stanbic Bank HR Policy- (number of years of service x current gross salary) I felt that the monetary compensation would take into account the period of service of 22 years and with a track record of high levels of integrity ....therefore an agreement somewhere in between but with years of service featuring as a consideration in the offer...

*...when iam released by the Bank – my humble request is that iam enabled to settle as much of my outstanding debt as possible and then use my savings to settle other obligations with the Bank...”*

110 Based on this email it is our considered opinion that, it is the Claimant who came to a conclusion that, her services were no longer required. It is not in dispute that, she was given was temporary assignment for 1 year, and there was nothing on the record to the contrary. Although she contended that, the terms of her temporary assignment were contrary to what had been agreed, as already discussed, we  
115 found it peculiar that, she laid emphasis on leaving the Bank rather than addressing the effects the temporary assignment had on her terms and conditions of service. Claimant in her testimony said that, “*there were no restrictions under my contract as to what and where I was expected to work and not to work... I was given a temporary assignment on 21/7/2017,... the assignment was supposed to*  
120 *be for 1 year and the Bank emphasised that my working conditions remain the same...they also said that after 1 year I would be assigned the same role or different role ...”*

In was also her testimony that, it was the practice of the Bank to temporarily attach employees to particular positions and upon expiry they would return to  
125 their previous positions or assume other roles which were comparable to their previous positions. The Claimant did not adduce any evidence to indicate that she was not willing to take up the temporary position or that the Bank had any intention of demoting her. She only raised concerns about the assignment 9 months after she assumed the role. Although Mr. Kihika Counsel for the  
130 Claimant, citing **Ugafode Microfinance Limited vs Mark Kyoribona LDA No. 34 of 2019**, argued that, the temporary assignment amounted to a demotion, which was described as not only reflecting in the salary and other privileges but also in stature and responsibilities attached to the assignment as compared to the previous assignment, the there was no evidence to indicate that the Respondent

135 intended to demote or terminate her, because even if her job title changed under  
the assignment, the wording of R5(supra), did not connote that, the assignment  
was intended to change the fundamental terms of her contract and she was aware  
of this. Even if the position was considered lower than her SBG 13 position, her  
terms and conditions remained the same. We therefore, respectfully disagree with  
140 Mr. Kihika's argument that, the temporary assignment was a demotion, given that  
her terms and conditions remained the same.

We also find nothing peculiar about her being asked to hand over her previous  
position to another officer, a one Brain Ndedezungira, a foreign expatriate,  
because her new assignment required her to move to another department,  
145 therefore requiring that another person carries out her previous duties. It would  
thus be unfair to fault the Bank for replacing her with another staff as was the  
case. In any case, the options she was given in R5, did not include being retained  
in the same position but rather in a position comparable to the one she previously  
held.

150 A further analysis of the evidence she adduced, indicated that, she preferred the  
option of leaving the Bank with enough compensation to deal with her  
indebtedness to the Bank, rather than addressing the issues regarding the stature  
and responsibilities of the temporary assignment, on her employment and nothing  
else.

155 It seems that, the Claimant had intentions of joining her Husband in Washington  
DC, as was stated by RW1, in her testimony in chief, hence her focus on the  
option to leave the Respondent provided she was adequately compensated. We  
are fortified by the fact, she went further to request for early retirement as a means  
of getting compensation, based on on her nearly 22 years of service with the  
160 Respondent, even when she knew that she was not qualified for it. It was her  
testimony that, "...yes I wanted to be paid some money so I could leave ... I  
brought it to the CEO's attention ... he promised to consider the proposal and

*assigned the matter to the HR... we did not agree on the proposed settlement... All I wanted was not to be left indebted... I knew I did not qualify for early retirement but none the less I requested ...”*

The CEO’s response to her by email dated 23/04/2018, indicated that, she had rejected the Bank’s offer for settlement and the CEO had no further options in this regard.

We also established that it was not in dispute that, on 17/05/2018, the Claimant received a letter notifying her of a “mutual separation” which in essence terminated her services with the Respondent. However, following the intervention of her lawyers by their letter to the Respondent dated 22/05/2018(marked R8 on the Respondent’s trial bundle),on 28/05/2018, the mutual separation agreement was withdrawn and her services were reinstated.

According to the Respondent thereafter the Claimant stopped work and this was confirmed by her when she testified that, “... *yes they tried to recall the mutual separation agreement... I was still an employee of the Bank ... I don’t remember the last time I was at the Bank... I was not trusting these people,... ....my last day was 31/05/2018, I had already served my notice of intention to sue...post 1/06/2018 I did not return to the Bank..”* In re-examination she actually stated that she went back and handed over as was required.

We also established that, she received a letter 17/05/2018, which stated that her services had been terminated and providing for an exgratia payment equivalent to 3 months’ pay amounting to Ugx 82,334,793/- as full and final settlement. In effect the letter was a termination of her services on grounds that the 2 parties had reached a mutual settlement agreement. As already discussed it was her testimony that she last worked on 30/05/2018 and by this date she had been reinstated, in employment, therefore she was still staff of the Respondent. It was also noteworthy that, her temporary assignment was still ongoing, because it was supposed to run until 31/07/2018. She did not render any explanation why she

did not return to the Bank after the mutual settlement agreement was withdrawn and she was reinstated, save that she had already issued her with a notice of intention to sue.

195 It seems to us that, she was determined to leave the Bank and all she wanted was to be given sufficient compensation to settle her liabilities with it and nothing else.

She argued that she was constructively dismissed. Constructive dismissal is provided for under Section 65(1) (c ) as follows:

200 *1) Termination shall be deemed to take place in the following circumstances-*

*a) ...*

*b) ...*

205 *c) where the contract of service is ended by the employee with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee and*

*d)...*

210 It is not in dispute that, the Respondent was initially unreasonable when she insisted that the Claimant had agreed on a mutual separation whereas not. However, the mutual separation was proposed by the Claimant herself and not the Respondent. She only turned around and rejected it when she failed to realise the amount of compensation she expected and this cannot be attributed to the conduct of the Respondent. In our considered opinion, she locked herself out of the Respondent's employment when she failed to return to work after the Respondent withdrew the Mutual separation agreement and reinstated her. We  
215 are fortified by her testimony when she stated that, “ *I had already served the Bank notice of intention to sue... I cant recall when I returned to the bank... I was*



*in a state of shock... post 1/06/2018.... My issue was my career...*” In our considered opinion, if indeed her intention was to salvage her career, she should have returned to work when the Respondent withdrew the termination letter and reinstated her. In our considered opinion her reinstatement was an opportunity for her to discuss the issues regarding the terms of her employment, but she chose to sue the Bank instead.

We are not convinced that it was the conduct of the Respondent that caused her to leave her employment, because she seemed bent on leaving the Bank as a means to getting compensation, rather than addressing issues concerning her terms and conditions of service. In the circumstances, her separation from the Respondent’s employment did not amount to constructive dismissal as she would like this court to believe.

It is our finding that, by failing to return to work after she was reinstated, she had chosen to terminate her own employment and the termination was not illegal and unlawful termination nor was it constructive resignation from the Respondent as claimed.

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

Delivered and signed by

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

**PANELISTS**

**1. MS. ROSE GIDONGO .....**

**2.MS. HARRIET MUGAMBWA NGANZI .....**

**3.MR. JACK RWOMUSHANA REUBEN .....**

**DATE: 19/08/2022**