



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT LIRA
LABOUR DISPUTE REFERENCE NO. 010 OF 2021
(Arising from Labour Dispute Complaint No. 2020/LDLG/03/017 of 2020)

MORO CHARLES:CLAIMANT

VERSUS

GREEN HILL SECONDARY SCHOOL LIRA:.....:RESPONDENT

BEFORE:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. HON. JIMMY MUSIMBI,
2. HON. ROBINA KAGOYE &
3. HON. CAN AMOS LAPENGA.

AWARD

Introduction

- [1] The Claimant brought this claim for salary arrears of UGX 1,240,000/= and other allowances arising out of his employment as a Chemistry Teacher from 10th February 2018 until 20th November 2019, when he was summarily terminated without justification. He filed a complaint with the Labour Officer at Lira who referred him to this Court. He filed a memorandum of claim on 30th September 2021.
- [2] The Respondent opposed the claim contending that the Claimant did not have a cause of action against it. Alternatively, the Claimant absconded from work, having been implicated in a case of aggravated defilement and teaching in multiple schools. He was paid until November 2019 and has never been terminated from employment.

Issues for determination

- [3] At the hearing on 21st February 2023, three issues were framed for determination viz:
 - (i) Whether the termination of the Claimant was unfair and unlawful?

(ii) Whether the Claimant is entitled to any wages?

(iii) What remedies are available to the parties?

Summary of the Evidence

- [4] The Claimant testified that he was employed as a teacher on 10th February 2018 at an agreed monthly salary of UGX 310,000/=. He was terminated on 20th November 2019. He claimed accumulated salary arrears of UGX 1,240,000/=.
- [5] In cross-examination, he testified that he did not have an appointment letter or a school identity card. That salary was paid for working months and not during school holidays. He was paid in cash by the Headteacher, Asia Suwedi. He would sign in a small counter book. He testified that he was paid termly. For the 2nd term of 2019, which started in late May and ended in early August, he was not claiming for May 2019 and August 2019, a holiday month. He was shown REX1, which was the payment book. He testified that it bore his signature but was unsure if it was 2018 or 2019. He testified that he applied for a salary advance of UGX 200,000/= in 2018. He further testified that while he got a salary advance for 2018, he did not recall applying for an advance in 2019.
- [6] In re-examination, the Claimant clarified that his appointment was verbal. He was paid a salary for June 2019. His claim for arrears was for July, August, September, October, and November 2019.
- [7] Asiya Suwed(RW1) confirmed that the Claimant was earning UGX 310,000 per month, and he was fully paid for July, September, October, and November 2019 and signed for these sums on 15th October 2019. His claim was false. His teaching in multiple schools was against the Respondent's terms and conditions of service and abscondment contrary to the Government Standing Orders and Employment laws. She testified to writing a warning letter after receiving complaints from students missing classes that the Claimant should have taught. She also testified that the Respondent had never terminated the Claimant.
- [8] In cross-examination, RWI testified that the Respondent had a disciplinary procedure. She sat down with the Claimant and warned him that he had promised to change. She did not have the minutes in Court. She suggested that she was in the habit of "doctoring" documents.
- [9] In re-examination, she clarified that she was not a doctor and did not understand doctoring. She confirmed having written a letter to the Claimant but did not subject him to disciplinary measures. She spoke to him in the presence of the Director of



Studies about absconding and complaints of students, and he did not change. She confirmed that the Claimant was no longer teaching.

- [10] Mr. Lawrence Aliga Odongo's (RW2) witness statement was admitted as his evidence in chief. In the statement, he testified that he was the Director of Studies of the Respondent. He corroborated RW1's testimony that the Claimant was fully paid his salary for July, September, October, and November 2019 and signed for the same on 15th October 2019. The claim was baseless and unsubstantiated. He was certain that the Claimant had never been terminated. He testified that the Claimant was paid salary like all other Teachers under the Ministry of Education in Public and Primary schools. That the Claimant was teaching in multiple schools and had been implicated in a case of aggravated defilement. That the Claimant received a warning letter after complaints from students. He testified that the Respondent did not owe the Claimant any monies and he had absconded from work.
- [11] Counsel for the Claimant opted not to cross-examine RW2.

Resolution of issues and Decision of the Court

Issue (i) Whether the termination of the Claimant was unfair and unlawful?

- [12] Ms. Bridge Kusemererwa, appearing for the Claimant, submitted that the Claimant was verbally terminated on 20th November 2019 by the Head Teacher, Asiya Suwed. That this was confirmed in paragraph 5 of the rejoinder and confirmed in the testimony. She relied on Section 68(1) and (2) of the Employment Act, 2006 (*from now EA*) and the case of Florence Mufumba v Uganda Development Bank LDC 138 of 2014 for her contention.
- [13] Mr. Twontoo Obaa, appearing for the Respondent, submitted that the Claimant had not proven termination. Counsel referred to the evidence of verbal termination as a 'naïve assertion'. He suggested that the claimant had not discharged the burden of proof under Sections 101 to 104 of the Evidence Act Cap.6. That the Claimant admitted to his signatures appearing in the Teacher's salary payment book "REX1". It was Mr. Twontoo's prayer that the claim be dismissed with costs.
- [14] In rejoinder, Ms. Kushemererwa submitted that the termination was verbal. On the basis of unlawful termination, the Claimant was entitled to severance pay. She referred to Section 66 EA that makes it mandatory for the employer to give an employee a hearing in every form of dismissal. Counsel cited the case of



Twinomugisha Moses v Rift Valley Railways C.S No. 212 of 2009 in support of this proposition.

Resolution

- [15] Ms. Kushemererwa submitted that no proper reason for termination was given and there was no fair hearing. Mr. Twontoo submits that there has been no termination at all. That the Claimant has absconded from duty.
- [16] It is useful to lay out the relevant legal provisions in respect of termination of the contract of employment. Under Section 65EA, a contract of employment may be ended by the employer with notice, at the expiry of a fixed term without renewal or end of a task, as a consequence of the employers unreasonable conduct to the employee or by an employee who has received notice but before expiry of the notice period.
- [17] Under S66EA, an employer who wishes to dismiss an employee must give the employee a fair hearing.¹ And under S69EA an employer is entitled to summarily dismiss an employee where an employee has fundamentally broken his or her contractual obligations.
- [18] In the matter before us, the Respondent denies the fact of termination. The Claimant's evidence is that the Respondent's Head-teacher verbally terminated the contract. The Respondent counters that the Claimant absconded from work on account of an alleged criminal inquiry. The Claimant did not seek to contradict this evidence in cross-examination. It would follow therefore that the Claimant had accepted this evidence. In the case of *Habre International Co Ltd v Kassam and others*² Karokora, JSC. observed that: "It is trite law that whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination it must follow that he believed that the testimony given could not be disputed at all. Therefore, an omission or neglect to challenge the evidence-in-chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible." It would follow, in the present case that the fact that the Respondent has never terminated the Claimant was not controverted.
- [19] The other difficulty that the Claimant faces is that he also admitted to teaching in various schools. While this admission would absolve the Respondent from the need to justify a dismissal, if at all there was one, the Claimant did not cite the reason or

¹ Per Musoke J in *Ebiju James v Umeme Ltd H.C.C.S No133 of 2012*. The tenets of a fair hearing are discussed.

² [1999] 1 EA 125 at 138. His Lordship referred to the Court of Appeal decision in *Kabenge v Uganda Court of Appeal Criminal Appeal No 19 of 1977 (UR)* and Supreme Court's decision in *Sowoabiri and another v Uganda Supreme Court Criminal Appeal No. 5 of 1990 (UR)*



reasons for termination. There was no evidence of any disciplinary proceedings leading to termination of the employment contract. The Claimant's pleadings did not include a prayer for a declaration of unlawful termination. He only sought unpaid wages and general damages. This position renders the provisions of Section 68EA, inapplicable. There is no challenge on the reason for termination. In our view, the Claimant has not established that he was terminated and the onus to do so would be on him. We are not satisfied that the claimant was terminated and we would answer issue no. 1 in the negative.

Issue (ii) Whether the Claimant is entitled to any wages?

[20] Paragraph 3 of the memorandum of claim read as follows:

"The Claimant's claim against the respondent is for accumulated salary arrears totaling to UGX 1,240,000/=..."

RW2 testified that the Respondent paid the Claimant's salary for the months of July, September, October and November 2019. The Respondent produced an exercise book containing payment records. An extract was admitted as REX1. The entries on the page bearing the Claimants name bore a signature that the Claimant recognized as his own. A date of 20th September 2019 was entered on the 4th row for a sum of UGX 310,000/=. Three entries above this did not have any dates against the payments. The Claimant confirmed that he had signed in a book for the year 2018 and had signed six times. He recalled taking a salary advance in 2018 and not 2019. That the Respondent admits paying these sums, we would make the inference that the Claimant performed his tasks in the 2nd half of 2019.

[21] Mr. Twontoo took the view that the Claimant did not have a cause of action against the Respondent. Counsel cited Order 7 Rule 11(a) of the Civil Procedure Rules S.I 71-1 (from now CPR) for the proposition that a plaint that does not disclose a cause of action shall be rejected. Counsel cited the cases of **Alhaji Nasser Ntege Ssebagala v Attorney General and Others** (Constitutional Petition No.1 of 1999), **Auto Garage v Motokov** (1971) EA 314 and **Priamit Enterprises Ltd v Attorney General** S.C.C.A No. 1 of 2001 in support of the proposition that the claimant had never been terminated and had been fully paid his salary and therefore did not have a cause of action against the Respondent. We agree that the dictum expressed in the authorities cited by Mr. Twontoo accurately reflect the position of the law in respect of cause of action in civil proceedings. We hasten to add that in employment and labour disputes, various actions are statutory in nature. Labour disputes as defined in Section 2 of the **Labour Disputes (Arbitration and Settlement) Act 2006 (from now LADASA)**, means any dispute or difference between the employer or employers and an employee or



employees, or a dispute between employees: or between labour unions connected with employment or non-employment, terms of employment, the conditions of labour of any person or of the economic and social interest of a worker or workers. Under the Employment Act 2006, an employee may bring a complaint for infringement of any rights provided under the EA. These rights arise from the employment relationship. In the present case, the employment relationship was not in dispute. The Claimant brought an action for unpaid wages under Section 41 of the EA. We think that the argument that he did not have a cause of action is not entirely applicable in the circumstances.

- [22] Returning to the contending positions in respect of wages, the Claimant argued that he was not paid while the Respondent contended that he was paid in full. The Claimant relied on his oral testimony while the Respondent produced documentary evidence. Section 58 of the Evidence Act Cap.6 provides that all facts, except the contents of a document may be proved by oral evidence. In his treatise "*The Law of Evidence in Uganda*" the Learned Author Cornelius Henry Mukiibi³ posits that oral evidence which is trustworthy is sufficient to prove a fact. However, where documentary evidence exists, it is considered the best evidence of its contents. Under Section 91 of the Evidence Act, no oral evidence may be given of the contents of a document. This is the Parole Evidence Rule. Oral evidence may not be taken to contradict the contents of a written deed.⁴ The Learned Author concludes that these rules of evidence preserve the benefits of writing and avoid confusion and endless uncertainties. Indeed, in the case of *John Sempijja v Stephania Samueneya High Court Civil Appeal 55 of 2014*⁵ the Honourable Mr. Justice Namundi observes that sections 91 and 92 of the Evidence Act are clear and it would be a mockery of the Law of Contract to admit oral evidence that substantially destroys the documentary evidence adduced.
- [23] In the case before us, and applying the law strictly, we would conclude that the Claimant's evidence of non-payment would not stand in the face of the Respondent's documentary proof of payment. However, the legislature anticipated challenges in the area of labour disputes. These challenges would be appropriately addressed by adherence to Sections 50 and 59EA to which we shall return later in this award. In the matter at hand, the Legislature provided under Section 18 of the LADASA, that the Industrial Court would not be bound by the rules of evidence in civil proceedings for the purposes of determining a matter before it. The intent of the legislature, it can be surmised, is to provide for a less formal and less legalistic approach to labour justice. It may well be said that the rationale behind this legislation rests on a global standard

³ Cornelius Henry Mukiibi 'The Law of Evidence' page 85

⁴ Per Mukiibi(Ibid) page 108

⁵ [2015] UGHCCD 165 (12 January 2015);



of the labour or employment relationship. The need for balance. According to a report by Professor Alan C. Neal following the XXVI Meeting of European Labour Court Judges held in Madrid, Spain⁶ the Respondent Judges generally agreed that evidence in labour disputes would be freely given. There appears to be broad measure of unanimity of view towards a less technically legalistic approach to evidence. The reading of Section 18 LADASA suggests that this Court would adopt a less technical approach to the strict view proposed by Mr. Twontoo, for the Respondent.

- [24] The question therefore is whose evidence would be believable. In cross-examination, the Claimant confirmed that the employees of the Respondent would be called to sign for payments in an exercise book. It was a small counter book, he would sign for the monthly payment. He was not claiming for the month of June 2019 as this was paid and was not claiming for August 2019 as this was for holiday. He suggested that he was ordinarily paid termly. It was his evidence that his signature appeared in the 2018 book six times. His concerns were that he was not sure that whether the book was for 2018 or 2019. The entry of the date of 20th September 2019 was not in his handwriting and the stamp was not clear whether it was 2018 or 2019. When he was shown the pages for Opio Denis the dates were 17.06.2019 and 8.10.2019 while the next page for Ato Harriet was dated 24.04.2019, 17.06.2019 and 8.10.2019. What we establish for the evidence is that the Claimant was paid certain sums for the year 2019 and he is not claiming salary for the terms 1 and 2. What about the months of April 2019 and August 2019? Was he not entitled to wages? And it was not clear when he is said to have absconded. The Respondent asserts that he was paid until November 2019 and therefore, it can be discerned that he worked for the first half of 2019. In our view, the Claimant would be entitled to wages for the months of April and August of 2019 and we would award him the sum of UGX 620,000/=. We do not think that he has established a case for the award of unpaid wages for the months claimed. Issue two would be answered in the affirmative to the extent of 2 months wages.

Issue (iii). What remedies are available to the parties?

Unpaid Wages

- [25] Under Section 41(1) and (2) of the Employment Act, 2006(*from now EA*), an employee is entitled to wages. The Claimant claimed UGX 310,000/= per month unpaid for the duration of 4 months. This would amount to UGX 1,240,000/=. We have answered issue two in the affirmative and now confirm that the Claimant is awarded UGX 620,000/= in unpaid wages.

⁶ https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/-dialogue/documents/meetingdocument/wcms_719949.pdf last accessed 22.04.2023 1:44 pm.

General Damages

- [26] The principles on the award of general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of⁷. In terms general damages are based on the common law principle of *restituto in integrum*.⁸ He worked for the Respondent since February 2018. We have found that he was not unlawfully terminated to warrant an award of general damages which we hereby decline.
- [27] Before taking leave of this matter, we wish to point the challenge presented by lack of record keeping on the part of the Respondent in this matter. First, the counter book REX1 was not necessarily a very helpful aid in ascertaining with certainty, payment of wages. The Employment Act makes ample provision for avoidance of confusion;
- (i) Under Section 50(1)EA, every employee is entitled to an itemised pay statement in writing, in a form and language that the employee understands which sets out any deductions, the purpose of deductions and the net wages at the end of the pay period. Where this is not done, under Section 50(2) to (5)EA, a complaint may be made to a Labour Officer and a Labour Officer shall issue a written statement in place of the employers written statement. Such a statement would go a long way in avoiding confusion.
 - (ii) Under Section 59 EA, an employer is entitled to receive from their employer a written statement of particulars of employment an employee is entitled to receive from his or her employer notice in writing of particulars of employment including the full names and addresses of the parties, the date of commencement of the contract specifying the date from which the employees period of continuous service commences, the job title, the place of work, the wages and intervals of payment, rate of overtime, work hours, number of days of annual leave, terms and conditions of incapacity or sick pay and length of notice required for lawful termination. In the case of **Mariam Kaggwa vs V.G Keshawala**⁹, this Court directed the Respondent to issue such written particulars of employment to the Claimant. The Respondent would be counselled to issue pay statement and written particulars to all its employees going forward.

⁷ *Stroms v Hutchinson*[1950]A.C 515

⁸ *Stanbic Bank (U) Ltd v Constant Okou* Civil Appeal No. 60 of 2020

⁹ LDR 51 of 2021



Final orders of the Court

[28] The orders of this Court are as follows:

- (i) It is declared that the Claimant was not unlawfully terminated from employment relationship with the Respondent.
- (ii) The Respondent is ordered to pay to the Claimant the of UGX 640,000/= as unpaid wages and;
- (iii) There shall be no order as to costs.

It is so ordered.

Delivered and dated at Kampala this 3rd day of May 2023

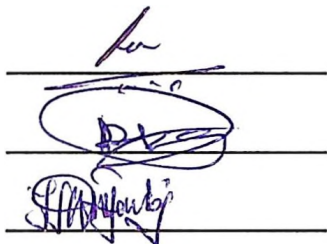
SIGNED BY:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,
JUDGE, INDUSTRIAL COURT



THE PANELISTS AGREE:

- 1. Mr. CAN AMOS LAPENGA,
- 2. Ms. ROBINA KAGOYE &
- 3. Mr. JIMMY MUSIMBI.



Delivered in open Court in the presence of:

For the Claimant: Ms. Erina Kawalya for the claimant.

For the Respondent: Absent.

Court Clerk: Mr. Samuel Mukiza.