THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 20 OF 2017
(Arising from HCT-CS-189/2017)

GRACE MWETEX ZAMUKAMA::CLAIMANT

VERSUS

1. ATTORNEY GENERAL :::RESPONDENT
2. DR. DIANA ATWINE

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

PANELISTS:

1. Hon. Jimmy Musimbi,

2. Hon. Robinah Kagoye &

3. Hon. Can Amos Lapenga.

AWARD

Introduction

[1] At the inception of the International Specialized Hospital project at Lubowa on the outskirts of Kampala, the Ministry of Health employed Mr. Grace Mwetex Zamukama as a project officer in charge of Finance and Administration. His contract was for 36 months from 1st July 2016 at a monthly remuneration of US$ 5000. He served the Respondent until the 16th of March 2017, when he received a letter terminating his services. Aggrieved, he instituted a suit at the High Court of Uganda, and the case was transferred to this Court. He seeks a declaration that he was wrongfully terminated and asked for an order of specific performance or damages in lieu of specific performance and costs. The 1st Respondent opposed the claim contending

that the Claimant was lawfully terminated by the contract's provisions. By consent of the parties, the claim against the 2nd Respondent was withdrawn. In this award, reference to the Respondent is limited to the 1st Respondent.

[2] At the scheduling conference held on 19th October 2022, two issues were framed for determination, namely:

(i) Whether the Claimant's contract of service was wrongfully and or lawfully terminated?

(ii) What remedies are available to the claimant?

Analysis and Decision of the Court

Summary of the Claimant's Evidence

[3] The Claimant testified that he was not paid a salary and made a demand in March 2017. Following this demand, he was terminated without reason on the 20th of March 2017. He testified that funds were available and committed to the project to cater for his remuneration. The contracts committee of the Ministry of Health could only terminate his contract for services through the procurement and disposal process. For this reason, he felt he was wrongfully terminated.

Summary of the Respondents' Evidence

[4] The Respondent's witness, Dr. Diana Atwine, testified that under the contract, either party was entitled to terminate the contract by giving one month's notice. The Claimant had not yet commenced work five months into the contract period. On 21st February 2017, upon the Solicitor General's advice, the Claimant's services were terminated. He was paid one month's gross salary in lieu of notice and all salary arrears. The termination was aimed at saving government revenue.

[5] At the close of the cases, Counsel were invited to address Court through written submissions, and the Court is grateful for the succinct arguments.

Issue One: Whether the Claimant's Contract for Services was wrongfully and or lawfully terminated?

The Claimant's Submissions

[6] Dr. Benson Tusasirwe, appearing for the Claimant, submitted that the Claimant was wrongfully and unfairly terminated because he was not at fault. Learned Counsel made three principal assertions: The claimant had a valid employment contract. Secondly, he was terminated to save the Respondent's funds. And thirdly, the claimant was not redundant as the vacancy was immediately filled because there were internal fights over the government project. Counsel cited the case of **Mbonyi Julius v Appliance World Limited**[1] and the case of **Hilda Musinguzi v Stanbic Bank(U)Ltd**[2] in support of the proposition that the purported reason for termination to save money was not justified and had to be based on the employee's misconduct. In his view, there was no valid reason for termination.

The Respondent's Submissions

[7] Mr. Sam Tusubira, State Attorney, appearing for the Respondents, submitted that the Claimant's contract of service was fairly terminated. The Learned State Attorney cited **Barclays Bank of Uganda Ltd v Godfrey Mubiru**[3] for the proposition that a contract may be terminated by giving notice. It was submitted that the employer's right to terminate a contract of employment, whether by giving notice or incurring a penalty by making a payment in lieu of notice, cannot be fettered. Evidence of a reason for termination, which was lack of project funds, was led and was not controverted. Counsel cited **Ochuru Henry v Ace Global (U) Ltd** [4]in support of the proposition that termination by redundancy is a valid reason. It was also submitted that the contract was illegal for being denominated in US$.

[1] Labour Dispute Reference No. 103 of 2016
[2] Supreme Court Civil Appeal No. 5 of 2016
[3] Supreme Court Civil Appeal No. 1 of 1998
[4] Labour Dispute Reference No. 164 of 2017

Submissions in rejoinder

[8] In rejoinder, Dr. Tusasirwe argued that the employer's right to terminate by giving notice of payment in lieu of notice was no longer unfettered. It was Counsel's submission that the reasons for termination advanced by the Respondent were neither valid nor justifiable. This was because the project was launched a month after the Claimant's termination, and funds had been approved at the time of termination. The argument of illegality was not proven. It was also submitted that the Claimant had carried on his work.

Resolution and decision of the Court

[9] The thrust of the Claimant's case, as we understand it, is that he was unfairly terminated because the Respondent did not have a right to terminate him with notice or by payment of salary in lieu of notice without a valid reason.

[10] The relevant provisions of law relating to termination with notice are set out in Section 65(1)(a)EA, where termination shall be deemed to occur where the employer ends the contract of service with notice. Under Section 65(2)(a)EA, the date of termination is deemed as the date on which the notice in Section 65(1)(a)EA expires. In the matter before this Court, the Respondent terminated the contract without notice but with payment of one month's gross salary in lieu of notice. The termination letter was admitted as REXH4. For a fuller appreciation of the letter's import, it is necessary to employ its full text:

"24th February 2017

Mr. Grace Zamukama
Project Officer/Finance & Administration
International Specialized Hospital Uganda(ISHU)

Thru: The Ag. Commissioner Clinical Services
Ministry of Health,
Kampala

RE: TERMINATION OF CONTRACT

This is to inform you that the Top Management of the Ministry of Health has directed that your contract be terminated with immediate effect.

Please hand over any of the Ministry's material documents or equipment in your possession to your Supervisor.

You will be paid your salary arrears as soon as funds are available. You will also receive one Month's gross salary in lieu of this termination letter in accordance with the terms of your contract.

As with all employees, you are bound by our confidentiality and data protection policies.

I wish you the best in your future endeavours.

Dr. Diana Atwine
PERMANENT SECRETARY."

[11] From this letter, the Respondent terminated the Claimant without notice. The termination was with immediate effect, and the Respondent opted to pay the Claimant one month's salary in lieu of notice as per his contract. In a recent decision in **Stanbic Bank v Constant Okou,**[5] the Court of Appeal considered a similar question. In that case, the employment contract provided that the employee was entitled to 3 months' notice, which the employer exercised. In the lead judgment, Madrama JJA(as he then was) held that the contractual provision allowing the Respondent to pay three months' salary in lieu of notice could not be read in harmony with the Employment Act. In His Lordship's view, under Section 58EA, a contract of employment cannot be terminated without notice, except that under Section 58(5), an employee is not prevented from accepting payment in lieu of notice. In effect, an employee must consent to payment in lieu of notice. The Court found that the Employment Act makes termination without notice a wrongful termination or summary termination.

[12] Applying the particularly apt dicta in the Stanbic case(ibid) to the case before us, the Respondent did not seek the Claimant's consent before terminating

[5] Civil Appeal No. 60 of 2020

his employment. He was given a termination letter notifying him of the payment in lieu of notice and asking him to hand over office immediately. These facts case are consistent with unlawful termination for want of consent. Consequently, we find, as a fact, that the Claimant was unlawfully and wrongfully terminated from employment with the Respondent.

[13] Regarding the reason for termination, Mr. Tusubira submitted that the termination was justified because the Claimant was redundant, there was lack of funds, and the contract was illegal for being against government policy.

[14] Regarding justification for termination, in the Stanbic case(supra), the Court of Appeal of Uganda, having found the termination wrongful for want of notice, held that it could not be justified under Section 69(3) EA. This section provides that an employer is justified to dismiss summarily, and the dismissal shall be termed justified where the employee has, by their conduct, indicated that they have fundamentally broken their obligations arising under the contract of services. There has not been a single assertion of the Claimant's wrongdoing from the present matter's pleadings, facts, evidence, and submissions. No such reason was advanced in the termination letter, whose full text we have reproduced in paragraph 10 above.

[15] It deserves emphasis that the termination letter did not stipulate the reason for redundancy or lack of funds as suggested by Mr. Tusubira or the Respondent's evidence. In the circumstances, we cannot accept Mr. Tusubira's proposition that the termination was justified, and we accept Dr. Tusasirwe's view that the termination was unjustified. The termination was unlawful and wrongful. Issue One is answered in the affirmative.

[16] Regarding illegality, Mr. Tusubira argued that the contract was illegal for being denominated in United States Dollars. At the same time, the Learned State Attorney did not point the Court to any particular statutory provision or legislation prohibiting the contract. According to Black's Law Dictionary illegality is an act forbidden by law. It is the state of not being legally authorized[6]. Beyond a circular by the Ministry of Finance, Planning & Economic Development dated 4th July 2016, requiring all contracts for works, goods, and services to be awarded in Ugandan Shillings, we have not found a statutory provision prohibiting the denomination of a contract of services in a currency not being the Uganda Shilling. This circular does not have the force

[6] 11 Edn by Bryan Garner

of law to render an agreement denominated in alternative currency illegal. It may be that the contract was contrary to policy or irregular but not illegal. In the case of Finishing Touches v Attorney General[7] on an action for breach of contract, the defendant submitted that procedures of the Public Procurement and Disposal of Assets Act had been flouted and therefore rendered the contract unenforceable. The High Court found that it would be unjust for the plaintiff not to be remunerated when the alleged acts of non-compliance were the acts of the Defendant's servants. In the case before us, the onus of preparing a contract conforming with policy lay on the Ministry of Health and not the Claimant. As a result, Mr. Tusubira's argument does not gain much purchase. We are unable to find that the contract of services was illegal.

[17] In all, we affirm that the termination of the Claimant was unlawful.

Issue Two. What remedies are available to the parties

[18] The Claimant sought various remedies. The Respondent contends that the Claimant is not entitled to any remedies sought. We propose to address each of the remedies sought individually.

Declaratory Relief

[19] Under Order 2 Rule 9 of the Civil Procedure Rules S.I 71-1*(from now CPR),* a party is entitled to a declaratory judgment of right whether consequential relief is claimed or not. [8] Having found as we have on issue one above, we declare that the Claimant was wrongfully and unlawfully terminated from employment with the Respondent.

Specific Performance

[20] The Claimant sought the remedy of specific performance on the ground that the person who had replaced him had since resigned. Alternatively, the Respondent be ordered to pay the Claimant damages in lieu of specific performance, taking into account the remaining term of the contract. Counsel suggested that during the contract term, the Claimant would have earned US$ 225,000/= or UGX 832,500,000/=, of which UGX 151,874,418/= had been paid, leaving a balance of UGX 681,050,712/=. While the doctrine of specific

[7] High Court Civil Suit No. 144 OF 2010 [2013] UGCOMMC 17

[8] Per Madrama JJA(as he then was) in C.A.C.A No. 01 of 2015 Makubuya Enock William v Bulaimu Muwanga Kibirige T.AKwoloon Garment Industry and Moses Kirunda

performance is perfectly applicable under Section 64 of the Contracts Act, 2010, as it stands, specific performance does not apply to employment contracts. In the case of **Irene Rebeeca Nassuna v Equity Bank Uganda Ltd,**[9] the Industrial Court observed that it is trite that once an employment contract has been terminated, unlike an ordinary contract, Court cannot make an order for specific performance. The only remedy to an employee in issue is the award of general damages and other remedies prayed for under the Employment Act. The Industrial Court was fortified by the Supreme Court of Uganda in **Stanbic Bank v Kiyimba Mutale,**[10] where it was held that "... it is trite law that normally an employer cannot be forced to keep an employee against his will. There can be no order for specific performance in contracts of employment. However, the employer must be prepared to pay damages for wrongful dismissal...."

[21] Following this dictum, which we agree with, the remedy of specific performance is unavailable to the Claimant. The alternative prayer was for a grant of damages in lieu of specific performance. Since the remedy of specific performance is unavailable and the Industrial Court has also held that future earnings are speculative in nature, the remedy of damages in lieu does not arise. In the circumstances, we decline to award damages in lieu of specific performance.

General Damages

[22] The Claimant sought UGX 100,000,000/= in general damages. Counsel premised this prayer on anguish, humiliation, loss of legitimate career expectation, and the unfair dismissal permanently ruined the Claimant's career.

[23] The law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of.[11] In the case of **Stanbic Bank (U) Ltd v Constant Okou** case(supra), it was held that general damages are based on the common law principle of *restituto in integrum* and should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated,

[9] LDC 6 of 2014 Per Ntengye H.J, Tumusiime Mugisha J. Nyachwo, Bwire, Mavunwa(Members)
[10] S.C.C.A No. 10 of 2010
[11] Stroms v Hutchinson[1950]A.C 515

and the inconvenience and uncertainty of future employment prospects. A few decisions of the Industrial Court are also helpful; In the case of **Dr. Omona Kizito v Marie Stopes Uganda,**[12] this Court observed that damages are assessed depending on the circumstances of a given case and at the Court's discretion. In determining an appropriate quantum of damages in an employment dispute, in the case of **Donna Kamuli v DFCU Bank Ltd**[13] the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract.

[24] In our view, the Claimant has made a case for an award of general damages. In our assessment, the Claimant earned US$ 5000 monthly and contracted for 36 months from July 2016. He was terminated on 24th February 2017, just under seven months after the commencement of his contract. All his salary arrears have been paid in full. Considering all circumstances, particularly the service period, we determine that based on his monthly salary, the sum of US$ 7500 as general damages will suffice.

Costs of the Claim

[25] Under **Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2020**, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.[14] We do not think the Respondent is culpable for any misconduct and decline to award the Claimant's costs.

[26] Before taking leave of this matter, it is essential and a statutory imperative that the termination of employment contracts conform with the law. In **Nicholas Mugisha vs. Equity Bank Uganda Ltd,** we have ruled [15] that a termination process consists of procedural and substantive fairness. This lies at the heart of employment law disputes. There is a straightforward procedure for termination that enshrines equitable treatment of an employee

[12] LDC No.33 of 2015
[13] LDC No. 002 of 2015
[14] JOSEPH KALULE VS GIZ LDR 109/2020(Unreported)
[15] LDR 281 of 2021

at the end of the employment relationship, regardless of whether it is a no-fault termination or a termination as a result of misconduct.

Final Orders of the Court.

[27] Given the preceding findings and conclusions, we make the following orders:

(i) We declare that the Claimant was wrongfully and unlawfully terminated from the Respondent's service.

(ii) The Respondent is ordered to pay the Claimant the following sums:

(a) US$ 7500 as general damages,

(b) The sum in paragraph [23](ii)(b) above shall carry interest at 15% p.a. From the date of this award until payment in full.

(iii) There shall be no order as to costs.

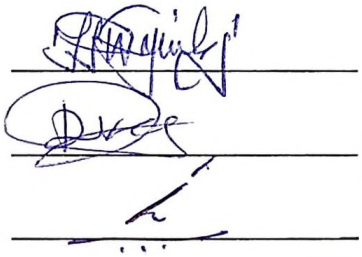
It is so ordered and delivered at Kampala this 29th day of May 2023

SIGNED BY:

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.



Delivered in open Court in the presence of:

1. **For the Claimant:** Dr. Benson Tusasirwe.
   Claimant in court.

2. **For the Respondent:** Mr. Sam Tusubira, State Attorney.

Court Clerk: **Mr. Samuel Mukiza.**