



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 140 OF 2021
(Arising from Labour Dispute No. 167 of 2020)

SERUMAGA AGATONI ::::::::::::::::::::::::::::::::::CLAIMANT

VERSUS

DEFENCE FOR HIRE SECURITY::::::::::::::::::::::::::::::::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. *Mr. Patrick Dlet Keera H. & Co Advocates for the Claimant.*
2. *No one for the Respondent.*

AWARD

Introduction

- [1] On the 1st of July 2018, the Claimant was employed as a Security Guard at a monthly salary of UGX 200,000/= until 30th June 2020, when he was asked to take leave and sought to be paid before taking leave. The Respondent Director then asked him to resign. He complained to the labour officer at the Directorate of Gender, Community Services and Production General Manager at Nakawa. Mediation before Ms. Grace Lander Atuko failed, and the matter was referred to this Court. In his claim before this Court, the Claimant sought a declaration for wrongful and unlawful dismissal, special damages arising from non-payment of terminal benefits, salary and other allowances, general and aggravated damages, interest, and costs. The claim was unopposed.

The proceedings and evidence.

- [2] The Respondent did not attend Court on 23rd August 2023. Upon perusal of the affidavit of service sworn by Mr. Derrick Kayera, it was deposed that the Respondent's officers had refused to acknowledge service and threatened him. We were satisfied that service had been effected on the Respondent and granted the Claimant leave to proceed *ex parte* under Order 9 Rule 20(1)(a) of the Civil Procedure Rules, S.I 71-1 (*from now CPR*). The Claimant's evidence was led, and written submissions were filed on two issues for determination, namely:


(i) *Whether the Claimant was constructively dismissed by the Respondent?*

(ii) *What remedies are available to the Claimant?*

- [3] The Claimant's witness statement, made on the 13th day of March 2023, was adopted as his evidence in chief. He testified that by a written contract dated 1st July 2018, he was employed by the Respondent as a Security Guard at a monthly salary of UGX 200,000/=. He served in that position until 30th June 2020, when the Respondent's Managing Director, Ben Takan, informed him that the Respondent had lost its contract with Makindye Country Club, where the Claimant was deployed. Mr. Takan asked him to hand over all company property in his possession. He handed over the property, and Mr. Takan asked him to take leave without pay as the Respondent did not grant leave. He claimed to have asked for his outstanding leave days and was advised to resign if he could not take unpaid leave. Due to his frustrations, he tendered a resignation letter on the 1st of July 2020. On the 5th of August 2020, he complained to the Labour Office in Nakawa. Mediation failed, and on the 17th day of May 2021, Ms. Atuko Grace Lander referred the matter to this Court. The evidence was not subjected to cross-examination. On closing the Claimant's case, we directed the filing of written submissions.

Analysis and Decision of the Court

Issue 1. Whether the Claimant was constructively dismissed?

- [4] Counsel for the Claimant submitted that the Claimant concedes to issue number one. To concede, according to the Oxford Dictionary, means that admit or agree that something is true after first denying or resisting it. Counsel for the Claimant's concession on issue one cements the view of the unsustainability of the claim for constructive dismissal. By such concession, it would be unnecessary for this Court to delve into a resolution of the issue and leave the Court to determine only the
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matter of remedies. But before doing so, we wish to examine the facts of this case in some brief detail.

- [5] The uncontested evidence of the Claimant is that he resigned following frustration by the Respondent's Managing Director and redundancy. In his handwritten letter of resignation dated the 1st of July 2020, which was admitted as CEX 2, he stated as follows:

*"To the Operation Manager,
Defence For Hire Security,
Kampala.*

RE: RESIGNATION LETTER FROM SERVICES UNDER THE
MANAGEMENT OF DEFENCE FOR HIRE SECURITY

I am much glad to have worked with you for 02 years in the security services at Makindye Country Club. A lot has been gained and achieved due to your diligence you have equipped me with a variety of skills knowledge and expertise in the security. However, following my problems at home, I deem it necessary to resign from the management and control of Defence for Hire and continue on an individual basis rather than company umbrella effective the 01/July/2020. I hope my appeal to your office will not face delays in process of approval and that it will generously be deemed key.

Yours faithfully

SSERUMAGA AGATONI"

- [6] This evidence was unchallenged. The position of the law where evidence stands unchallenged is that on failure to challenge the evidence on a material or essential point, such evidence is deemed admitted as inherently credible and probably true. In **Geoffrey Brown v Ojijo Pascal**,¹ the Honourable Mr. Justice Musa Ssekaana observed that the Court must evaluate the evidence to give it quality and value. The Claimant's letter of resignation does not in any way suggest that he resigned from his employment with the Respondent on account of any action or conduct of

¹ Per Ssekaana J in *Geoffrey Brown v Ojijo Pascal* H.C.C.S No. 228 of 2017



the Respondent. In the case of **Francis Mudibo Ouma v Oakwood Investments Ltd**,² the Industrial Court observed that:

"Although under Section 65 of the Employment Act, resignation is not mentioned as one of the methods of terminating an employer – employee relationship, based on the freedom of contract and the legal principal that an employee is free to give his labour to an employer at agreed terms and that no employee can be forced to provide labour to a given employer, resignation is considered a method of the employee to end the relationship."

- [7] The Claimant's resignation from reading his letter of resignation does not appear to have been forced. Only after he filed his complaint with the Labour Officer and the matter was referred to this Court did he assert a constructive dismissal case. In the case of **Denis Mbikwa v Centenary Rural Development Bank**,³ the Industrial Court held a resignation to be constructive dismissal where the resignation results from unreasonable conduct on the employer's part. This is provided in **Section 65(1)(c)EA** which reads:

*"Termination shall be deemed to take place in the following instances
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"*

In the case of **Edotun James v Okra Beverages Ltd**,⁴ we cited **George Wimpey Ltd v Cooper**,⁵ where it was suggested that unreasonable conduct is of the kind which, by good industrial relations practice, no employee could reasonably be expected to accept. In the matter before us, based on the Claimant's resignation letter, we cannot accept the view that there was any unreasonable conduct on the part of the Respondent. The Claimant resigned of his own accord. By the Claimant's concession, issue one must be answered in the negative.

Issue II. What remedies are available to the parties?

- [8] Having found that the Claimant resigned of his own accord, remedies available to a constructively dismissed or unlawfully terminated employee will not be available to

² LDR 46 of 2015

³ LDC 23 of 2014

⁴ LDR 261 of 2021

⁵ 1977(IJLR) 205

him. However, we shall consider the remedies sought as any terminal benefits due to him.

Unpaid Wages

- [9] Citing **Section 43(6)EA**, the Claimant sought unpaid wages from 16th June to 30th June 2023. This totaled to 15 days. The Claimant sought UGX 161,538/=. It was his uncontested evidence that he earned UGX 200,000 per month. At a rate of UGX 6,667 per day, we would award the Claimant **UGX 100,005/=** in unpaid wages.

Accrued Leave

- [10] The Claimant argued on the premises of **Section 54EA** and the cases of **Kemba Musa v Mount Meru Millers(U)Ltd LDC 02 of 2021** and **Mbikka Denis(supra)** that the employer must grant rest days during a calendar year. Counsel propounded a thesis that CEX1 entitled the Claimant to 21 days of annual leave and that the Claimant testified that the Respondent's Managing Director had indicated that the Respondent did not give leave. It was submitted that the Claimant asked for leave, which was denied. The position of this Court has been that for a grant of unpaid leave, an employee must show that leave was applied for and denied⁶. In the circumstances of the case before us, the Claimant joined the Respondent on 1st July 2018 and resigned on 1st July 2020. This was two years. There was no evidence to show that the Claimant sought leave for the years 2018 to 2019. However, he was only informed on the 30th of June 2020 of the loss of the contract with the Makindye Country Club.
- [11] Under **Section 54(1)(a)**, an employee is entitled to 7 days of leave for every continuous service of four months. This means that the statutory minimum of leave days is 21 days per annum. The Employment Act provides irreducible minimum standards of labour practices, meaning that an employer and employee would be permitted to agree on a longer leave period than the minimum of 21 days per annum as indicated in **Section 27 EA**. In the circumstances that the Claimant asked for his leave and his evidence that the Respondent's Director refused to grant the same is uncontested, he would still be entitled to leave for 2019 to 2020. We therefore award the Claimant 21 days of leave for the year 2019 to 2020. The same would be computed at **UGX 140,000/=**, which we hereby grant to the Claimant. We are fortified in this view by the decision of the Industrial Court in **Butamanya v Uganda Cooperative Alliance**,⁷ where the Honourable Mr. Justice Asaph Ruhinda Ntengye held that depending on the nature and construction of the employment

⁶ See *Edace Michael v Watoto Child Care Ministries L.D. A 21 of 2015*

⁷ LDR No. 035 of 2019

contract, the employee may not be required to expressly apply for leave in the course of employment before he or she access the said payment.

- [12] The Claimant also sought payment for work done on public holidays. He is said to have worked for 28 public holidays during the two-year period. He asked for UGX 738,461/= in the memorandum of claim. This claim was, therefore, a claim for special damages. While it was pleaded, it was not proven. It did not feature in the witness statement and was not explained or supported with evidence⁸. It is trite that special damages must be specifically pleaded and strictly proven.⁹ Given that the Claimant has not proven his claim, we decline to grant the claim for unpaid dues on public holidays.
- [13] Regarding overtime, it was submitted that the employment contract provided for payment of 1.5 times the pay on a day which is not a public holiday. There was no evidence adduced to this effect and we decline to award the claim for overtime.

General Damages

- [14] Counsel for the Claimant was contending for UGX 2,000,000/= in general damages. 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 of¹⁰. In **Stanbic Bank (U) Ltd v Constant Okou**¹¹ Madrama, JJA (*as he then was*) held that general damages are based on the common law principle of *restituto in integrum*. In the circumstances that the Claimant resigned, he would not be entitled to the quantum of general damages claimed. For the inconvenience of unpaid wages and accrued leave, we would grant the Claimant the sum of UGX 1,000,000/= in general damages.

In the final analysis, we make the following orders:

- (i) We order the Respondent to pay the Claimant the following sums:
 - (a) UGX 100,005/= as unpaid wages,
 - (b) UGX 140,000/= as accrued leave,
 - (c) UGX 1,000,000/=general damages,

⁸ In Yasin Kiyingi v Post Bank Uganda Ltd LDR 014 of 2020 Tumusiime Mugisha J. held that an employee had a duty to adduce evidence to prove a claim.

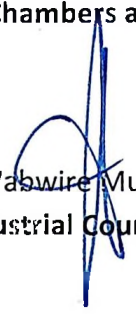
⁹ Per Ssekaana J. In H.C.C. S 160 Of 2014 Nasif Mujib & Abdul Hamid Mujib (Through Mujib Juma Kenyi, Attorney) Versus Attorney General

¹⁰ *Stroms v Hutchinson* [1950]A.C 515

¹¹ Civil Appeal No. 60 of 2020

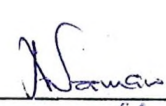
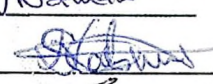
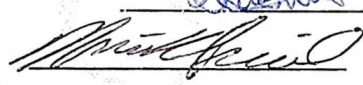
- (d) The sums above shall carry interest at 18% p.a. from the date of this award until payment in full.
- (ii) There shall be no order as to costs.

Signed in Chambers at Kampala this 17th day of November, 2023.


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

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


17th November 2023

9.43 a.m.

Appearances

1. **For the Claimant:** Mr. Abner Nseko
Claimant in Court.
2. **Respondent:** Absent
Court Clerk: Mr. Samuel Mukiza.

Mr. Abner Nseko : Matter for ruling, and we are ready to receive it.
Court : Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court