



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBALE
LABOUR DISPUTE REFERENCE NO. 005 OF 2022
(ARISING FROM MBALE LABOUR COMPLAINT NO. 149 OF 2022)

ROSET MUGOYA:.....CLAIMANT

BOARD OF GOVERNORS,
NABUMALI HIGH SCHOOL:.....RESPONDENT

Before:

The Hon. Head Judge Linda Lillian Tumusiime Mugisha

Panelists:

1. Hon. Charles Wacha Angulo
2. Hon. Harriet Mugambwa Nganzi
3. Hon. Rose Gidongo

Representation:

1. Mr. Kisiimo Ivan Kiyaga of M/s. Wamimbi Jude Advocates for the Claimant.
2. Mr. Bashil of Mutembuli & Co. Advocates for the Respondents.

AWARD

Introduction

- [1] The Claimant Ms. Rosset Mugoya was employed by the Respondent as a storekeeper. Nabumali High School the Respondent. The Respondent is a body established by under the Education Act to run and manage the affairs of school with the capacity to sue and be sued. Nabumali high School is a mixed boarding secondary school situate in the Eastern Region of Uganda, in Mbale.
- [2] The Claimant brings her claim against the Respondent for unlawful termination. She seeks for a declaration that her termination from employment was illegal, wrongful malicious, and contrary to the employment laws of Uganda and Public Service Standing Orders. She prays for Payment of special damages, General damages, Punitive and Exemplary damages, Interest of 21% p.a from the date of determination of the claim, until payment in full and costs of the suit.

Brief Facts

- [3] On 20th August 2007, the Claimant was employed by the Respondent as a storekeeper in the Public Service, on probation for two years. Her employment was governed by the Constitution of Uganda, the Public Service Act and Regulations made thereunder, the Public Service Standing Orders, and administrative instructions made from time. Her starting salary was Ugx.290,000/-, under salary scale U6. She was confirmed in service on 22/05/2015 at a salary of UGX 300,000/-. She claims that she was employed on permanent terms, therefore she was not required to apply for renewal as was stated in the Respondent's internal advertisement of 25/11/2019. She was terminated on 31/12/ 2019, on the grounds that she did not show interest in her job because she did not re-apply for the renewal of her employment contract. She appealed against her termination in her letter to the Head Teacher, dated 6/01/2020, but she received no response. Subsequently, on 9/03/2020, she lodged a complaint before the Labour Officer Mbale. The Labour officer referred the matter to this court for resolution hence this award.

- [4] The Respondent filed a reply to the claim, and denied the claim, asserting that the Claimant was lawfully terminated, and she is not entitled to any of the remedies sought.

Issues

1. Whether the Claimant's terms of employment were permanent or contractual?
2. Whether the Claimant was lawfully dismissed by the Respondent?
3. What are the remedies available to the Claimant?

Resolution of Issues

- [5] Prior to the precession hearing that was held on 16/05/2024, both Counsel were served by the Court process server on 08/05/2024 and they all acknowledged receipt of service. However, on 16/05/2024, the Respondent's Counsel did not appear before the Court, nor did they provide any reason for their absence. They were given the last chance to comply with the directives of the Court, failure of which the matter would be heard on 19/06/2024, in their absence. That is Ex-parte.
- [6] On 19/06/2024, when the matter was set down for hearing, we established that the Respondent had been served as evidenced by an affidavit of service by one Wetete Martin of Wamimbi & Co. Advocates and Counsel Bashil of Mutembuli & Co. Advocated acknowledged receipt of the same by appending his signature. Court being satisfied that the Respondent was properly served having acknowledged receipt of service and they did not provide any reason justifying their absence, Court granted the Claimant leave to proceed Ex-parte. The Claimant took the stand for formal proof.

1. Whether the claimant's term of employment was permanent or contractual?

- [7] Counsel for the Claimant cited Section 2 of the Employment Act 2006, for the definition of contract, which means any contract whether oral or in writing, whether express or implied where a person agrees to work for an employer in return for remuneration. He also cited an online article on "use of fixed-term and open-ended Employment Contracts by the University of Strathclyde Glasgow, 19/06/2024, at 3.31 pm, and the Kenyan case of *Transparency International Kenya v Teresa Carlo Omondi*, CA No. 81

of 2018, which proposed that an open-ended contract of employment is not a fixed contract and such a contract may be referred to as permanent, indefinite or continuing contracts where there is no fixed date, and contended that, whereas the Claimant was appointed on probation for a period of two years that is from 2007-2009, her employment automatically became permanent/open-ended with no fixed term after the lapse of the 2 years. According to him this implied that she had an open-ended contract.

- [8] Relying on *Diana Carey Namubiru v United Bank of Africa*, LDR No. 100/2014 at page 6, *Akoye David v Libya oil*, LDC No. 82/2014) and on Sections 2, 67 (2), 67 (3) Employment Act 2006 which provide for the period of probation, he asserted that, any ambiguities arising from the preparation or drafting of correspondences regarding the start and end of a probationary period must be resolved in favor of the employee. Therefore, given that the Claimant's appointment dated 22/05/2015 was prepared by the Respondent and it omitted to state the duration of the contract, the ambiguities arising out this should be resolved in favour of the Claimant because, between 2008 and 2019 when she was terminated, she was serving on permanent terms. This being an Ex-Parte hearing the Respondent did not make any submissions.

Analysis

- [9] It is indeed the position of the law as stated under Section 2 of the Employment Act that a contract means, "*any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship*".
- The UIJRT/United International Journal for Research and Technology, volume1, issue 9, 2020/ISSN:2582-6832, defines "... a contract of agreement as an agreement between an employer and an employee, that the employee will render his/her services under the direction and control of the employer for remuneration...". With regard to Probation periods; it stated that, "*these are fixed-length monitoring and testing periods enforced on newly hired employees. Probation agreements allow both employers and employees to find out whether the match of the workers to the job is suitable, before committing to the binding rules of a formal employment relationship...*".
- [10] The Employment Act under Act Section 67 on the other hand provides for a maximum length of a probationary period of 6 months which can be extended for another period

of 6 months with the agreement of the employee. The Public Service Standing Orders, Section (A -d) on Public Service General Appointment on probation provides that appointment to a pensionable office shall be preceded by a six-month probation period which shall count from the date of assumption of duty. The essence of a probationary appointment is that the employer retains the right not to confirm the appointment after a specified period, particularly on grounds of capability.

- [12] After carefully considering the evidence on the record, we established that on 28/06/2007, the Claimant applied to the Board of Governors of Nabumali High School for the position of storekeeper. (Exh. CEX 1 CTB p.4). On 20/08/2007, she was appointed as a storekeeper on probation for a period of two years. Her starting salary was Ugx.290,000/= under salary U6. (Exh. CEX 2, P.5 CTB). Her letter of appointment/confirmation marked CEX 3 P.6, on the Trial bundle dated 22/05/2015, the Claimant indicated that she was confirmed in service as the school storekeeper, and her salary was raised to Ugx.300,000 per month. Her duties and responsibilities were specified in her confirmation letter, but nothing was stated about the duration of her employment. However, given that her appointment on probation indicated that her employment was subject to the Constitution of Uganda, the Public Service Act, and Regulations made thereunder, the Public Service Standing Orders, and administrative instructions made from time to time, by implication the confirmation was based on the same terms. It is trite that the terms of employment are two-sided that is, they are part of the agreement made between the employer and the employee, while the conditions are unilateral instructions which are laid down by the employer. Therefore, any changes regarding the terms of employment must be by mutual agreement, while the conditions can be unilaterally changed by the employer from time to time, with notice to the employee.
- [13] Therefore, the Respondent in the instant case, having not stated the duration of the contract, in her letter of confirmation, there was ambiguity as to its duration. However given that her appointment on probation indicated that her employment was subject to the Constitution of Uganda, the Public Service Act, and Regulations made thereunder, the Public Service Standing Orders and Administrative instructions made from time, by implication her confirmation was on the same terms, thus rendering her confirmation in service on permanent terms. As already discussed a contract of employment that has no fixed date of expiry is indefinite and may also be referred to



as a permanent, indefinite, or continuing contract and in the case of the Public Service it is permanent, and age based.

Given our analysis, we concluded that the Claimant was employed on a permanent and not contractual basis.

2. Whether the Claimant was lawfully dismissed by the Respondent?

[14] On 25/11/2019, the Respondent ran an Internal Advert directing all staff on contract to re-apply for renewal of their contracts for 2020. The Claimant did not respond to the advert on grounds that she was on permanent tenure of service.

In the Head Teacher's letter to her, ref. NHS/BOG/4, dated 13/12/2019, he categorically stated that her services were terminated effective 31/12/2019, for her failure to respond to the advert.

[15] In his submissions, Counsel for the Claimant relied on Section 2 Employment Act 2006, on the definition of termination of employment and Section 66 on notification and hearing before termination. He also relied on the case of *Angela Birungi v NLS Waste Services*, LDR No. 671/2014(2017), *Donna Kamuli v DFCU Bank* LDR No. 02(2015), and *Bwengye Herbert v ECO Bank (U) Ltd*, LDR No. 132/2015, for the proposition that an employee had to be given a reason and an opportunity to respond to the reason before dismissal.

We had an opportunity to consider the Respondent's Internal Advert which stated in part as follows:

“...RE: INTERNAL ADVERTISEMENT

As you are aware, this year 2019 is coming to an end.

The Board of Governors under minute No. 7.8/BOG/18/2019 and Min 05/BOG/05/2019, directed that all staff on contract re-apply for renewal of their contracts for 2020. (emphasis added)

*The purpose of this notice is to ask you to submit your applications addressed to the Deputy Head Teacher Administration **clearly indicating the job applied for with your personal contacts** not later than **Friday 29th November 2019 5.00 pm**, if you are interested ...”*

[16] A reading of this internal advert indicates that the staff who were required to apply for renewal, were staff whose contracts were due to expire at the end of 2019 and they had to be renewed for 2020. As already discussed, the Claimant's letter of

Appointment/ confirmation, having not provided for the duration her employment, we interpreted it to be an open-ended/permanent contract; the letter was prepared by the Respondent, therefore it had no basis to allege that the Claimant was not interested in her job because she did not apply for renewal of her permanent contract. Clearly, the internal advert did not apply to permanent employees.

[17] In any case, Section 66 of the Employment Act, is to the effect that before dismissing an employee on allegations of committing any infractions, or for any reason, the employee must be notified about the reason and be given an opportunity to defend him or herself. We found no evidence on the record to indicate that the Claimant was notified about any reason for her dismissal or that she was given an opportunity to defend herself. It is highly probable that had she been given the opportunity to respond to the allegations, the Respondent would have established as we did, that after her confirmation, her employment was on permanent terms and not on fixed terms that required to renewal, therefore she was no required to submit an application for renewal as stated in the internal memo(supra). Section 68 Employment Act 2006, further provides that;

- (1) *In any claim out of termination, the employer shall prove the reason or reasons for dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of Section 71.*
- (2) *The reasons for dismissal shall be matters which the employer at the time of dismissal genuinely believed to exist and which should have caused him or her to dismiss the employee.*

[18] The Respondent was expected to prove that the reason for the Claimant's dismissal was justifiable under the circumstances, but she was not given an opportunity to make any representations regarding the allegation that she was not interested in her job. We are convinced that by its conduct, as stated in the letter of confirmation, the Respondent confirmed her as the School Storekeeper on indefinite terms. It can therefore not turn around now, to state that she was on contractual terms, that required renewal, to warrant her dismissal for not applying for renewal! We believe that the Respondent intended to dismiss the Claimant without any justification. Accordingly, we find that severing the employment relationship by the employer was unjustified and unlawful. This issue is resolved in the negative.



3. What are the remedies available to the Claimant?

[19] In her memorandum of claim filed in this court on 9/11/2022, the Claimant prayed for the following remedies:

1. A declaration that her termination was unlawful. We hereby declare that her termination was unlawful.

2. Special damages

(a) Untaken leave from 2007-2019 (10 months) amounting to Ugx. 5,000,000/-

[20] Although Section 54 of the Employment Act entitles an employee to annual leave at the rate of 7 days in respect of each period of a continuous 4 months' service, the period within which it should be taken must be agreed between the parties. It is therefore incumbent on the Claimant to prove that he or she applied for leave and it was denied before making a claim for untaken leave. The Claimant in the instant case, did not adduce any evidence to indicate that she applied for and was denied leave for the period 2007-2019. In the circumstances, we have no basis to grant her claim for untaken leave. It is hereby denied.

(b) Untaken salary from termination until retirement amounting to Ugx. 18,000,000/-

[21] It is the position of the law that an employee is entitled to be paid for work done and it is a general Human resource practice that there is no pay for no work done. This Court has held in many cases, that a claim for prospective earnings is speculative, because an employee may not complete the term of employment because of circumstances such as the death of the employee, lawful termination of the contract by either party, the closure of the organisation, among others.

[22] It is clear from the evidence on the record that the Claimant was terminated on 31/12/2019, therefore she has not worked for the Respondent since then. Her only remedy in this case would be an award of general damages. Since she has not been

working, her claim for the salary from the date of termination until her retirement cannot stand. It is hereby denied.

(c) NSSF unremitted contribution amounting to Ugx. 2,700,000/-

[23] As already discussed the Claimant's employment was subject to the Constitution of Uganda, the Public Service Act and Regulations made thereunder, the Public Service Standing Orders, and administrative instructions made from time to time. She was therefore a Public Servant. According to the Public Service Standing Orders Civil servants don't make contributions to NSSF because they are pensionable. In any case, her letter of appointment/ confirmation did not provide for the remittance of NSSF contributions nor did she adduce any evidence to prove that the Respondent made any deductions from her pay regarding NSSF. In the Circumstance, her claim for unremitted NSSF has no basis and it is denied.

(d) Gratuity-one month for each completed year (13yrs) amounting to Ugx.6,500,000/-

[24] Section 10 (2) of the Pensions Act cap 286 provides exceptions for payment of pension, gratuity, or other allowances in circumstances where an officer has not reached the retirement age, where an officer retires on the attainment of the age of forty -five years if he or she has served for a continuous period of ten years or more. The law is however silent on what happens to a Public Officer who is unlawfully terminated before reaching retirement age or the 45 years prescribed as was the case in the instant claim. In the alternative, the Employment Act on the other hand provides for the payment of a severance allowance to an employee who has been in the continuous service of an employer for a period of 6 months or more and is found to be unlawfully terminated.

[25] We strongly believe that the circumstances of this case warrant an award of severance pay to the claimant, as calculated in *Donna Kamuli v DFCU Bank*, LDC No 2 of 2015, at 1 month's salary for every year served. At the time of her termination, she was earning Ugx.300,000/= per month. Therefore, having served for 13 years she would be entitled to **Ugx.3,900,000/-** as severance pay. We have no reason not to grant it, it is hereby awarded.



(e) Repatriation for the 13 years served.

- [26] Section 39 (3) Employment Act provides for the payment of repatriation as follows:
(1) " *where an employee has been in employment of at least ten years he or she shall be repatriated at the expense of the employer irrespective of his or her place of recruitment*"

The claimant prayed for an award of Ugx.5,000,000 for repatriation. It was however her evidence in chief that she hailed from Butaleja which is not very far from Mbale, according to Google Maps, 26/06/2024, at 3.53 pm, we established that the distance between Mable and Butalege is 42.5 kilometers. In the circumstances, we believe that an award of **Ugx.600,000/-** is sufficient as a repatriation allowance.

(f) General damages

- [27] General damages are awarded at the discretion of the court and are compensatory in nature, in *Akeny Robert v Uganda Communications Commission*, LDC 023 of 2015, and several other cases this Court has held that in addition to the remedies prescribed under the Employment Act, an employee who is unlawfully terminated is entitled to an award of General damages. General damages are intended to return the aggrieved party to as near as possible in monetary terms to the position if the wrong complained of, had not been occasioned. The Claimants served the Respondent for 13 years and having established that she was unlawfully terminated, therefore she was entitled to an award of general Damages. However, we established that she was terminated at the age of 39, therefore she was expected to seek alternative employment to mitigate the loss of her employment. She did not adduce any evidence to show that as a result of her termination, she sought alternative employment and failed. By the time of her termination was earning Ugx. 300,000/-, we believe that an award of **Ugx. 7,000,000/-** is sufficient as general damages.

(g) Punitive damages

We find no grounds to justify the award of punitive damages. This claim is denied.

(h) Interest

An interest rate of 10% per annum shall accrue on 2 (d, e, and f) from the date of the award until payment in full.

Orders of Court

1. It is declared that the claimant was unlawfully terminated.
2. The Respondent is ordered to pay severance of Ugx.3.900,000/-
3. The Respondent is ordered to pay General damages of Ugx. 7,000,000/=
4. The Respondent is ordered to pay Repatriation of Ugx. 600,000/-
5. An award of Interest of 10% per annum, on 2, 3, and 4 from the date of this award until payment in full.
6. No order as to costs is made.

Signed in Chambers at Mbale this 27th day of June 2024.

Hon. Justice Linda Lillian Tumusijime Mugisha,
Ag. Head Judge

The Panelists Agree:

1. Hon. Charles Wacha Angulo,
2. Hon. Harriet Nganzi Mugambwa &
3. Ms. Rose Gidongo.







27th June 2024
9:30 am

Appearances

1. For the Claimant: - Mr. Kisiimo Ivan Kiyaga holding brief for Counsel Ronald Wetete
2. None for the Respondent.

3. Court Clerk: - Mr. Christopher Lwebuga.

Delivered and signed by:



Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court

Industrial Court of Uganda