

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO. 096 OF 2014
(ARISING OUT OF HCT-CS NO. 247 OF 2014)**

SSALI EMMANUEL & 4 OTHERS.....CLAIMANT

VERSUS

THE B.O.G. ST. BENEDICT'S SEC. SCHOOL - BUWAMA.....RESPONDENTS

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Mr. Anthony Wanyama

AWARD

This claim was filed by 9 claimants against the respondent as their former employer. They all alleged in their joint claim that the respondent unfairly dismissed them and for that matter prayed the court to allow them recover special damages, general damages, unpaid NSSF remittance, severance allowance, interest and costs of the claim. The memorandum of claim stated that the claimants were orally appointed as staff of the respondent at different times and issued with staff identify cards. The claimants claimed that although they were paid salaries and allowance for their labour, some of it was not paid as reflected in the annexure to their statements.

On 08/08/2017 Mr. Kakeeto for the claimants informed court that four claimants had withdrawn from the claim. After several adjournments at the instance of the

respondent, on 23/11/2018, we allowed the claimants to proceed ex parte, and 5 of them testified.

In a memorandum of reply, the respondent denied having employed the claimants and pleaded that the school was bought by them after the claimants had been terminated. According to the respondent the claimants never performed any duties for them after purchasing the school and therefore they have no claim.

Issues

From the pleadings and evidence on the record we discern the issues to be:

- a) Whether the claimants were employees of the respondent.**
- b) Whether they were terminated and if so whether such termination was unlawful.**
- c) What remedies are available?**

We shall begin with the first issue. Most of the claimants claimed that their engagement at work with the respondent was as a result of oral agreements. Under the Employment Act an oral agreement is as good as a written agreement.

Section 2 of the Employment Act provides:

“a contract of service 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.”

However in the event that there is a conflict between the parties, an oral contract has to be proved on the same standard with a written contract. Obviously it is easier to prove a written contract than an oral contract.

In the case of **Emma Obokullo Vs Walter Arnold LDC 023/2014**, this court held that where a party intended to rely on an oral contract it was necessary to adduce additional evidence in addition to his/her own testimony to prove the existence of such a contract.

On the other hand a written contract speaks for itself since the terms of the contract we spelt therein.

In the instant case the 1st claimant witness one Ssali Emmanuel, was one of those formerly appointed by letter as headmaster on 15/08/2011 at a salary of 450,000/= per month. Attached to his written witness statement is what can be described as a payment schedule indicating the date, gross salary, arrears, allowances, advance, net pay and balance. It seems to us that this was a method used to pay the staff by the respondent. However the “**pay slip**” is not clear, photocopy having been poorly done. We cannot tell how much is in allowances or how much is the balance, yet it is the only document on the court record that was intended to prove the indebtedness of the respondent to the claimant. It was the duty of the claimant to avail the court with legible documents if he intended the court to rely on them.

The second claimant witness was one Nantale Slyvia (fifth claimant) who according to the witness statement, was orally employed at a salary of **Ugx.150,000/= (One hundred fifty thousand shillings only)** as Librarian but later on as bursar at an extra **Ugx. 100,000/= (One hundred thousand shillings)**. Attached to her witness statement is a clear hand written payment schedule indicating the date of the month and payment due. Each of the months is column indicating how much was paid and how much was the balance from the month of February 2012.

The third claimant witness was one Semaganda Joseph (claimant 3) who was formerly employed by an appointment letter which bears an unclear date. According to his written witness statement, he was appointed on 18/2/2012 as Warden at a monthly salary of **Ugx. 100,000/= (One hundred thousand shillings)**. Subsequently he was appointed on 1/10/2012 formerly by letter as director of studies at a monthly salary of **Ugx. 200,000/= (Two hundred thousand shillings)**, office allowance of **Ugx. 50,000/= (Fifty thousand shillings)** monthly and any other allowance deemed necessary. Although the attached “**pay slip**” is not very legible, it is possible to discern the total balances payable.

The fourth claimant witness was one Buyondo Isaac who claimed that he was orally employed as teacher of computer at a monthly salary of **Ugx. 150,000/= (One hundred fifty thousand shillings)**. The legibility of the attached pay slip is

not very clear although the balances of amounts owed by the respondent can be discerned.

In the absence of evidence to the contrary, we are convinced that the claimants were at the material time working for the respondent school in their various capacities as envisaged in their statements. We are convinced because of the handwritten pay slip which shows clearly that they were being paid for services rendered at the respondent school. We also had the opportunity to watch them as they confirmed their statements in open court and they gave us an impression of being truthful.

The question however is **whether the current respondent Board of governors would be responsible for the commitment made by the previous Board of governors.**

It was the contention of the respondent (in their reply to the memorandum of claim) that they bought the school and only found that the claimants had left the school and were not therefore the employees of the current Board of governors.

A Board of governors of a school is the legal authority to sue or to be sued in courts of law. It is not the members of the Board that have capacity to be sued or to sue. In other words change of membership of the Board of governors does not in any way exonerate the Board from liability of acts or omissions incurred by the previous Board.

Although the respondent attached a copy of an agreement for sale of the respondent school, no evidence was adduced to prove the contract of sale of the school. In any case whatever was agreed between the alleged seller and the alleged buyer had very little to do with the claimants who had served the school and who the school owed remuneration .

We are convinced on the evidence available that the claimants were in an employment relationship with the respondent school and the fact that management changed did not take away its liability.

Accordingly the first issue is decided in the affirmative.

The next issue is whether the claimants were terminated and if so whether the termination was unlawful.

According to the statements of all the claimants each of them was **“impliedly terminated”**. There is no detail or circumstances of the termination or how each of them left the employment of the respondent. Nothing on the record shows whether a responsible officer orally told any of them to pack their bags and leave. We therefore find on the evidence that although the claimants were employed and entitled to their remuneration, the fact of their termination was not proved.

The last issue is **whether the claimants are entitled to any remedies.**

As already alluded to, the claimants were employees of the respondent in various capacities. We are convinced that the **“pay slips”** on the record are sufficient evidence that they were paid part of their remuneration.

The pay slip photocopy of CWI Ssali Emmanuel is not clear and we cannot determine how much is owed to him. We therefore declare that unless a clear pay slip showing clear balances, is obtained by this court he will not get paid any alleged balances.

CW2, Nantale Sylvia’s pay slip is legible and when we added the total balances we found that she is entitled to 1,065,000/=.

The third claimant, one Semaganda Joseph will be entitled, from his **“pay slip”** on the court record to 770,000/=.

The fourth claimant, one Buyondo Isaac, from his **“pay slip”** will be entitled to 600,000/=.

The fifth and last claimant, one Musazi Robert from his **“pay slip”** will be entitled to 1,119,000/=.

Any other claims are not supported by evidence on the record and they are therefore disallowed. Since there was no evidence to suggest that the claimants were terminated, no general damages arise and no severance allowance arises.

Accordingly the claim succeeds in the above terms with no orders as to costs.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists:

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Mr. Anthony Wanyama

Dated: 12/07/2019