

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE NO.091/2014
(ARISING FROM HC.C.S 231 OF 2014)

TUMUSIIME GODFREY & 2 OTHERSCLAIMANTS

Vs

MARMA TECHNICAL SERVICESRESPONDENTS

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

Panelists

- 1. MS. NGANZI HARRIET**
- 2. MR. F. X MUBUUCHE**
- 3. MR. EBYAU FIDEL**

AWARD

The claimants, Tumusiime Godfrey, Lutakome John Bosco and Sendege Ronald, filed this labour dispute against the respondents on the 28th November 2014, for unpaid wages for the months of October to November 2013, monies unlawfully deducted from their wages, 4 weeks wages being compensation for irregular termination, 2 months' pay in lieu of notice, 3 months wages being additional

compensation for unfair termination severance pay general damages, accrued leave and interest and costs of the suit.

The respondents filed a memorandum in reply to the claim on the 17/12/2014. Both parties appeared on the 1/03/2016 and were directed to initiate and file a Joint scheduling memorandum trial bundles and witness statements. The case was adjourned with costs to the claimants on the 12/07/2016 and set down for hearing on the 19/10/2016. The respondents were served and evidence of proper service was presented to court by the claimants. The respondents did not enter appearance and as such the claimants prayed to proceed *ex parte*. We were satisfied that the respondents had been properly served and therefore granted the claimant's their prayer.

FACTS:

The 1st claimant Tumusiime Godfrey was employed by the Respondents from 2008, the 2nd claimant Lutakome, from 2008 and the 3rd claimant, Sendege, from 2010. During their employment the respondents had failed to pay their salaries on numerous occasions. The claimants reported the non-payment of wages for the months of June July, August, September and October, 2013 to the labour officer of Kampala City Authority in October 2013. The claimants contended that in November 2013 the respondents paid the claimants salary for September and terminated their contracts without notice in December 2013, which led to their complaint to the labour officer and subsequently to this court.

The agreed issues as set out in the joint scheduling memorandum were as follows:

- 1. Whether the claimants were paid all their salary arrears.**

- 2. Whether the termination of the claimants' employment was irregular and fair.**
- 3. What remedies are available to claimants?**

- 1. Whether the claimants were paid all their salary arrears.**

CW1 Tumusiime Godfrey in his witness statement stated that at the time of his termination he was the company's Auditor earning Ugx. 3,200,000/= per month. He said the Respondents had paid him Ugx. 19,970,000/= but still owed him Unpaid wages for the month of October and November amounting to Ugx. 6,400,000/- plus Ugx. 4,000,000/= and Ugx. 1,500,000/- which he claims was unlawfully deducted from him for a lost laptop.

CW2 Lutakome John Bosco testified in his witness statement that at the time of his termination in 2013, he was working as the respondent's project coordinator earning a salary of Ugx. 2,290,000/- per month. The respondents had paid him Ugx. 16,310,000/- but still owed him unpaid wages for the month of October and November 2013, amounting to Ugx.4,580,000/= plus Ugx. 1,000,000/- which he claimed was an unlawful deduction.

CW3 Sendege Ronald testified at the time of his termination he was earning Ugx. 800,000/- per month, and that the respondent had paid him Ugx. 800,000/- cash and Ugx. 1,700,000/- by cheque. The cheque however was dishonored on its presentation to the bank. He further claims that the respondents owed him salary for the months of October and November 2013 amounting to Ugx. 1,600,000/-.

It was Counsels submission that the respondent had not paid the claimants their salaries for the months of October and November 2013 prior to the termination of their contracts of employment.

We have carefully considered the evidence on the file together with Counsels submissions and we find as follows; CW1 was appointed as part of the board of management team by letter dated, 01/01/2010 (Ex. P.1) earning Ugx. 3,000,000/- and Auditor of the Company by letter dated, 5/11/2012(Ex.P2) He claimed his salary had been increased to Ugx. 3,200,000/-, although this letter did not state how much he would be earning. The respondents response to the labour Officer regarding the nonpayment of all the claimants arrears, dated 18/10/2013(marked D), did not controvert CW1 claim to Ugx.3,200,000/-. It is standard practice that increase in ones salary should be communicated to him or her in writing. Ex. P1 did not stipulate the increase so we shall maintain the original salary of Ugx. 3,000,000/- as CW1 salary. There is evidence in form of a voucher showing that CW1 was paid salary arrears for the months of May –September 2013 less advances, Voucher marked as exhibit P3, dated 10/11/2013. The Voucher Ex. P3 shows a deduction of Ugx.1, 500,000/- for a laptop that was purportedly in his custody, Ugx, 2,700,000/- for previous advances and Ugx. 2,000,000/- for recent advances amounting to Ugx, 7,400,000/- we don't see the Ugx. 4,000,000/- thatCw1 claims had been deducted. We are not satisfied that it should be paid and therefore it is denied, he should only be paid the Ugx 1,500,000/ for the laptop.

CW2 Lutakome's salary as project coordinator was increased by letter dated 3/11/2008 (Ex.P6) there is evidence of payment of salary arrears for the Months

of May to September 2013 less advances, of Ugx. 1,000,000/= Voucher marked as exhibit P12 dated 10/11/2013. There is no evidence to justify this deduction so it should be refunded to him.

CW3 Sendege Ronald was appointed Technician initially earning Ugx. 400,000/= per month, his salary was increased to Ugx. 800,000/= on 1/01/2013. Cw2 also claims unpaid wages for the month of October and November 2013 and unlawful deduction of Ugx. 1,000,000/- and 1,700,000/= from a bounced cheque.

Order 8 rule 3 of the Civil Procedure Rules; SI 71 states that:

“Every allegation of fact in a plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by admission.” Also see the case of **THE OBSERVER MEDIA LTD VS BOOKS PLUS LTD HCCS No.0937 OF 2004.**

The evidence on record shows that the claimants’ contracts of employment were terminated on the 13/11/2013 due to the company’s poor performance and failure to meet its financial obligations including the payment of the claimant’s wages. (Termination letters exhibited as P5, P14, and P19 respectively. The claimant’s termination took effect on the 13 /11/2013. There is no evidence to show that the claimants were paid their salary arrears for these months. In the absence of any evidence to the contrary we order the respondents to pay the claimants their salary arrears for the month of October, 2013 and 13 days for the month of November 2013.

Accrued Leave

Section 54 of the Employment Act makes it mandatory for employees who have worked continuously for 4 months to take paid leave every calendar year, the claimants in this case have not proved that they applied for and were denied to take leave. It is an established principle that an employee can only recover untaken leave if he or she had applied for it and the same had been denied. See **FLORENCE OTHIENO VS UGANDA BROADCASTING CORPORATION HCCS No.107/2013, ABDUMOSHI MUGERERE & 3 OTHERS VS KAMPALA CITY COUNCIL AUTHORITY L.D No. 224/2014**. The prayer for accrued leave is therefore denied.

2. Whether the termination of the claimants' employment was irregular and fair.

According to counsel termination of an employee shall be unfair if the employer does not act in accordance with justice and equity and does not give a reason for dismissing the employee contrary to Sections 73 and 68 of the Employment Act respectively.

According to him the claimant's testified in their witness statements that the respondent had terminated them because they had reported him to the labour office. He cited the claimant's letters of complaint to the labour officer and the termination letters as evidence. He further argued that the respondents had not been given the claimants notice in accordance with section 58 of the Employment Act 2006 and therefore the termination was unlawful.

We have carefully looked at the letter of termination and found that the respondents had terminated the claimants' contracts because the company was not performing very well and they could no longer afford to pay the claimants salaries and not because the claimants had reported them to the labour office.

There is no evidence to prove that the respondent company was actually performing poorly and therefore it could not meet its financial obligations. We are not convinced that an employer's failure to meet his or her financial obligations should be an excuse not to pay his employees. The employer must prove this to court that indeed they were not financially sound. It is our considered opinion therefore that the claimants were unfairly terminated.

The record further shows that the respondents did not give the claimants the requisite notice and thus contravened Section 58 the Employment Act 2006. The 1st and 2nd claimants had worked for the respondents for more than 5 years and according to Section 58 (3) (c) of the Employment Act, 2006, they were entitled to 2 months' notice or payment in lieu of notice. The 3rd claimant had worked for more than 2 years but less than 5 years and was therefore entitled to 1 months' notice or payment in lieu of notice in accordance with Section 58 (3) b) of the employment Act of Uganda, 2006. The respondent's failure to give the claimants notice further rendered the dismissal unfair and unlawful. In the premises the claimants are awarded general damages and payment in lieu of notice for each.

3. What remedies are available to claimants?

There was no evidence to justify the deductions of Ugx. 1,500,000/= from CW1 and Ugx. 1,000,000/= from CW2s salary. We therefore hold that these deductions were unlawful and the respondents should refund the said monies to the claimants. CW3 should receive a refund of Ugx, 1,700,000/- for the dishonoured cheque.

According to Counsel Section 46(6) provides for payment of all the employees benefits within 7 days of termination. Counsel also cited Section 71(5) (b) of the

Act which provides for the compensation of an employee who has been unfairly terminated. We note that section 46(6) is not a provision in the Employment Act 2006. We think that counsel probably intended to refer to section 43(6) which provides for the prompt payment of accrued benefits to an employee upon the termination of his or her contract of employment.

We have already decided that the respondents unfairly terminated the claimants on grounds that they could not afford to pay their salaries and by not giving them notice before they were terminated, contrary to Section 58 of the Employment Act. The remedy prescribed under Section 71(5) however can only be given by a Labour Officer. The Court is presided over by Judges with a wide discretion to award damages. It is our considered opinion therefore that in addition to receiving the payment in lieu of notice, the claimants are awarded general damages. The claimants demanded for general damages of Ugx. 60,000,000/- for CW1, Ugx. 45,000,000/= for CW2 and Ugx.35,000,000/-.

It is trite law that damages are generally compensatory in nature and the injured party must always be awarded such sums of money as may put him or her as near as possible to the position he or she was in before the wrong complained of had been occasioned. The respondents unfairly terminated the claimants' employment without notice, on the grounds that they were not in position to pay the salaries of the claimants because of the company's poor performance. We believe that general damages Ugx. 10,000,000/- for CW1 and Ugx. 7,000,000/ for Cw2 and Ugx. 4,000,000/- for CW3 are sufficient.

In conclusion the claimants are awarded the following:

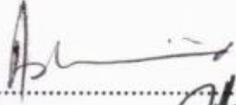
1. Declaration that they were unfairly terminated.

2. Payment of salary arrears for the month of October and 1/2 of November each.
3. Refund of the unlawful deductions from the claimants, Ugx. 1,500,000/- to CW1 and Ugx.1, 000,000/- to CW2.
4. Payment in lieu of 2 months' notice for the CW1 and Cw2 and 1 months' notice for CW3.
5. Refund of Ugx.1, 700,000/= to CW3 for dishonored cheque to CW3.
6. General Damages of Ugx. 10,000,000/- for CW1, Ugx. 7,000,000/- for CW2 and Ugx. 4,000,000/- for CW3.
7. No order as to costs is made.

It is so ordered.

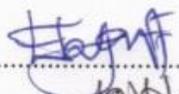
Signed and delivered by:

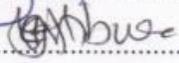
SIGNED

1. Hon Justice Ruhinda Asaph Ntengye, Chief Judge 

2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha, Judge..... 

PANELISTS

1. Mr. Ebyau Fidel 

2. Ms. Harriet Mugambwa 

3. Mr. Frankie Xavier Mubuuke 