

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE NO.206 /2015
(ARISING FROM KCCA CB.075 OF 2015)
OCHIENG JOSEPHAT CLAIMANT
VERSUS
MONITOR PUBLICATIONS LIMITED RESPONDENT

BEFORE:

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

PANELISTS:

1. MS. ROSE GIDONGO
2. MR.ANTHONY WANYAMA
3. MR. EBYAU FIDEL

BRIEF FACTS

The claimant was employed by the Respondent as Chief Accountant from 1/09/2010. He claimed he was forced to resign on the 30/03/2015, following disciplinary proceedings against him. On the 31/03/2015, the Respondent accepted his resignation and undertook to pay to him salary and accrued allowances up to 31/03/2015, 3 months in lieu of notice, outstanding leave, gratuity and terminal benefits.

According to him the respondent failed and or refused to honour its obligations to pay the claimant all his dues hence this suit.

It was the Respondents case that after undergoing disciplinary proceedings, the claimant was found guilty of “voiding leave” and he opted to resign. According to the respondent his terminal benefits had always been available for collection by the claimant but he did not collect them.

When this matter came up for scheduling, the parties opted for mediation. A partial Consent agreement was entered for the claimant, for the payment of his terminal benefits and other claims. What remained unresolved was the issue of damages and costs.

The claimant was represented by Ms. Byarugaba Kusiima and Mr. James Nangwala Senior Counsel was for the respondent.

Both counsel made oral submissions on the issue of payment of Damages and Costs.

SUBMISSIONS:

General Damages

It was submitted for the claimant that section 43(6) made it mandatory for the employer to pay an employee’s benefits with 7 days of his or her termination. Section 43(6) provides that:

“

(6) On the termination of his or her employment in whatever manner, an employee shall, within seven days from the date on which the employment terminates be paid his or her wages and any other remuneration and accrued benefits to which he or she is entitled.”

Counsel asserted that the respondent had violated this provision of the law to the detriment of the claimant who therefore needed to be compensated by awarding

him General and Punitive damages. She sought leave of court to tender new documents to which the respondent did not object.

With leave of Court she tendered documents and evidence to prove that the claimant had experienced unprecedented suffering as a result of the respondent with holding his payments. She restated the fact that the respondent in its letter dated 31/03/2015, had undertaken to pay the claimant all his benefits and entitlements but had failed and or refused to do so within the time stipulated under section 43(6). According to her this letter estopped the respondent from later introducing pre- conditions before it could pay the claimant. She enumerated a number of pre-conditions which she contended had been unfairly imposed on the claimant, such as tramping charges against him which the police later found to be false. It was her submission that the respondents refusal to immediately pay the claimant in lieu of notice resulted in a sudden loss of income by the claimant which caused him emotional anguish and suffering because he was his family's sole bread winner. She prayed that Court awards him general and punitive damages. She relied on the cases of **BASIIMA KABONESA & 2OTRS VS THE ATTORNE GENERAL AND COFFE MARKETING BOARD, HCCS No. 259 OF 2014, RAJAB KAGORO VS MAKERERE UNIVERSITY HCT-00- CV-CS – 0823 F 2003, ANMED EL TERMEWY VS HASSAN AWDI AND 3 OTHERS, CS No.95 OF 2012, UGANDA REVENUE AUTHORITY VS WANUME DAVID KITAMIRIKE CA No. 43 of 2010.**

Mr. Nangwala for the respondents, in reply strongly objected to the manner in which Ms. Kusiima Byarugaba had adduced evidence for the claimant as if she was his witness. He opined that had he known this would be the case he would have objected. He contended that by adducing evidence which the respondents had not

been given an opportunity to controvert, Counsel had violated Regulation 9 of the Advocates (Professional Conduct) Regulations. Regulation 9 stipulates that:

“(9)Personal involvement in a client’s case.

No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit; and if, while appearing in any matter, it becomes apparent that he or she will be required as a witness to give evidence whether verbally or by affidavit, he or she shall not continue to appear, except that this regulation shall not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on a formal or non-contentious matter or fact in any matter in which he or she acts or appears.”

He insisted that there had been no trial and the fact remained that the court had no evidence at all and Counsel had merely submitted to ***“fanciful theories of reasoning ... without end.”*** According to him the claimant had not by evidence in chief or cross examination verified what Counsel had submitted upon and the Annexures to the pleadings were not evidence. He further argued that both the statement of claim and reply to it had not been proved by any evidence. He contended that Counsel had prayed for general damages for delayed payment to the claimant, but there was no evidence for Court to know why there was delayed payment. In his opinion there was no evidence to prove that the claimant had suffered mental anguish or any sort of suffering as Counsel had alleged. He relied on the case of **MUSISI JACKSON VS UGANDA SCCA NO. 30 OF 2001(Unreported)**, in which Court criticized a holding by a lower court that; ***“ ... in every criminal trial, a conviction can only be***

based on the weight of actual evidence adduced and not on any fanciful theories or attractive reasoning....”

In rejoinder, Ms. Kusiima Byarugaba insisted that the Court record reflected that she had sought Courts direction on how to tender documents on the peculiar nature of this claim and the respondent had not objected to the same. She insisted that Counsel was also aware that under the Labour Disputes (Arbitration and Settlement) Act 2006, this Court was not bound by rules of procedure.

With regard to the claimant’s prayer for punitive damages, she relied on the case of **UGANDA REVENUE AUTHORITY VS WANUME DAVID KITAMIRIKE CA No. 43 of 2010**. In which it was held that:

“... the justification for awarding punitive damages was because of the harassment, humiliation and embarrassment that the respondent had meted out of the appellant.” And in the case of **AHMED EL TERMEWY VS HASSAN AWDI AND 3 OTHERS, CS No.95 OF 2012**, in which it was held that; ***“...Punitive damages focus on the defendant’s misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society and also the courts sense of decency.*** And in the case of **OBONGO VS KISUMU MUNICIPAL COUNCIL (1971) EA, 91**. She asserted that the instant case was not different.

The issue for resolution as we see it is that on the termination of his contract the respondents under took to pay his accrued benefits but failed and r refused to pay them within the stipulated time.

It was not disputed that the Respondent did not pay the claimant in accordance with section 43(6)(supra). This section requires an employer to pay an employee

whose contract has terminated within 7 days after its termination. It is our considered opinion that it is not possible to do the computation and payment of terminal benefits such as gratuity within 7 days after the termination of an employee's contract of service. It is an established best practice that prior to entering into or exiting a contract of employment there is a process that has to be undertaken. This process includes but is not limited to; in the case of entry; the assessment for suitability of the job, offer and acceptance of the contract of employment and terms and conditions of service etc., similarly in case of exit, disciplinary proceedings in case of misconduct, giving of notice period in case of termination or retirement or expiry of contract and the computation of terminal benefits including gratuity among others.

Our interpretation of section 43(6) therefore is that once an employee's contract terminates in whatever manner he or she should be paid 7 days after the completion of the exit process. The process should be concluded within a reasonable time and in our considered opinion, where the duration of the exit process has not been expressly stipulated in a contract of employment, it should not exceed three months.

We are satisfied that by undertaking to pay the claimant his salary and accrued allowances up to 31/03/2015, any accrued gratuity as per Company Policy, and payment in lieu of notice, the respondent was obliged to abide by Section 43(6) (supra) which it did not.

We therefore find that the respondents unreasonable withholding of the claimants pay for 11 months, for whatever reason was unfair. We think an award of Ugx. 9,000,000/= is sufficient as general damages.

Punitive Damages

It is trite law that punitive damages are intended to punish the respondent for the misconduct meted on the claimant and not for the injury suffered. See **AHMED EL TERMEWY VS HASSAN AWDI AND 3 OTHERS, CS No.95 OF 2012 (supra)**.

There is no evidence to prove that the respondents conduct towards the claimant caused him mental anguish, emotional distress, humiliation and embarrassment warranting the award of punitive damages. The prayer is denied.

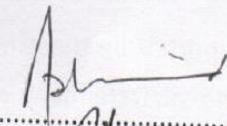
Costs

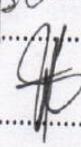
All parties should bear their own costs.

In conclusion the claimant is awarded Ugx.9,000,000/- as general damages, the prayer for punitive damages is denied. All parties to bear their costs.

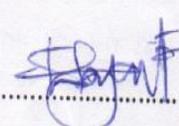
Delivered and signed by:

Signed:

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye 

2. The Hon. Judge, Linda Lillian Tumusiime Mugisha 

PANELISTS

1. Mr. Ebyau Fidel 

2. Mr. Anthony Wanyama 

3. Ms. Rose Gidongo 