**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE REFERENCE NO. 310/2017**

**ARISING FROM KCCA/NDC/LC/278/2016**

**MEEME LYNDA …….……….. CLAIMANT**

**VERSUS**

**GEOLOGIES UGANDA ……………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR. EBYAU FIDEL.**

**2. MS.HARRIET MUGAMBWA NGANZI.**

**3. MR. FX MUBUUKE.**

**RULING**

BRIEF FACTS

The claimant was employed by the Respondent from the 3/10/2007 to 3/10/2016 as Guest Relations Officer. Her salary was increased periodically from Ugx. 250,000/- and by the time she was terminated she was earning Ugx. 1,800,000 per month. According to her she was verbally summarily terminated on 30/10/2016 and she received the termination letter on 7/11/2016. Her claim is for general damages, for mental anguish, special damages amounting to Ugx. 40,392,000 and other remedies.

The Respondents on the other hand claim she was terminated with ample notice and her termination was justified.

The matter was referred to this court by the Labour officer KCCA after he failed to mediate it.

 PRELIMINARY OBJECTION

When the matter was mentioned in Court on the 14/2/2018 the Respondents raised a preliminary objection to the effect that the parties had settled before the Labour officer. He argued that the Respondents offered the claimant Ugx.11,510,000/= as full and final settlement of the claim and based on the Doctrine of Estoppel as provided under section 114 of the Evidence Act, the claimant cannot claim more than what was agreed. He further contended that the claimant was relying the same documents used in mediation as part of the claimants trial bundle filed on court record to the prejudice of the Respondent.

According to him, the claimant accepted the proposed Ugx. 11,510,000/= as stated in the letter dated 20/7/2017, save that she wanted it paid as a lumpsum while the Respondent in its letter dated 31/7/2017 wanted it paid in 4 instalments of Ugx. 2,877,500/= each. The Respondent went ahead and deposited Ugx. 2,877,500/= into the Claimant’s account as the 1st instalment which the Claimant rejected and refunded as per the letter dated 23/08/2017.

It was Counsels submission that it was clear and apparent that the an agreement in the matter was reached and the only contention was the terms of payment and the respondent only stopped paying the instalments when the 1st instalment was rejected.

It was Counsels submission that the claimant was precluded from denying that the settlement figure was agreed and therefore the matter was prematurely before this court because in his view labour justice before the Industrial court is derivative/ based on the decisions of the labour Office.

Citing the ruling in **LUBANDI EMMANUEL VS UGANDA ELECTRICITY COMPANY LTD LDR 095/2015,** which was to the effect that it was the Labour office’s role as a court of first instance to sieve and resolve labour disputes before they are referred to the Industrial Court, he argued that the instant matter had been sieved and conclusions had been reached between the parties. He argued that given the reasons for the termination and the economic circumstances pertaining at the moment it was not favorable for the respondent to pay a lump sum. In any case he was of the view that the issue whether the claimant’s termination was fair or not and the remedies sought, had been cleared by the settlement agreed upon, therefore the objection should be upheld.

In reply Counsel for the Claimant submitted that the objection had no merit

in law and fact and should be over ruled. It was his submission that there was no binmding agreement between the parties as was falsely alleged by counsel for the Respondents. Although he did not deny that the parties had agreed to a sum of Ugx 11.510,000/= as as a quick and amicable resolution of the matter, he insisted that this was not conclusive given that they disagreed on the terms of its payment and no consent agreement was executed. Counsel cited correspondences dated 20/7/2017, 30/8/2017 and 10/08/2017 in which both parties discussed the said settlement and eventually failed to agree on the terms of payment, where the Respondents insisted in paying the said money I 4 instalments and the claimant insisting on it being paid as a lumpsum. He insisted that there was no binding agreement as is provided for under Regulation 7(3) of the Employment regulations, 2011. It states that:

*“An agreement to settle the matter, between the Complainant and the Respondent, shall be in the form prescribed in part B(2) of the fourth Schedule.”*

He further submitted that in total disregard of their communication dated 10/08/2017 the Respondents, arbitrarily and unilaterally decided to set out its terms of payment and paid a sum of Ugx. 2,877,500/ into the claimants bank account which was refunded to them and a communication to that effect made by letter dated 23/08/2017.

Counsel further stated that it was trite law that for any binding agreement/contract to be valid, there must be offer and acceptance and section 7(1) (a) of the Contracts Act No.7 of 2010 provides that an offer is converted into a promise where the acceptance is absolute or unqualified. In the instant case the claimant was willing to accept the payment of Ugx. 11,510,000/= subject to the payment being made as a lumpsum and the offer of instalments was rejected in the letter dated 10/08/2017. He cited **COURTNEY & FAIRBAIRN Ltd vs TOLIANI BROTHERS (HOTELS) Ltd & ANOTHER [1975], THE WEEKLY REPORTS, 297 ON APPEAL** whose holding was to the effect that the law did not recognize a contract to negotiate and where a fundamental matter was left to be subject of negotiation there was no contract.

It was his submission that this court should be persuaded by the said holding which was similar to the instant case to find that whereas the parties exchanged letters and one claimed a contract had been concluded, the respondent reneged on the promise and the claimant considered it a failed mediation. He contended that the Respondent’s had never made any effort for the last 3 years and therefore it would be unjust for them to wish to go back to the same position now.

He submitted that the fact that the claimants willingness to take the 11,510,000’/=as a quick resolution of the matter then, which never materialized did not preclude her from perusing her claims as stated in the memorandum of claim. He reiterated that there was never a binding agreement reached and given that the Respondent annexed the same documents they claim to be prejudicial to them on their memorandum in reply, they are not prejudicial.

It was his view the doctrine of estoppel was being misapplied and it was not relevant to the instant case.

DECISION OF COURT

We have carefully considered both counsels submissions and the evidence on the record. We think that the issue in contention is whether the matter was settled by mediation?

From our analysis of the record, it is not disputed that before the matter was referred to this court, Mr. Hannington Kasagga the labour officer, KCCA mediated upon it and in his report, he stated that the complainant was agreeable to the proposed 11.510,000/- , but she wanted it paid in a lump sum which was not agreeable to the Respondent who pleaded financial incapacity and wanted to pay in instalments. He concluded by stating that the mediation had failed and the complainant requested for a referral to this court. The referral dated 29/11/2017 was to the effect that the labour officer had failed to dispose the case within 8 weeks after it was reported.

It is also not disputed that during the mediation the Claimant agreed to the sum of Ugx. 11,510,000/= proposed by the Respondents as long as it was paid in a lumpsum which the Respondents did not agree with.

A dictionary meaning of the term agreement is a negotiated and typically legally binding arrangement between parties as to a course of action, the absence of incompatibility between two things, consistency. The law dictionary.org defines an agreement to mean a deliberate engagement between competent parties, upon legal consideration, to do or abstain from doing, some act.

The contracts Act 2010, under section 2 defines agreement to mean *“ a promise or a set of promises forming consideration for each other” a*nd consideration as *“ a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party.”*

According to the respondent their offer of Ugx. 11,510,000/= as full and final settlement was agreed to by the claimant save for the mode in which it was to be paid.

Section 7 of the Contracts Act (supra) provides that:

*“(1)An offer is converted into a promise where the acceptance is-*

1. *Absolute and unqualified*
2. *Expressed in a usual and reasonable manner, except where the offer prescribes the manner in which it is to be accepted…”*

Section 10 of the same Act provides that:

*“(1)A contract is an agreement made with free consent of parties with capacity to contract, for a lawful consideration and with lawful object, with intention to be legally bound.*

*(2) A contract may be oral or written or partly oral or partly written or may be implied from the conduct of the parties.*

*…”*

The claimant’s claim comprised of, 34 months’ pay of deducted but unremitted NSSF, payment of 172 off days, accumulated leave for 4 years, notice pay and severance pay. The labour officer’s report seems to suggest that the claimant opted for a quick resolution of the matter by accepting the payment Ugx. 11, 510,00/= as full and final settlement of her claim as long as it was paid in a lumpsum which the Respondent clearly disagreed with. The Respondent’s payment of the proposed 1st installment and its refund was evidence that the parties did not agree on the mode of payment. They were still incompatible as far as the payment of the said sum was to be made.

We are inclined to agree with counsel for the Claimant that the acceptance by the Claimant was not absolute but dependent on the payment of the lumpsum. We do not agree with the respondent’s submission that the acceptance of the figure bound the claimant therefore she was estopped from denying that she accepted. We were not furnished with any written consent agreement as proof of agreement. Setion 10(5) provides that:

(5) A contract the subject of which exceeds 25 currency points shall be in writing. In the instant case the subject of the agreement exceeded 25 currency points but it was not in writing.

 Given the Labour officer’s report and the absence of a written consent as proof that the parties had an agreement, we are no basis to hold that there was an agreement.

The respondents did not adduce any evidence to show that they made any effort to pay the said sum since they paid the 1st instalment in August 2017. We think they only woke up after the claimant served them with her memorandum of claim. We do not think they were willing to pay the said money as a lumpsum.

In the premises we find that there was no agreement arrived at before the Labour officer and as he stated in his report mediation failed and he was correct to refer the matter to this court as he did.

The matter is therefore properly before this court. The preliminary objection is denied. With no order as to costs.

The matter shall proceeds on its merits.

Signed and delivered by;

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ………….**

**PANELISTS**

**1. MR. EBYAU FIDEL. ………….**

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