**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 322 PF 2015**

**ARISING FROM LD 67/20/05/2015**

**ROBERT ODONGO OMARA&ANOR …………………………………….. CLAIMANT**

**VERSUS**

**SAVE THE CHILDREN INTERNATIONAL ……………………………... RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. JULAIN NYACHWO**

**2. MR.BWIRE JOHN ABRAHAM**

**3.**

**BRIEF FACTS:**

The claimants were former employees of the Respondent. They were terminated on 5/3/2015. Their claim against the Respondents is for special and general damages for unlawful termination. According to them, by the time of their termination the 1st claimant Odongo Omara was working under an open ended Contract as Project Specialist and the 2nd Claimant on a 2 year contract as Senior Officer, earning Ugx. 4, 234, 600 per month and 2,266,000 per month respectively. They claim that their respective contracts were unlawfully terminated without notice or a hearing. The 2nd Claimant also claims his salary for the months of January and February was withheld. According to him, he was terminated on allegations that he had overpaid officials of Gulu, Nwoya and Gulu RDCs Office funds amounting to Ugx. 2,070,000/- without proof.

Before the matter was heard the parties entered into a partial consent agreement in which the Respondent admitted that the Claimants were its former employees and they were terminated. That the Claimants were paid severance packages on termination, that the 1st claimant shall be paid Ugx. 1,500,000/- and the 2nd claimant shall be paid Ugx. 1,000,000/= as repatriation costs from Gulu to Lira-Kato Agago and from Gulu to Apac respectively.

What remains for determination by this court is;

1. **Whether the claimants employment Contracts were lawfully terminated?**
2. **Whether the Claimants are entitled to the remedies prayed for?**

**SUBMISSIONS**

It was submitted for the claimants that they were terminated without basis because there was reason advanced by the respondents for the termination and they were not given an opportunity to defend themselves as is provided under sections 66(1) and (2) and section 68(1) and (2) as well as section 71 of the Employment Act, 2006. Counsel argued therefore that they were denied a fair hearing. He contended that the Respondents did not follow their disciplinary procedure as provided in their Human Resources Manual and Declaration of acceptance form. According to him the Respondents did not suspend the claimants, they did not conduct an investigation and or give the claimants a hearing before they dismissed them and therefore they did not prove the allegations against them. He asserted that given that they were not given a hearing and no justifiable reason for terminating them, the claimants were unlawfully dismissed.

In reply it was submitted for the respondents that in accordance with Sections 65(a) and 58(3)(b) of the Employment Act 2006, the respondent had a right to terminate their employees by giving notice. He cited **BARCLAYS BANK vs MUBIRU GODFREY CA No. 1 OF 1998 AND LEES VS ARTHUR GREEVES LTD (1974) I.C.R.** According to Counsel the claimants admit that they were dismissed in accordance with section 65(a) and 58(3)(b). Counsel further cited **STANBIC BANK OF UGANDA Vs KIYEMBA MUTALE. SCCA No. 02 OF 2010** whose decision is to the effect that an employer could terminate the employee’s contract for a reason or no reason at all, although the termination must be done in accordance with the contract of employment. Counsel asserted that this court by holding contrary would be fettering the right of the employer to terminate the contract of employment by notice or payment in lieu of notice.

Counsel also argued that the respondents had followed chapter 11, section 11.2 of their Human resources Manual therefore it was within the ambit of the law and therefore the termination was lawful.

Counsel concluded that having established that the termination was lawful the claimants were not entitled to any remedies. He also cited **CHRISTOPHER KIGGUNDU AND ANOR VS UGANDA TRANSPORT CO.(1975) LTD CA No. 7/1993**  in respect to the respondents failure to call any witness on its part, to the effect the not calling a witness did not mean that whatever the claimant submitted was true. He opined that the claimant’s testimonies should be aligned with section 100-102 of the evidence Act.

THE DECISION OF COURT

1. **Whether the claimants employment Contracts were lawfully termination**

From the evidence on the record and submissions from both parties it is clear that the claimants were terminated by the Respondents without giving them a hearing or a reason for terminating them. The respondents actually admitted that they terminated them in accordance with section 65(a) and section 58(3) (b) of the Employment Act 2006.

Section 58(3)(b) provides that

…

***3) The notice required to be given by an employer or employee under this section shall be-***

***(b) not less than one month, where the employee has been employed for a period of more than twelve months but less than five years;…”***

Section 65(a) provides that:

***“65. Termination***

***(1) Termination shall be deemed to take place in the following instances-***

***(a) where the contract of service is ended with notice; …”***

The letters of termination marked Annexture “B” on pages 26 and 27 of the Claimants trial bundle states that they claimants would be paid 1 month in lieu of notice. The letters did not state any reason for the termination nor did they indicate that there was a hearing before the terminations. Counsel for the respondent’s assertion that the respondents had a right to terminate an employee with notice and in accordance with the contract of employment and that giving a reason was farfetched, cannot hold in light of Sections 66(1) and (2) and 68(1) and(2) of the Employment Act. Section 66(1) and (2) provides that;

***“66. Notification and hearing before termination***

***(1) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation,***

***(2) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.***

And section 68 provides that:

***68. Proof of reason for termination***

 ***(1) In any claim arising out of termination the employer shall prove the reason or reasons for the 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 reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee….”***

We think the case of Kiyimba Mutale cited by counsel for the respondents is relevant in the instant case because, the Employment Act 2006, clearly provides in section 66(1 and (2) and 68 (1) and (2) (supra) that before terminating the services of an employee an employer must give the employee a reason for terminating him or her and an opportunity to respond to the reasons. Therefore sections 65(1)(a) and 58(3) (a) must be read together with sections 66(1) and(2)and 68(1) and (2)(supra)

Although the claimants assert that they were terminated based on a number of allegations which were not proved, although the respondents did not adduce evidence to rebut this assertion, it is our considered view that this evidence should have been brought before a disciplinary hearing and not to this court. (see Queenvale….

That notwithstanding however, given that the Respondents admit that they terminated the Claimants in accordance with sections 65(a) and 58(3) (b) and that that giving them a reason for termination was farfetched, they violated Sections 66(1) and (2) and 68(1) and (2) therefore rendering the Claimants termination unlawful. This issue is therefore answered in the affirmative.

1. **Whether the Claimants are entitled to the remedies prayed for?**

The claimants prayed for declaration that their employment contracts were breached because of the erroneous, premature, malicious and unlawful termination. we have already found that the termination was unlawful.

Payment of special damages in form of payment for the remaining period of the contracts. They cited BANK OF UGANDA VS BETTY TINKAMANYIRE C.A.No. 12/2007 and BARCLAYS BANK VS GODFERY MUBIRU C.A No. 1 OF 1998 in support of the claimants compensation.

In VIRES VS NATIONAL DOCK LABOUR BOARD (1958) 1 QB 658 cited with approval in STANBIC BANK VS KAKOOZA MUTALE C.A No. 2 OF 2010, It was held that; ***“It has long been settled that if a man employed under a contract of personal services is wrongfully dismissed he has no claim under the contract after repudiation. His only claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can to mitigate them”***

***In BANK OF UGANDA VS BETTY TINKAMANYIRE….*** Kanyeihamba J as he then was stated that, “***The contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they should have retired is unattainable in law. Similarly claims of holidays, leave, lunch allowances, and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculation and cannot be justified in law”***

This court in many decisions has maintained this position and has no intention of departing from it in this case. The claimants’ only claim is damages.

We are not satisfied with the claimants’ contention that the respondents exercised any malice to warrant a claim of mental anguish and psychological torture, inconvenience and embarrassment. Damages are awarded at the discretion of court and they are intended to bring an aggrieved party to as near as possible in monetary terms to a position he or she was in before the injury occasioned to him or her occurred. In the premises the 1st claimant is awarded Ugx. 35,000,000/= as General damages and the 2nd claimant Ugx, 26,000,000/= as general damages.

They prayed for repatriation. This was already resolved by consent.

They prayed for Aggravated damages;

We found no evidence to prove callousness, maliciousness to warrant the grant of aggravated damages, it is therefore denied.

In conclusion an award is entered in favour of the claimants in the following terms

1. The 1st claimant is awarded Ugx. 35,000,000/= as General damages
2. The 2nd claimant Ugx, 26,000,000/= as general damages.
3. Interest on 1 and 2 from the date of award till full and final payment.
4. No order as to costs is made.

Delivered and signed by:

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

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

**PANELISTS**

**1. MS. JULAIN NYACHWO ……………….**

**2. MR.BWIRE JOHN ABRAHAM ……………….**

**3. MR.ANTHONY WANYAMA ……………….**

**DATE 16/11/2018**