**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE NO 102/2017**

**ARISING FROM LD. NO. CB 205/2017**

**TAMWENYA DAVID ……….. CLAIMANT**

**VERSUS**

**BUDAKA DISTRICT LOCAL GOVERNMENT …………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR. ANTHONY WANYAMA**

**2. MS. ROSE GIDONGO**

**3. MS. RWOMUSHANA JACK**

**AWARD**

**BREIF FACTS**

According to the Joint Scheduling Memorandum, the claimant was appointed as Service Driver at salary scale U8 in 2009. In 2011 he was directed to handover the vehicle he was driving to a one Bumba Bernard and was denied access to any of the Respondents vehicles. This was done without giving him any reason or explanation. He ceased to receive salary and was verbally informed that he was no longer needed. He was issued a letter of termination on 17/03/2017. According to the Claimant all efforts to have the respondents rectify their actions were in vain and as a result of being deprived of his employment he suffered mental anguish and damages for which he seeks court redress.

The respondents on the other hand contended that after the creation of the Respondent, the Claimant was appointed on transfer and posted to the CAOs office and later to the Department of Works and Technical Services in 2010. According to the Respondents the Claimant refused to work despite several correspondences requesting him to do so. He was maintained on the pay roll up to 2012 having abandoned duty in 2011. His absence was deemed to be abandonment of work. His name was forwarded to the District Service Commission (DSC) for dismissal. The DSC summoned the claimant in vain and subsequently dismissed him. They contend that he was not entitled to any of the remedies sought.

**ISSUES:**

1. **Whether the Claimant was lawfully dismissed from duty?**
2. **Whether the Claimant is entitled to the reliefs sought?**

**EVIDENCE**

The claimant adduced his own evidence and confirmed that he was appointed by the Respondent District. He stated that he was not appraised in 2011, 2012, 2013, 2014 and 2015. He denied ever being transferred and any knowledge about the Respondents sign in arrival and departure book.

He stated that when the vehicle was withdrawn from him he was not given another one and he wrote to the Cao in 2012. He did not tender the letter in court as evidence. He also stated that he wrote to the CAO again in 2015 through his lawyers, but he was ignored until he was terminated in 2017. He stated that he last received salary in March 2012 and that he complained about the non-payment of his salary. He admitted that he stopped working in 2012 and he complained to the CAO about his non-deployment. According to him all the letters he wrote complaining are in the Respondents registry where they received and stamped with the inscription “received”.

The Respondents adduced evidence through 2 witnesses RW1 Irumba Twaibu and RW2, David Tabitya. RW1 stated that the claimant absconded from duty from 2009 to 2011. He stated that the Claimant was transferred to the Water department for about 2 years and then assigned vehicle UAK 839X under the Health department which he refused to drive. He stated that the Claimant was warned about absenteeism and cited a number letters to that effect, exhibited as “4” and “5” on the Respondents Trial bundle. He refuted the claim that the claimant complained about non deployment in writing and stated that the Respondent only received a complaint from the labour Officer, which directed the Respondent to pay the Claimant his salary yet he did not work.

RW2 the Secretary to the District Service Commission, testified that he received a copy of the Respondent’s letter warning the claimant about absconding from duty. He stated that by the time the Claimant absconded he was working in the Health Department. He also in accordance with the set procedure a submissions was made to the District Service Commission (DSC) by the responsible officer for disciplinary action. The DSC invited the claimant on the 15/03/2012. The claimant however could not be served because his whereabouts were not known. According to RW2 the Claimant was not at his home and his phones were switched off.

**SUBMISSIONS**

**ISSUE 1. Whether the Claimant was unlawfully terminated?**

It was submitted for the claimant that he was terminated in 2011 and dismissed effectively on 17/03/2015, having been appointed as a driver in 1999. According to Counsel it seemed that the claimant’s termination was due to his absconding from duty on 8/11/2011. He contended that the termination was illegal and unlawful therefore the case qualified to be one of unlawful summary dismissal. He argued that the dismissal letter did not state any reason why the claimant was being terminated and in the same vain it commended him for his loyalty and dedication to serving the Respondents. He cited **ALEX BWAYO VS DFCU HCCS 78/2012.** Counsel further submitted that the dismissal violated Section 66 of the Employment Act 2006 and **BWAYO** (supra), which made a fair hearing an integral part of a dismissal process. He cited Article 42 of the Constitution which provides for the right to fair treatment in administrative decisions. He insisted that the withdrawal of the Vehicle which the Claimant was driving in 2011, his non- deployment and his termination without a reason amounted to summary wrongful dismissal and Court should find so.

In reply Counsel for the Respondent submitted that the Claimant admitted that he was assigned Vehicle UAK 839X via letter dated 18/10/2011 marked as exhibit “3” on the Respondents trial bundle. According to Counsel the claimant refused the assignment and decided to disappear. He asserted that the Claimant did not controvert exhibits “4” and “5” in which the CAO notified him about his absconding from duty. He contended that the service of these 2 documents upon the Claimant was impossible given that the Claimant could not be traced. It was his submission that subsequently the Respondent was left with no option but to submit his name to the DSC for termination on grounds that he had absconded from duty.

He further stated that the DSC by letter dated 16/03/2012 made efforts to summon the Claimant but he could not be found. The DSC then decided to terminate him via letter dated 17/03/2015. Counsel cited the Public Service Standing Orders Section F-b sub section 5 and 7 which provide that a public officer’s working hours are from 8.00am to 5.00pm and a public officer had an obligation to register his or her time in and out of office.

Counsel argued that the Claimant had never filled the arrival and departure book in Budaka, from 2011 which indicated that he was not at the duty station. He stated that the CAOs letter in response to the Claimant’s letter demanding for salary arrears indicated that the CAO had never seen the Claimant and the CAO was posted to the Respondent in 2013. The CAO also indicated that he had never received any complaint from the Claimant regarding salary arrears, therefore the Claimant was not at the duty station at the time. Counsel asserted that the signing of the arrival and departure register was evidence that an employee actually reported for duty and in this case the claimant admitted he had not signed the registers.

Counsel doubted that the Claimant could have worked for 4 years without any formal complaint because he only raised the issue about his salary arrears and deletion from the payroll in 2012, and again in 2015.

Counsel further contended that the Claimant having been assigned Vehicle UAK 839X, he was already deployed and if he was not comfortable with the deployment he should have stated so, but he did not. He contended further that the claimant’s admission that he was not appraised from 2011 was another indicator that the Claimant had no outputs to report since he had not worked. He insisted that the Claimant had not told court the truth.

 According to him Regulation 37 of the PSC Regulations of 2009, is to the effect that if an officer does not report on duty without justifiable reason he would be struck off the payroll. He insisted that according to exhibit “4” and “5” of the Respondents trial bundle the Claimant was notified about his absconding from duty and given a warning which he defied. Subsequently, a submission was made to the District Service Commission (DSC) in accordance with the relevant law. The DSC having notified him about the submission in vain then dismissed him and therefore the dismissal was lawful.

**DECISION OF COURT**

**ISSUE 1. Whether the Claimant was unlawfully terminated?**

It is not disputed that the Claimant was an employee of the Respondent and at the time he was terminated he had been assigned to drive Vehicle UAK 839X which was a project vehicle under the Department of Health and the letter of assignment is on the record marked exhibit “3” on the Respondents Trial Bundle. This letter was not controverted by the Claimant and in his testimony he admitted that he was assigned the said vehicle but he stopped working in 2011. He stated that he was asked to hand over the previous vehicle he was driving to another driver but he was not deployed in 2012.

Although he testified that he made a complaint about non deployment, he did not tender in any evidence about the complaint. He also stated that he last received salary in March 2012. According to the record the only request for deployment and reinstatement onto the payroll is dated 31/05/2015. The Claimant denied having any knowledge of an arrival or departure book. He also did not adduce any evidence from any supervisor.

We are at pains to believe the claimants assertion that he was able to work without deployment and without a salary for 4 years with no complaint. He did not controvert the Respondents allegation that he refused the assignment to drive Vehicle UAK 839X which was assigned to him after the one he was driving at the time, was withdrawn from him. He did not controvert exhibits “4” and “5” in which the CAO warned him about absenteeism. We also find it hard to believe that he did not possess any copy of the complaints he made and the allegation that they were with the Respondent’s possession lacks credibility.

According to Section 40 of the Employment Act 2006, it is the responsibility of an employer to provide an employee with work in accordance with the contract of service and during the period for which the contract is binding. The Claimant was employed as a driver, the respondent was therefore supposed to provide him with work of driving its vehicles. The claimant admitted that on 18/10/2011 he was assigned to drive a project Vehicle UAK 839X. The Respondent however submitted that he refused to drive the Vehicle and disappeared instead and this was not controverted by the Claimant. The Claimant in his testimony stated that:

***“I was told to handover the vehicle in November 2011 to Mr. Bumba… no I handed it to Engineer Alosyious Lubanda. I remained without a vehicle. I had never worked in another department. No I was not given another vehicle.***

When he was referred to exhibit 3 regarding the assignment of Vehicle UAK 839X, he said ***“…*** ***it was an assignment of driving vehicle UAK 839X… the vehicle was a project Vehicle under Health department…”***

By stating that he had never worked in any other department even after being assigned to drive Vehicle UAK 839X, it seems to us that the Claimant did not consider the assignment as a deployment or work provided to him by the Respondent. We think he actually refused to drive the Vehicle, given his demand for deployment in 2012 and yet he had been assigned to drive Vehicle UAK 839X in October 2011. He further testified that he stopped working in 2012. Regulation 37 of the Public Service Regulations states as follows;

 ***“37. Abandonment of duty***

***(1) Where an officer absents himself or herself from duty without reasonable cause or fails to report his or her absence from office, the responsible officer shall-***

***(a) notify the officer to the effect within fourteen days from the date of absence from duty; and***

***(b) call upon the officer to explain his or her absence from duty within a period of fourteen days from the date of the letter of notification.***

***(2) Where the officer fails to show cause, the responsible officer shall***

***(a) immediately stop payment of salary of the officer***

***(b) report to the secretary in a detailed memorandum including appropriate recommendations on the abandonment of duty by the officer.***

Given his testimony that he stopped work in 2012, yet he was assigned vehicle UAK 839X on 18/10/2011 and given that he did not respond to or contest exhibits “4” and “5” which warned him about being absent from duty and that he did not prove that he did not refuse to drive vehicle UAK 839X, clearly show that he did not consider the assignment as a deployment or work provided to him by the Respondent and therefore he did not work.

We have no doubt in our minds therefore that the Claimant absconded from duty and in accordance with Regulation 37 of the Public Service Regulations the Respondent lawfully deleted him from the payroll.

He did not controvert the assertion by the Respondents that the DSC summoned him but failed to find him nor did he controvert the CAO’s letters warning him about his absconding. In the circumstances, therefore the argument that he was not given a hearing cannot hold.

We therefore find that his termination was lawful.This issue is therefore decided in the negative.

Issue 2 **Whether the Claimant is entitled to the reliefs sought?**

Having established that the Claimant absconded from duty and therefore his deletion from the payroll and subsequent termination was lawful, he is not entitled to any of the reliefs sought.

In conclusion the matter is dismissed with no order as to costs.

Delivered and signed by;

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

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

**PANELISTS**

**1. MR. ANTHONY WANYAMA ……………..**

**2. MS. ROSE GIDONGO ………………**

**3. MS. RWOMUSHANA JACK ……………….**

**DATE……………………………**