**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO.149 OF 2015**

**ARISING FROM KCCA NO 179/2015**

 **KABUUSU HENRY ………….. CLAIMANT**

**VERSUS**

 **UGANDA REVENUE AUTHORITY ….……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. HARRIET MUGAMBWA NGANZI**

**2. MR. EBYAU FIDEL**

**3.MR. FX MUBUUKE**

**AWARD**

**BRIEF FACTS**

On 1/9/2011, the Claimant was employed by the Respondent as an information Technology Officer (IT). By the time he was terminated on 1/02/2013, he was earning Ugx. 3,641,758/- per month.

According to him, on 17/07/2011, while on duty in Arua, he was involved in an accident along Koboko-Arua on a motorcycle belonging to the Respondent and he sustained severe bodily injuries. He was admitted to hospital, but he had to bear all the medical expenses and his injuries rendered him totally incapacitated.

He contends that his termination on 1/2/2013 was unlawful and it has rendered it impossible for him to earn a living and to get medical care for the injuries he suffered. He seeks compensation in form of general and exemplary damages.

Issues for determination are:

**1.whether the Claimant was unlawfully terminated?**

**2. what remedies are available to the parties?**

When the matter came up for hearing on the 20/05/2019, both Counsel sought leave of Court to enable them admit the statements of their witnesses, in the same vain, both waived their right to cross examine each other’s witnesses, both closed their cases and prayed to make submissions. Court issued a schedule for each party to file submissions and judgement was set for 20/5/2020. Due to the Covid lockdown however the date lapsed.

**REPRESENTATIONS**

The Claimant was represented by Mr. Jonan Niwandinda Rwambuka, of Rwambuka and Company Advocates and the Respondent by Mr. Ahebwa Stuart, of the Legal Services and Board Affairs Department of Uganda Revenue Authority.

**SUBMMISSIONS**

**1.whether the Claimant was unlawfully terminated?**

In his submission, Counsel for the Claimant restated the facts of the case as already stated above and stated, the Claimant was unlawfully terminated because he was not given the notice provided for under clause 6.2 of his contract of service, yet he was entitled to 2 months’ notice or 2 months’ salary in lieu of notice. He contended that the Respondent also violated Section 58(3) of the Employment Act 2006, when she failed to give the Claimant notice.

He argued that on 1/2/2013, the Respondent in total disregard for this provision of the law, retired the Claimant on medical grounds. He contended that, whereas the Respondent based her decision to terminate he Claimant on a medical report from her doctor, the Claimant was never asked to attend any doctor nor was the medical report given to him.

It was also his submission that, although the Claimant was entitled to compensation under The Workers Compensation Act Cap 225, the Respondent had a responsibility to take care of him until he got healed. According to Counsel, the Claimant was terminated when he was still under temporary total incapacity as defined under section 7(2) of the Workers Compensation Act Cap 225 and yet he was entitled to treatment during this period but the Respondent failed to honour its obligations to treat him. He argued that all the above omissions by the Respondent rendered the Claimants termination unlawful.

In reply, Counsel for the Respondent did not refute the facts of this case save for the assertion that the Claimant was treated for his injuries and he returned to work full time on 15/09/2011. He was later granted sick leave between 20/02/2012 and 18/06/2012. He took his annual leave of 55 days from 16/06/2012 and 10/08/2012. He was granted another 5 months sick leave from 4/09/2012 to February 2013, following which he was terminated on medical grounds.

It was his submission that whereas the Claimant contends he was not given notice as provided under Clause 6.2 of the contract of service, this clause did not apply to the circumstances of his case, because the Claimant was sick and he did not work for over a year. According to Counsel, the Claimant’s contract was subject to the Respondent’s Human Resources Manual, which provides for sick leave as follows; an employee who had served for over 4 years was entitled to 3 months sick leave on full pay and an additional 3 months on half pay after the expiry of the additional 3 months the Respondent had the discretion terminate the employee. It was his submission that in the instant case, the Claimant was given 3 months sick leave on full pay an additional 5 months on half pay before he was terminated. He argued that when the Claimant was placed on half pay, this served as notice of termination to take effect after the expiry of 3 months.

He asserted that there was no requirement under section 55(1)(b) for the Respondent to give the Claimant any further notice because he was on sick leave for more than 2 months.

He also argued that the Claimant’s reliance on section 11(4) of the Workers Compensation Act 225 could not hold, because this Court did not have jurisdiction to handle such matters under that Act.

He contended further that the matter concerning compensation for the injuries suffered, was Resjudicata, having been resolved by another Court with competent Jurisdiction, and the Claimant was awarded Ugx. 190,358,400/-as compensation. Citing Section 7 of the Civil Procedure Act, he argued that courts are barred from trying any issue which was directly or substantially in issue in a former /other suit between the same parties.

In rejoinder Counsel Rwambuka, insisted that the fact that the Claimant was sick did not waive his right to be given prior notice of termination as provide under clause 6.2 of his contract of service and section 58 of the Employment Act 2006.

Counsel asserted that section 55(1) cannot be read in isolation of section 58. He insisted that the two sections must be read together and both make it mandatory for an employer to give notice prior to termination except where the contract has ended and is not renewed or where the employee has reached mandatory retirement age or where the contract is terminated due to death of the employee and or where the employee is summarily dismissed with justification.

He argued that the matter in the instant case was not resjudicata, because the Claimant is not claiming compensation under The Workers Compensation Act, but rather he is seeking remedies for the Respondent’s failure to treat him, for a period of 96 months, when he was nursing the injuries, he sustained in the accident. According to him this was a period where he was temporarily incapacitated and therefore the Respondent was obliged to treat him until he got healed. He invited Court to resolve this matter on the basis of Section 55 of the Employment Act and not The workers compensation Act.

**DECISION OF COURT**

We have carefully analysed the facts of this case and find that, indeed, in July 2011, the Claimant was involved in a motor accident while on duty in Arua. It is also not in dispute that he suffered severe bodily injuries which caused him to be totally incapacitated.

It his case that, the Respondent did not take care of him during the 96 months he was treating these injuries and he personally bore the cost of his medical treatment and upkeep. He also claims that he was terminated unlawfully because he was terminated, without notice contrary to Clause 6.2 of his Contract of service and section 58 of the Employment Act.

The Respondent on the other asserts that prior to 2012, she had provided a medical contribution scheme to all her employees and the Claimant received the same, evidence of the same was attached as annexure “B” to the reply and according to the Respondent the Claimant he subscribed to the scheme in the financial year 2012/13 under Kadic Medical Scheme.

It is not in dispute that the matters pertaining to the Claimant’s compensation regarding to the injuries he suffered in the accident were resolved under Civil Appeal No.00021 /2018 arising from Civil Suit No.047/2017 and he was compensated under The Workers Compensation Act.

We have perused both decisions and have established that the Claimant was awarded compensation for his injuries, under The Workers Compensation Act Cap 225, to the tune of Ugx.190,358,400/-. We also established that in te findings his findings, His Worship Daniel Lubowa, categorized the injuires as Permanent Total incapacity, he awarded him Ugx. 2,261, 380/= for each of the 60 months amounting to 135,682,400/= specifically for the injury.

We failed to draw a distinction between the claim in the instant case, and the one made under the workers compensation Act and although the Claimant insists that this claim was for compensation for treatment which the Respondent was supposed to have paid for but it did not do so, we found nothing on the record to show that the Claimant personally bore the cost of treating himself for 96 months. Apart from medical reports which only show that he suffered injuries resulting from a motor accident, there was nothing to show that he paid for the medical Bills personally. We found no basis for this claim and have no reason to doubt that the compensation awarded under to him nder The Workers Compensation Act catered for this claim.

Section 55 (1) of the Employment Act, 2006 provides that;

1. *An employee who has completed not less than one month’s continuous service with an employer and who is incapable of work because of sickness or injury is entitled to sick pay as follows-*
2. *For the first month’s absence from work he or she is entitled to full wages and any other benefit whether for his or her family or himself or herself stipulated in the contract of service; and*
3. *If at the expiry of the second month the sickness of the employee continues, the employer is entitled to terminate the contract of service on complying with all the terms of the contract of service up to the time of termination of employment.*

In our considered view Section 55(1) provides specifically for circumstances where an employee is temporarily incapacitated due to sickness and therefore, he or she **temporarily** unable to perform his or her his duties but once the employee is sick beyond 2 months the employer is at liberty to terminate his or her services. Therefore, the section cannot be construed together with section 58 which provides for various general notice periods. Further Section 55 entitles a sick employee to receive pay during the period of temporary incapacitation but as already stated when the incapacitation is prolonged that it provides the employer with the option to terminate the employee. It is the expectation of an employer that a person employed to work in accordance with a contract of service will be available to work and in return the employee will be paid for the work performed. (See Section 40 and 41 of the Employment Act ). Therefore the employer is ordinarily entitled to pay the employee, if he or she performs the duties for which her or she was employed to perform, in accordance with his or her Contract of service.

Section 55 is therefore creates an exception because, it provides for the payment of wages to an employee who is ***temporarily*** incapacitated and is therefore not able to work due to sickness, but for only a period of 2 months with a with a proviso that, the employer can terminated, if the sickness is prolonged beyond 2 months. Therefore the circumstances under Section 55, cannot be construed with Section 58, as Counsel for the Claimant would like this Court to believe.

It is not disputed that the claimant in the instant case, was granted sick leave on full pay between 20/02/2012 and 18/06/2012 and thereafter, he was also granted his 55 days of leave from 16/06/2012 to 10/08/2012. He was granted an additional 5 months sick leave on half pay having exhausted his leave options under the Manual, from 4/08/2012 to February 2013, following which he was terminated. The period granted to him was more than what was provided under section 55 of the Employment Act.

We think that the Legislators were alive to the fact that, during sick leave the employer would be incurring a cost of paying the employee, with no returns from him or her, given the temporary incapacitation, hence the provision that the employee should receive wages for not more than 2 months.

Therefore, it would be an injustice to require that the employer, to give notice or payment in lieu of notice, before terminating an employee who is incapacitated by sickness beyond the 2 months provided under section 55, after he or she has granted the employee sick leave with full pay, which this court cannot subscribe to. Clause 7.3(a) of the Respondent’s Human Resources Manual which provides for the grant of sick leave to a staff subject to a medical report from a qualified medical practitioner being presented by the employee. The Claimant was entitled to 3 months sick leave on full pay and an additional 3 months on half pay which were granted to him. In fact, he was given, almost 4 months sick leave from 20/02/2012 to 18/06/2012 on full pay after which he took 55 days of his accumulated leave from 16/06/2012 to 10/08/2012 plus an additional 5 months sick leave on half pay. The Respondent’s Manual gives the Authority discretion to terminate on medical grounds, after the maximum period on half pay. It is not in dispute that, the Respondent granted the Claimant more sick leave days than was provided for both under her Human Resources Manual and Section 55(1) of the Employment Act 2006. The report from the Medical Arbitration Board team, which he submitted in support of his claim in **Civil suit No. 047/2017, Kabuusu Henry Vs Uganda Revenue Authority,** indicated that he was totally disabled and it recommended an additional 25% to be added to the value of 100% incapacity which Dr Jacob Emmanuel Ewochu had earlier established. Therefore, according to the report, it was a clear that, unfortunately the Claimant was totally and permanently incapacitated by the injuries he suffered in the accident. We therefore do not subscribe to the assertion by Counsel for the Claimant that, at the time the Claimant was terminated he was still rated “***temporary total incapacitated”.*** In any case Management went further to review his case before he was terminated and before the termination, he was compensated for the injuries he suffered, under The Workers Compensation Act Cap 225, Under **Civil Suit No. 047/2018,** which was upheld in **Civil Appeal No. 0021/2018**.

Having established that the Claimant was given him the sick leave, he was entitled to both under the Respondent’s Manual Resource Manual and Section 55(1) of the Employment Act(supra) and moreover he was given much more than was provided for, there was no requirement for the employer to grant him additional notice, before terminating/retiring him on medical grounds.

In the circumstances, his termination on medical grounds was lawful.

We found no basis, to make an award for compensation for the medical costs he purportedly incurred for 96 months instead of the Respondent, because did not adduce any evidence to prove that he personally paid for his medical expenses.

**2.what remedies are available to the parties?**

Having established that the Claimant was lawfully terminated on medical grounds and having not, found any basis upon which to grant him any compensation for the medical expenses he claimed he incurred for 96 months, and having established that he was compensated for the injuries he suffered as a result of the accident, under The workers Compensation Act Cap 225, the Claimant is not entitled to any other remedies. Therefore his prayer for general Damages, recovery of payment in lieu of notice, Severance Allowance and interest fail.

This claim fails it is therefore dismissed with no orders 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. MS. HARRIET MUGAMBWA NGANZI ……………..**

**2. MR. EBYAU FIDEL ……………..**

**3.MR. FX MUBUUKE ………………**

**DATE: 9/12/2020**