**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 028 OF 2018**

**[ARISING FROM KCCA/CEN/198/2016]**

**BETWEEN**

**MUBIRU MARTIN…….……………………………….….……..APPELLANT**

**VERSUS**

**THE UGANDA RED CROSS…..……...……………..………..RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Ms. Suzan Nabirye
3. Mr. Michael Matovu

**AWARD**

This is an appeal against the decision of the labour officer sitting at KCCA in labour claim No. KCCA/CEN/198/2016.

The appellant was represented by Mr. Julius Kinyera as well as Mr. Jackson Kayongo of M/s. Jingo, Ssempijja & Co. Advocates and M/s Kayongo Jackson & co Advocates respectively. When the matter came up in open court on 17/09/2019 none was in court for the respondent but this court ordered that the record of proceedings in the lower court be availed to the respondent and timelines were given for submissions.

By the time of writing this Award on 25/2/2020 only the appellant’s submissions were on the record.

Briefly the facts from the background of the appeal are:

The appellant was an employee of the respondent having been appointed as Corporate Resource Mobilization Manager by letter dated 11/7/2012. Both parties signed an employment contract that provided for the employment to last for 3 years effective 16/7/2012. His salary was to be UGX 2,800,777 per month excluding other benefits as stipulated in Red Cross policies. On 25/11/2014, he was appointed as Resource Mobilization officer and as per the contract of service signed by both parties on 1/12/2014 the contract came into effect on 1st September 2014 and was to last up to 31/8/2017. On 20th November 2015, the respondent issued a notice to the appellant to **“Realign your employment contract**” because of funding constraints. The notice provided (among others)

**“You will be remunerated on at new terms engagement that will be informed by the income realized from the cooporate and other fundraising initiatives. Such arrangements will be worked out and agreed with management by the end of December 2015 “……You will be expected to sign a new employment contract based on “personal to holder basis”.**

On 7/03/2016, the respondent wrote to the Secretary General of the appellant notifying him that he was resigning from the position of Resource Mobilization Officer effective 25/3/2016.

In reply the Secretary General wrote to say that resignation did not arise because there was no confirmed position to resign from since following the letter of re-alignment of his job he was expected to prepare a comprehensive handover report before computation of his terminal benefits. The appellant then prepared some report which the appellant questioned and denied the appellant salary of up to March 2016 arguing that from the date of realignment the claimant was not an employee. The appellant also was denied terminal benefits on the ground that the handover report was not proper. When the matter came before the labour officer he decided that the appellant ceased to be an employee of the respondent on 31/12/2015 since the employment contract was to be re-aligned effective 1/1/2016. The labour officer also decided that the appellant was to provide a formal handover and the respondent to do an exit clearance before the appellant could access his terminal benefits. The appellant was not satisfied and filed this appeal which is based on two grounds.

* 1. **The labour officer erred in law and in fact when he failed to fully evaluate the evidence thereby arriving at a wrong conclusion that the appellant did not continue to offer service to the respondent between the months of January and March 2016 leading to the entitlement of salary for that period.**
	2. **The labour officer erred in law and in fact when he failed to fully evaluate the evidence presented thereby arriving at a wrong conclusion that the appellant should make a comprehensive hand over report before claiming his provident funds.**

In a preliminary objection, the respondent argued that without leave of court the appellant could not raise grounds of fact or of mixed law and fact which this court overruled by citing the case of **Baingana J. P. Vs Uganda Crim.App. No. 068/2016(C.O.A)** that held evaluation of evidence to be a matter of law.

With the above background, we will go on to re-evaluate the evidence on the record as a first appellate court and reach a conclusion which may or may not be in support of the decision of the labour officer.

The first ground relates to whether or not the appellant was entitled to a salary payment after 31/12/2015 up to when he filed his resignation.

It was the contention of the respondent in the evidence adduced that the notice of alignment of the appellant’s job description was a termination from employment.

However it was the submission of counsel for the appellant that given the evidence of one Irene Kasiita that the appellant left the organization in March 2016 and the evidence of the appellant that he was encouraged to continue working at the Headquarters to the extent that he designed a work plan and budget plan for 2016, he could not have been terminated by virtue of the notice of realignment.

The content of the notice of realignment of the job description of the claimant in our considered view did not constitute a termination of employment. The notice stated (inter alia**) “This notice of engagement does not represent a contract with Uganda Red Cross Society (URCS) but rather a statement of intent on the part of URCS to continue engaging you as resource mobilization officer under new terms of engagement. Subsequently this automatically nullifies your current contract and in accordance with staff standing regulations you are given one month notice effective 1st December 2016” .**

On perusal of the notice, we form the opinion that the payment for the services of the appellant from January 2016 on words would be dependent on an agreed arrangement between then and the respondent. Although the notice “automatically nullified” the contract it did not stop the appellant from working. It was expected that both parties would sign a new employment contract based on new terms. The notice provided that arrangements of how to pay the claimant would be ‘WORKED OUT AND AGREED WITH MANAGEMENT BY THE END OF DECEMBER 2016’. The burden was on the respondent to provide an agreeable method of payment by the end of December 2016, given that the notice was intended for the respondent to continue engaging the claimant as a mobilization officer.

The new terms mentioned in the notice would only operate after they were stipulated and agreed upon. The evidence on the record does not show any steps taken by the respondent towards issuing new terms of employment to the appellant yet he was allowed to continue working. We take the phrase **“you will be remunerated on a new terms of engagement** **that will be informed by the income realized from the cooperate and other fundraising initiative..”** as vague and not constituting any concrete terms of engagement or constituting a termination of the previous remuneration terms. In cross examination, one Irene Nakasiira, a supervisor of the appellant told the labour officer that the appellant left appellants organisation in March 2016. The evidence is clear on the record that it is in the reply of the letter of the appellant as he signaled resignation, that the chief executive of the respondent asked him to file a handover report which was not mentioned in the notification of realignment. By the time the chief Executive Director asked the appellant to write a handover report he was aware that the appellant was working for the respondent. The fact that the employer in the instant case fixed a definite time within which the employee would have received new terms of engagement coupled with the fact that the employee continued working and resigned after the said period and before the new terms were in place, in our view, estopped the employer from denying that the employee was working under the previous terms. It is our opinion therefore that the termination of employment in the instant case occurred when the appellant requested for resignation and was effective as at the time he mentioned in the letter that he was to resign.

Before we take leave of this ground, we would like to emphasize that under the Employment Act **Section 81** although an employer has the liberty and the law allows him/her to re-organize his/her enterprise because of economic reasons, there is a procedure such employer is required to employ before the actual reorganization. Such employer has to give prior notice to those employees who are likely to be affected by such economic or financial constraints.

Evidence on the record reveals financial constraints as the reason for the respondent to notify the appellant of the need to realign his job description which never was. The notice to realign the job, in our opinion, remained as such notice, until the actual realignment would be done and in the meantime the contract of service entered into before the notice continued to run until the appellant resigned. Accordingly we find that the labour officer did not address his mind properly to the evidence and this led to a wrong conclusion that the appellant had been terminated by re-alignment of his job description. Therefore the appellant was still an employee of the respondent in January –March inclusive and was entitled to a salary. The first ground of appeal succeeds.

The second ground is that the labour failed to evaluate evidence and this led him to wrongly conclude that the appellant should make a comprehensive handover report before claiming his provident fund/terminal benefits.

It was the submission of counsel for the appellant that contrary to the ruling of the KCCA Labour officer there was no provisions of a handover report as a pre-condition for payment of provident funds. According to counsel, the respondent rejected the handover reports in a bid to frustrate his client’s efforts to recover his provident funds. Counsel argued that in the absence of a data base or record of a handover to the appellant to which the respondent could refer or an audit of a previous handover to the appellant to which the respondent could refer or an audit of a previous handover to the appellant to corroborate the claim of the alleged shortage in the appellant’s report, the respondent could not rely on the said shortage to deny the respondent his provident fund.

On perusal of the evidence on the record we find that the appellant indeed prepared and presented a handover report to the respondent which according to the respondent raised issues and was not comprehensive enough. It is clear on the evidence adduced that before the appellant took over, no handover report was given to him. Evidence is lacking as to whether there was any report about existing stores before the appellant became in-charge. The handover report was rejected for the inconsistences in the numbers of certain items which according to the respondent constituted more in the report than were on the ground and in some cases less in the report than were on the ground. The appellant wrote a clarification to the respondent which was received on 29/9/2016. The question to be determined by court is **whether a handover report that does not satisfy the employer is a reason to deny the employee his terminal benefits?**

According to the contract of service, the appellant was contributing 5% of his salary and the employer contributing 15% of his salary. The respondent does not deny that the appellant is entitled to his provident fund. The question whether the items in the report indeed existed before the appellant took over or whether the appellant officially received certain items during the course of his work which he did not include in the report, or any other questions raised by a handover report could only be answered by an audit of the stores during and before the appellant took office. It is this audit that would inform the labour officer whether or not the appellant made a comprehensive handover report.

Terminal benefits, especially whatever an employee contributes as part of his or her salary, should not be denied to such employee on the basis that the employer is not satisfied with a handover report made by such employee in the absence of an audit to implicate such employee. We form the opinion that terminal benefits are an entitlement to an employee who has completed his contractual obligations and they can only be denied to the employee by way of a counter claim raised by the employee or by way of an express provision in the contract of service detailing circumstances under which the terminal benefits could be withheld. None of these was evident in the instant case and consequently it is our finding that the labour officer did not evaluate evidence properly leading to a conclusion that the applicant could not get his benefits unless he presented a comprehensive handover report even when there was such a report on the record. The second ground therefore succeeds. However, we do not accept the contention of counsel for the applicant that he be awarded general damages. The claim of general damages was never pleaded. The claim before the labour officer was not such a one that called for remedies of compensation under **Section 78 of the Employment Act** and as such cannot call for damages on Appeal. We therefore decline to award damages.

We note that the respondent should have paid the appellant his terminal benefits at the time he exited the respondent’s employment by resignation which was unfairly denied. Accordingly, we find it fair enough to order that such terminal benefits carry interest of 12% per year from the date of his resignation until payment in full. The salary arrears of January March inclusive shall earn the same interest rates.

In conclusion the appeal succeeds with orders that

1. The appellant be paid his terminal benefits with an interest rate of 12% per year from the date of the resignation till payment in full.
2. The appellant be paid salary arrears of January-March inclusive at 12% per year from the date of his resignation till payment in full.
3. No order as to costs is made.

**Delivered & Signed:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye ……………..
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha ……………..

**PANELISTS**

1. Ms. Adrine Namara ……………..
2. Ms. Suzan Nabirye ……………..
3. Mr. Michael Matovu ……………..

Dated: 28/2/2020