**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE No.261/2019**

**ARISING FROM ML/LD/068/2018.**

 **NAMUGERA GASTER …………… CLAIMANT**

**VERSUS**

 **DIRECTOR BUGIRI HIGH**

 **SCHOOL ……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR. BWIRE ABRAHAM**

**2. MAVUNWA EDSON**

**3. MS. JULIAN NYACHWO**

**AWARD**

**BACKGROUND**

This claim was brought for general Damages for loss of career progression, declaration that the Claimant’s employment was wrongfully and unfairly terminated, payment of salary arrears and interest accruing thereto from date of judgement until payment in full, punitive and aggravated damages and costs of the claim.

**BRIEF FACTS**

According to the Claimant on 15/ 1/2018, the Respondent appointed him to the position of Agriculture teacher to teach S1.to S.5, in Bugiri High School Mukono campus earning gross pay of Ugx. 350,000/- per month. According to him he commenced duty in February and worked diligently for 9 months. He claims he was only paid salary for 4 months out of the 9 months he worked. He contends that he was unlawfully terminated because the Respondent did not follow due process of the law. On 13/08/2018, he made a formal complaint, a copy of which is attached as annexure “A”. On 29/10/2018, he formally resigned and according to him his resignation letter marked “B”, was received and acknowledged by all the parties. On 12/11/2018, he filed a complaint before the Labour Officer of Mukono District, who notified the Respondent about it and summoned them on, 15/11/2018, 5/03/2019,11/04/2019, which summonses he claims were received and acknowledged by different officers. The Respondent did not adhere to the summonses leading to the Labour Officer referring the matter to this Court for resolution.

**Issues for determination:**

1. **Whether the claimant was employed by the Respondent?**
2. **Whether the Claimant was entitled to the remedies sought?**

When the matter came up for hearing on 21/12/2020, Counsel Kawalya Erina of Platform for Labour Action, informed Court that she had served the Respondent but they refused to acknowledge service. She furnished Court with an Affidavit to that effect. She applied to proceed exparte. We were satisfied that the Respondent was served and they did not furnish court with a reason for their absence. We therefore, granted Counsel leave to proceed exparte.

**SUBMISSIONS**

1. **Whether the claimant was employed by the Respondent?**

In her submissions, Counsel for the Claimant restated the brief facts of the case that, the Claimant was employed by the Respondent from 15/01/2018 to September 2018, earning Ugx. 350,000/-. It was her submission that a claim for benefits accruing from an employee/ employer relationship can only succeed where the employment relationship is proved.

She cited section 2 of the Employment Act 2006, which defines a contract of employment to mean *“any Contract whether oral or in writing, whether express or implied, where a person agrees in return for remuneration to work for an employer”* and **Harrison Ltd vs Macdonald Evans (1952) I.T** in which Lord Denning resounded the same definition. She also cited section 25 of the same Act which provides that the Act applies to an oral contract as well.

According to her in **Ready mixed Concrete (south East) vs Minister of Pensions and National Insurance [1968] 2 QB 497**, Makenna J, stated that for a contract of service to exist the following elements must exist.

1. *The servant agrees that in consideration of a wage or other remuneration, he will provide his own work and skill in performance of some service for master.*
2. *He agrees expressly or impliedly, that in the performance of that service he will be subject to the other’s control in a sufficient degree to make that other the master*
3. *The other provisions of the contract are consistent with its being a contract of service*

She also cited **Rev. Fr. Cyril Adiga Nakari vs Rev. Sabino Ocan Odoki & Anor CS No. 002/2017**, for the same legal proposition.

It was her submission that, there is clear evidence which establishes an employment relationship between the Claimant and the Respondent. According to her, his testimony clearly indicates that he worked for the Respondent as an Agriculture teacher, which duty he diligently executed. He agreed to work for Ugx. 350,000/- per month and the Respondent controlled all his classes. It was also his evidence that the salary stopped coming from May and he stopped work in September 2018, therefore he was an employee of the Respondent and it was his fundamental right to be paid wages.

**DECISION OF COURT**

Section 2 of the Employment 2006 (supra), defines “contract of service”, “to *mean any contract whether oral or in writing, whether express or implied where a person agrees in return for remuneration to work for an employer and includes a contract of apprenticeship.*” Section 25 of the same Act is to the effect that the Act, shall apply equally to oral and written contracts.

Indeed, any person who claims an employment relationship between him or her and another person must prove it. We agree with Makenna J’s holding in **Ready Mixed Concrete**(supra), that a person alleging he or she is employed by another must prove 3 elements which we shall restate for emphasis as follows that:

1. *The servant agrees that in consideration of a wage or other remuneration, he will provide his own work and skill in performance of some service for master.*
2. *He agrees expressly or impliedly, that in the performance of that service he will be subject to the other’s control in a sufficient degree to make that other the master*
3. *The other provisions of the contract are consistent with its being a contract of service*

 According the Claimant’s evidence on the record, he was not given an appointment letter, but he received salary from February 2018 to May 2018. He claims that he was not paid for the rest of the period up until September 2018, when he stopped working. The Evidence Marked “A” which he relies on to support his demand for salary arrears, is a demand letter to the head teacher, but it does not disclose the basis of the claim for salary nor does it make reference to any receipt of salary purportedly paid to him from February to May.

We are of the considered opinion that in the absence of an appointment letter or any documentary evidence relating to any contract between him and the Respondent, proof of payment of salary would suffice to establish that there was employment relationship between the Claimant and the Respondent. We reiterate that, Annexure “A” did not show that from February 2018 to May 2018, the Claimant received payment of Ugx. 350,000/- per month, as an Agriculture teacher. Although section 40 of the Employment Act 2006, mandates an employer to provide an employee with work in accordance with the contract of service and Section 41 entitles the employee to the payment of wages for the work done, for an employee to succeed in a claim for wages/salary arrears , the employee must prove that there is an employee/employer relationship (contract whether oral or written) with the alleged employer, that the employer gave the employee work in accordance with the contract, whether oral or written and the employee did the work.

In the instant case, the Claimant did not attach any evidence to prove that he was a teacher of Agriculture at the Respondent. Ordinarily, for a person to claim that he or she is a teacher, he or she must prove that her or she possesses the qualifications of the teaching profession, he or she possesses a contract of employment whether it is oral or written or letter of posting to a school or learning institution. It is also the expectation that as a teacher he or she must have lessons assigned to him or her, lesson plans or a school time table indicating when he or she undertakes / teaches the lessons as part of the terms of his or her job as a teacher or the scripts or lists of the students that he or she teaches. Apart from the unacknowledged demand letter to the head master / Director, dated 13/10/2018, the Claimant did not attach anything else to show that he was a indeed, a teacher of Agriculture at the Respondent. He did not attach any evidence of any work relating to his role as a teacher of Agriculture and that it was given to him by the Respondent. He did not attach any lesson plans or evidence that he taught Agriculture at the Respondent not even the list of students he purportedly taught Agriculture.

In the circumstances, the Claimant has failed to prove that he was actually assigned the responsibility of teaching Agriculture at the Respondent, that he was paid for teaching Agriculture and that the Respondent exercised any control over him by assigning him work. We are therefore, not convinced that the Claimant was actually employed by the Respondent to warrant him to demand for payment of wages as he has done. We have no basis to make a finding that there was an employment relationship between the Claimant and the Respondent, we believe there was none.

**2.Whether the Claimant was entitled to the remedies sought?**

The Claimant having failed to establish that he was employed by the Respondent, he cannot claim any remedies from it.

In conclusion, this claim fails 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. BWIRE ABRAHAM ……………**

**2. MAVUNWA EDSON …………….**

**3. MS. JULIAN NYACHWO …………….**

**DATE: 3RD FEB 2021**