**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE No. 164 OF 2017**

**ARISING FROM LABOUR DISPUTE NO. 498 OF 2017**

**OCHURU HENRY …………………….. CLAIMANT**

**VERSUS**

**ACE GLOBAL (U) LIMITED ………..………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. ACIRO BEATRICE**

**3. MR. JACK RWOMUSHANA**

**AWARD**

**BRIEF FACTS**

The Claimant was employed by the Respondent Company in March 2001 as a field inspector, he rose through the ranks and by the time of his termination in March 2017, he was a Credit Support Officer. According to him he signed a 3-year contract in 2012, but when it expired in 2015, it was not renewed. However he continued working after its expiry and he was issued with an identity card which would expire in 2019. On 27/03/2017, he received notice that the contract would not be renewed, and he was terminated.

**ISSUES FOR DETERMINATION**

1. **Whether the claimant had a contract of employment by the time of his termination and whether the said contract was breached by the Respondent?**
2. **Whether the claimant was unfairly terminated from work?**
3. **Whether the claimant is entitled to severance and repatriation allowance?**
4. **What are the other remedies for the Claimant?**

**EVIDENCE**

The Claimant Ochuru Henry adduced his own evidence. He testified that, he was working on an implied contract, his contract having expired in 2015. According to him when the contract expired, he was issued with an identity card which would expire in 2019 and the General Manager told him that he was working on an implied contract. He also testified that although his termination letter was titled ‘non- renewal of contract’, he was terminated because the Company was in financial crisis but this reason was not clear to him. He said that he was paid 3 months in lieu of notice, but he was not paid severance allowance , repatriation yet he was from Mayangi in Busia. He also said he served the Respondent for 17 years.

The Respondent adduced evidence through Amos Tumwesigye, its Country Manager, who testified that he worked for the Respondent for over 25 years and the Claimant worked with the Respondent for over 10 years from 2001-2017. He was aware that the Claimant had signed a 3-year contract in 2012 which was supposed to expire in 2015, but when it expired, it was not renewed, although was given another identity card whose expiry date was 2019. It was his testimony that, the Claimant was terminated in 2017 because the Respondent had no option to terminate him.

He said all the staff were given notice about the Company’s poor financial state and they were all given opportunity to voluntarily retire. Some of the staff retired but the Claimant did not. When this notice expired another one was issued but it also expired without the Claimant applying. 20 days later, the Respondent issued him with a termination letter and he was paid 3 months in lieu of notice.

**REPRESENTATION**

Tumwebeze Elias of Mugarura, Kwarisiima & Co. Advocates represented the Claimant and the Respondent was represented by Niwagaba Gilbert of M/S KGN Advocates.

**SUBMISSIONS**

**1.Whether the claimant had a contract of employment by the time of his termination and whether the said contract was breached by the Respondent?**

It was submitted for the Claimant that, at time of the termination of his employment he was earning Ugx. 1.075,000/= as a credit support Credit Officer. Counsel contended that, given section 25 of the Employment Act 2006, which provides that an oral contract had the same effect as a written one, after his contract expired in 2015 and he continued working, the Respondent made representations to him, to the effect that, he continued to work under an implied contract and even issued him an identity card on 1/02/2016, a copy of which was filed on the record as “H”. According to Counsel, the ID was valid until 31/01/2019. It was his submission that, these facts were evidence of a contract of a subsisting contract of employment between the Claimant and the Respondent scheduled to expire in 2019. Therefore, by terminating it in March 2017, the Respondent breached it because the Claimant still had 21 months to complete the contract.

In reply Counsel for the Respondent submitted that, the fact that the Claimant was the Respondent’s employee since 2001 was not disputed. Citing section 65(1) of the Employment Act, which provides that termination is deemed to take place “*where a contract of service, being a contract for a fixed term or task, ends with expiry of the specified term or completion of the task and it is not renewed within a period of one week, from the date of expiry on the same terms or terms not less favourable to the Employee”,*  Counsel for the Respondent contended that te expiry of the Claimant’s in 2015, rendered it necessary for the parties to enter into a new contract which was not the case.

According to him, when the contract expired on 22/2/2015, the Claimants employment terminated and the Respondent could only be faulted for not asking him stop working or to vacate their premises immediately. He however stated that, the Respondent kept the Claimant around in anticipation of getting more contracts from their clients until it became clear that none were forthcoming and therefore rendering the Claimant’s employment not sustainable, hence the issuance of a notice of inability to renew it. He concluded that, there being no contract, it cannot be said that, there was any breach on the part of the Respondent.

**DECISION OF COURT**

1. **Whether the claimant had a contract of employment by the time of his termination and whether the said contract was breached by the Respondent?**

Section 2 of the Employment Act defines a “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 pf apprenticeship.”* This Court in **Okonye David vs Libya Oil LDR No. 082 of 2014,** held that, *“the burden of preparing a contract is placed on the employer because it is the employer who sets the terms and conditions of the employment. The burden of proving the provisions of any allegations regarding the terms of the employment contract therefore remain on the shoulder of the employer…”*

It is not disputed that the Claimant entered into a 3 year contract of service with the Respondent in 2012. The Contract expired in 2015. Although the Respondents assert that the expiry of this contract terminated the claimant’s employment, it was not in dispute that he continued to work after the expiry and was even issued with an identity card in January 2016, expiring in 2019 and he continued to work until 28/03/2017, when he was given notice of non renewal of his employment agreement. The notice reads in part as follows:

***Re: Notification of Non-Renewal of Employment Agreement***

*we refer to the Employment Agreement between ACE Global Uganda Limited and Henry Ochuru dated 22ndFebruary 2012, where the company engaged you as credit support officer for a duration of three(3) ears which period has since expired.*

*we write to inform you that the management has decided not to renew the said contract and will be ending your employment relationship with us effective 31st March 2017 which will be your last working day, this decision has been taken due the financial state of the Company…”*

Although the Respondent argues that the Claimant’s employment was terminated when his contract expired in 2015, it stated that, his last day of work was 31/03/2017, which was 2 years later. It is not in dispute that, the Claimant continued to work for the Respondent after 2015, without a renewal of contract. Section 59 of the Employment Act makes it an entitlement for an employee to receive from his or her employer notice in writing of the particulars of his or her employment. The burden is therefore, on the employer to prepare these particulars and they must be in writing. Where the employer fails and or refuses to give written particulars of an employment, this cannot be blamed on the Employee and the burden of disproving any the verbal allegations relating to the terms of a verbal contract still remains on the employer.

It is our considered opinion that, an employer can only rely on Section 65(1) of the Employment Act only where the employee ceases to work for him or her when the employee’s contract expires and is not renewed within a period of 7 days. Where the contract has expired and it is not renewed within 7 days as provided under Section 65(1) supra but the employee continues in the service of the employer, the contract is presumed to have been automatically renewed.

The Claimant’s contract expired in 2015 and it was not renewed, as prescribed under section 65(1), nonetheless, he continued to work for the Respondent until he was issued with a notice of non-renewal in March 2017.

In the circumstances, his contract is presumed to have been automatically renewed for a period of 3 years, under the same terms and conditions set under the previous contract, which expired in 2015. Therefore, his contract was scheduled to expire in 2019. This issue is resolved in the affirmative.

**2.Whether the claimant was unfairly terminated from work?**

Having established that the Claimant’s contract was automatically renewed for 3 years expiring in 2019, what remains to be resolved is whether its termination was fair or not?

It was the Claimant’s evidence in chief under clause 2, that, *“that I made an inquiry from the regional manager at a general meeting as to why we were working without renewed contracts but I was answered that, the previous 3 years contract had been impliedly renewed and that it will be binding on me other employees and the respondent. …”*

Under clause 9, he said that, *“… on 21st November, 2016, an internal memo was pinned up at our work place asking any employee who wants to retire voluntarily to do so and that he would be entitled to a monthly gross pay in addition to other statutory entitlement.*

*In clause 11, he said that, “to my surprise on the 15th of March 2017, another internal memo was pinned up withdrawing the company offer on voluntary retirement.*

*12. That to my surprise on 28th day of march, 201, I was given notification of non-renewal of employment agreement by the Respondent….*

Given this testimony, we are convinced that the automatic renewal of contracts applied to all the Respondent’s staff and not the Claimant as an individual. We also believe that, the Claimant was aware that the Respondent was undergoing a redundancy exercise, because one of his claims under clause 4(g) of his Amended memorandum of claim was for redundancy pay. RW1, Amos Tumwesigye, also testified that, the Claimant was excluded from the redundancy program because his contract expired in 2015. We are therefore convinced that, when the Respondent invited its staff to take the option to voluntarily retire, it had already started the redundancy process. Given that the Claimant had a subsisting contract by the time the redundancy process commenced, he was not excluded from the program as Counsel for the Respondent would like this court to believe. He equally had the option to voluntarily retire when the notice was issued, hut he did not do so. He cannot turn around now to claim that he was not part of the programme yet he was an employee of the Respondent at the time.

We do not accept the testimony of Respondent’s witness Amos Tumwesigye that, the Claimant was not placed on the redundancy program because his contract had already expired and it was not renewed hence the *“ Notification of Non Renewal of Employment Agreement”… due to the financial state of the company,* because we have already established that his contract was automatically renewed when the Respondent allowed him to continue working without a renewal.

We strongly belief that the Respondent exercised its right to terminate the Claimant after he failed and or refused to take the opportunity to voluntarily retire and not because his contract had expired. In any case the last day of employment was stated as 31/03/2017 and not 2015. Section 2 of the Employment Act, defines termination of employment as *“ the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age, etc….”*

Itwas therefore a requirement for the employer to give a justifiable reason for terminating an employee before terminating him or her. The Notice of non-renewal which was issued to the Claimant in the instant case, stated the reason for termination as the financial state of the Company. It was not in dispute that the Company was in bad financial stead, and the fact that it invited its staff to voluntarily retire was sufficient for us to believe that it was actually not doing well financially, hence the redundancy process.

It is a settled position of the Law that, termination by redundancy resulting from restructuring, reorganization or due to poor financial state of a company is acceptable and it is in conformity with the Termination of Employment Convention No. 158 of 1992, which Uganda ratified and domesticated in the Employment Act 2006. The Convention under Article 13 provides that:

*“…when the employer contemplates termination for reasons of an economic, technological, structural or similar nature, the employer shall:*

1. *provide the workers representatives concerned in good time, with relevant information including reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;*
2. *give, in accordance with national law and practice, the workers’ representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment….”*

Section 81 of the Employment Act 2006, provides for termination by redanduncy as follows:

***“Collective Terminations***

***Where an employer contemplates termination of not less than 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature, he or she shall;***

1. ***Provide the representatives of the labour union, if any , that represent the employees in the undertaking with relevant information and in good time which shall be a period of at least 4 weeks before the first terminations shall take effect , except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to reasons for the terminations contemplated ,(emphasis ours) the number and categories of workers likely to be affected and the period over which the terminations shall be carried out, and the information in paragraph (a)shall include the names of the representatives of the labour unions if any that represent the employees in the undertaking;***

This section it mandatory for the employer, to give an employee or employees a warning about an impending redundancy before, termination occurs. This Court in **ZTE Uganda Limited Vs Sseyiga Hermenegild and 7 others, Labour Dispute Appeal No. 24/2019,** held that:

“… *it is mandatory for the employer, before terminating an employee by redundancy, to give such an employee or employees a warning about the impending redundancy…”*

It is the prerogative of an employee to determine the requirements of its business including its Human Resources, therefore, he or she has a right to terminate its staff, if it in a poor financial state. However, the employer is required to notify the employees about the impending termination by redundancy.

Therefore, in accordance with section 81(supra), the Respondent should have given the Claimant at least 1 month before his termination, as provided under Section 81(supra).

Therefore, having issued the notice of non-renewal of contract due to its financial, the Respondent was not required to give the Claimant a hearing as provided under section 66 of the Employment, but notice of the impending redundancy at least 1 month before it occurred.

The evidence on the record indicates that he was only given 2 days’ notice, but he was paid 3 months in lieu of notice. Having received the payment in lieu of more than 1 months’ notice, his claim for unlawful termination cannot hold. He was lawfully terminated by redundancy.

We have established that, at the time the Company was undergoing a redundancy process, the Claimant had a subsisting 3-year contract, his contract having been automatically renewed when he continued working after it expired in 2015, therefore, the invitation for voluntary retirement also applied to him, even if the Respondent believed it did not. We believe that, the Claimant was aware of the redundancy exercise and having not invoked the option to voluntarily retire, the Respondent had a right to terminate him in accordance with section 81(supra) because it was in bad financial stead. He was not given the requisite 1 months’ notice, but he was paid 3 months in lieu of notice, Therefore, his termination from employment was lawful.

**Whether he was entitled to any Remedies?**

Having established that his termination was lawful he is not entitled to any remedies.

However, one of his claims was for redundancy pay of Ugx. 10,000,000/-, for being rendered redundant after his termination. The Employment Act does not provide for redundancy pay, therefore we have no basis to award it. it is therefore denied.

This claim fails. No order as to costs is made.

delivered and signed by:

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

**2.THEHON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ……………**

**PANELISTS**

**1.MS. ROSE GIDONGO …………….**

**2.MS. ACIRO BEATRICE …………….**

**3. MR. JACK RWOMUSHANA ..……………**

**DATE: 12/10/2021**