**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 104 OF 2017**

**(ARISING FROM LABOUR DISPUTE CLAIM MGLSD/LD/484/2017)**

**OTIM ROBERT …………………………………………………….…….……………..CLAIMANT**

**VERSUS**

**TIRUPATI DEVELOPMENT (U) LIMITED…………………………………....…RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha

**PANELISTS**

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

**AWARD**

**Brief Facts**

By memorandum of claim the claimant filed this claim against the respondent for unlawful termination. It was alleged in the claim that the claimant having been employed by the respondent on 07/6/2016 he was not issued an appointment letter until 24/10/2016 and that even when he was issued with one, it contained a salary of 500,000/= contrary to the 800,000/= earlier on promised. It was also alleged that as the claimant worked as an electrician no protective gear was availed to him in the course of his work.

According to the claim, on 8/2/2016 (we believe he meant 8/2/2017) he was asked to resign and later, on the same day, he was told to leave since his services were no longer needed. He was denied salary for the period he had worked.

By memorandum in reply, the respondent denied having employed the claimant prior to 24/10/2016 and denied failure to avail protective gear to the claimant in the course of his work. The respondent denied having terminated the claimant but instead asserted that the claimant absconded from duty.

**Issues**

No joint scheduling memorandum was filed so as to show court the agreed issues. However, the claimant filed a scheduling memo which enumerated two issues and which we think are sufficient to dispose of the matter:

1. Whether the claimant was unfairly terminated from employment by the respondent.
2. What remedies are available to the parties?

The claimant was represented by Mr. Ivan Omoloy of M/s. Okello-Oryem & co. Advocates while the respondent was represented by Mr. Gilbert Opodi who appeared only once on 26/9/2018. On 2/09/2020 the court was satisfied that the respondent had been served for hearing but without reason failed to turn up and therefore allowed the claimant to proceed exparte.

Evidence was adduced from the claimant himself alone. It was largely in support of what was contained in the memorandum of claim as prescribed above.

**Submission of claimant**

Counsel submitted that the termination of the claimant was unlawful because he was not given any reasons why his services were no longer needed, he was not given a chance to defend himself or have representation contrary to **Section 66 of the Employment Act.**

He argued that the duty of proving absconding from duty was on the respondent but this duty was not discharged, making the termination unfair.

**Decision of Court**

There is no doubt that the claimant was an employee of the respondent in the year 2016 accccording to the appointment letter dated 24/10/2016. The commencement date was 07/06/2016 and the salary was to be Ugx. 500,000/= per month. In his own testimony the claimant informed court that he was asked to leave the office as his services were no longer needed.

This evidence was not controverted by any other evidence from the respondent.

The mere fact that services of an employee are no longer needed by the employer is not sufficient reason for termination of services of an employee.

The employee is entitled to advance notice and a reason as to why his services are no longer needed. This is the essence of **Section 68 of the Employment Act** which provides for a reason for termination. The case of **HILDA MUSINGUZI VS STANBIC BANK (U) LTD**, **SCCA 05/2006** held

**“The right of an employer to terminate a contract cannot be fettered by the court so long as the procedure of termination is followed to ensure that no employee’s contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation.”**

We take the statement that one’s services are no longer needed without an explanation as to why they are no longer needed as a statement amounting to the “**whims”** of an employer mentioned in the above supreme court case.

The allegation that the claimant absconded from his duty was not supported by any evidence and we shall ignore it since we agree with counsel for the claimant that the respondent had a burden to prove the same.

From the above analysis our conclusion is that we agree with counsel for the claimant that his client was unfairly and illegally terminated for failure to offer reasons as per **Section 68 of the Employment Act** and for failure to afford him an opportunity to defend himself against any allegation as provided by **Section 66 of the employment Act.** The first issue is in the positive.

The second issue is **what remedies are available to the parties?**

1. **Severance allowance**

Since this court has declared that the claimant was unlawfully terminated, and he was employed for more than 6 months, he is entitled to severance allowance in accordance with **Section 87 of the Employment Act.** As held in the case of **Donna Kamuli Vs DFCU Bank LDC 02/2015**, the claimant would be entitled to a month’s pay for 1 year he worked. Although the claimant claimed he was entitled to Ugx. 800,000/= per month, his appointment letter provided for 500,000/= per month. He commenced work on 7th June 2016 and he was terminated on 8th February 2017. He therefore worked for 8 months. Following the legal principle in Donna Kamuli Vs DFCU Bank (supra) the claimant was entitled to 250,000 for the 6 months and 82,000/= for the extra 2 months which totals to 332,000/=.

1. **Payment in lieu of notice**

Under **Section 58 of the Employment Act** an employee who has been on job for 8 months is entitled to notice of 2 weeks. Therefore the claimant shall be paid 250,000/= as in lieu of notice

1. **Compensation for unfair termination**

Section 66(4) of the Employment Act provides:

**“Irrespective of whether any dismissal is justified or whether the dismissal of the employee is fair, an employer who fails to comply with this** Section **is liable to pay the employee a sum equivalent to four week’s net pay”.**

It is our considered opinion that the above section envisages a situation where an employee has fundamentally broken his or her obligation under the contract necessitating the employee to dismiss him but does so without giving the employee a hearing. Since under **Section 69 of the Employment Act** the employer has a right to dismiss such employee, the four weeks in our view is meant to serve as a penalty for not giving an opportunity to the employee to be heard. The claimant t having not shown that his termination was a summary termination under section 69 above mentioned, the remedy under **section 66(4)** was not available to him. The prayer for compensation is therefore denied.

1. **General Damages**

This is compensation available to the claimant for loss or injury incurred at the instance of the respondent. The compensation ought to be such that it approximately puts the claimant in the original position he would have been if the loss or injury did not occur. The claimant was employed at a salary of 500,000/= per month. He had worked for 8 months before he was unlawfully terminated. Given the nature of the job, how long he had worked and how much he earned, we think 3,000,000/= is sufficient for general damages.

1. **N.S.S.F PAYMENT**

Under **Section 12 of the N.S.S.F Act**, an employer is obliged every month to remit 5% from the salary of the employee and 10% as employer’s contribution to the NSSF account for Social Security of the employee. In **Stanley Mwijukye Vs Barcklays Bank LDC 243/2014**, this court held that the money so deducted and or ought to have been contributed by employer was property of the employee and the employee had a legal right to protect it and could rightly file a claim in courts of law arising from its non-remittal.

We must add however that it is only the NSSF that has the mandate to enforce the deductions of salary and contributions of employers. We have looked at page 3-12 of the trial bundle of the respondent which shows what the respondent refers to as NSSF payment slips. We have also looked at the claimant’s trial bundled exhibit 4 at pages 9-12. The statement is dated 24/04/2018 and yet it does not show any deposits beyond June 2013. The payment slips suggest that 75,000/= was payable to Robert Ouma but by Bank of Baroda. This being the case we cannot confirm that the said NSSF contributions were paid into the claimant’s account. Accordingly, we order that a total of 800,000/= be deposited into the account of the claimant at NSSF as his social Security for a period of 8 months that he worked.

In conclusion the claim succeeds in the above terms. No order as to costs is made.

**Delivered & Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye ……………………

2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha ……………………

**PANELISTS**

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

Dated 11/12/2020