**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 119 OF 2020**

**[ARISING FROM MISC. APPLN. NO. 267 OF 2019]**

**[ARISING FROM LABOUR DISPUTE CLAIM NO. 018 OF 2015 & HCCS No. 18/2013]**

**BETWEEN**

**KIWALABYE JOSEPH & OTHERS .......................................................CLAIMANT**

**VERSUS**

**POSTA UGANDA………………………………………………………………………RESPONDENT**

**BEFORE**

1. Hon. Judge Ruhinda Asaph Ntengye
2. Hon. Judge Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa
3. Mr. Micheal Matovu

**RULING**

This ruling arises from a reference by the Registrar of this Court. The brief back ground is that this court delivered an Award on 24/05/2019 in favor of the claimants in Labour Dispute Claim No. 018/2015 who were Kiwalabye Joseph Kayondo & others. The court decided (among others):

**“…………We have perused all the contracts of the claimants and there is a provision that the claimants were entitled to 20% of gross salary for every 12 continuous months of services completed. The claimants’ contracts were for a certain period (2 years) but renewable. In our opinion each renewed contractual term will be calculated as a continuous period from the previous contractual term until the claimant left service**.

**They will therefore be paid gratuity for the period when they started working up to the time they were terminated from service.”**

At execution of the Award the registrar was faced with interpretation of the Award in as far as the time period of payment of gratuity was concerned since the Judgment debtor argued that only contracts of 2011- May 2013 provided for gratuity and the previous contracts of 1998 – 2011 had no such provision. The Judgment debtor also argued before the registrar that they had paid gratuity for June 2011- 31st May 2012 leaving only the period 1st June 2012- September 2012 pending.

**REPRESENTATIONS:**

The judgement creditors were represented by Mr. Isaac Kugonza of Kabega Bogezi & Bukenya Advocates while the judgement debtor was represented by Ms Muyanja Alice of the respondent’s Legal Department.

When the matter came before us on 26/4/2021. Both counsel were in court and we gave them directives to file submissions by Judgment debtor and Judgment creditor on 10/5/2021 and 24/05/2021 respectively. Whereas the Judgment debtor (Posta Uganda) filed in time, the Judgment Creditor did not file theirs by the time we discussed the case. We shall not therefore refer to the Judgement creditor’s submissions.

**Order 50 rule 7** provides:

***“If any matter appears to the registrar to be proper for the decision of the High Court the registrar may refer the matter to the High Court, and a Judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she may think fit.”***

Section 17 of the Labour Dispute (Arbitration and Settlement) Act 2006 provides:

**“17. Interpretation and review of Awards**

**(1) Where any question arises as to the Interpretation of any Award of the Industrial Court within twenty-one days from the effective date of the Award or, where new and relevant facts concerning the dispute materialize, a party to the Award may apply to the Industrial Court to review its decision on a question of interpretation or in the light of the new facts.”**

Given the above provisions of the law, this matter is properly before the full panel of the Industrial court having been properly referred to the court by the registrar and under the same provisions of the law, the court is seized with Jurisdiction to handle the same.

In his submission counsel for the Judgment creditor argued that the contracts between 1998 did not provide for payment of gratuity and that the claimants did not make any claim for the same during this period.

In our understanding every contract between the parties ended with the completion of the period specified in the contract. A renewal of the contract was only a renewal as far as the period stipulated in the renewed contract. Therefore the provision of entitlement to **“20% of gross salary for every 12 continuous months of service completed”** could only refer to the current contract and not to precious completed contracts.

The statement in the Award that **“gratuity is ordinarily provided for in the contracts of service between the employer and the employee”** isin direct conflict with the statement in the same Award that **“They will therefore be paid gratuity for the period when they started working up to the time they were terminated from service.”**

This is especially so considering the submission that the contracts during the period 1998 – 2011 did not contain a provision for payment of gratuity.

Consequently, in the absence of a submission from the Judgment Creditor about the contents of the contracts of 1998-2011, we agree with the submission of the Judgment debtor that the Award in Labour Dispute Claim No.018/2015 excludes gratuity for the period 1998-2011 since the contracts in respect to this period did not include a provision for the same. No order as to costs is made.

**Delivered & signed by:**

1. Hon. Judge Ruhinda Asaph Ntengye ………………….
2. Hon. Judge Linda Tumusiime Mugisha ………………….

**PANELISTS**

1. Mr. Ebyau Fidel ………………….
2. Ms. Harriet Mugambwa ………………….
3. Mr. Micheal Matovu ………………….

Dated: 11/06/2021