



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 022 OF 2015**  
*(Arising from Labour Dispute Complaint No. KWP/C.B/011/2015)*

**MUBAALE WYCLIFF & 59 OTHERS.....CLAIMANTS**

**VERSUS**

**MAKERERE UNIVERSITY.....RESPONDENT**

**BEFORE:**

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

**PANELISTS:**

1. MS. ADRINE NAMARA,
2. MS. SUSAN NABIRYE &
3. MR. MICHAEL MATOVU.

**AWARD**

**Introduction:**

- [1] Between 1987 and 2001, the Claimants were appointed into the service of the Respondent on temporary terms for initial periods of 6 months. They served in various capacities, including cleaners, custodians, general farm workers, labourers, and messengers. The Claimants were transferred between the Respondent's departments. Their social security benefits were paid to the National Social Security Fund. By General Notice No. 2027 in July 2013, the Respondent's Appointments Board directed an end of all temporary employment terms. Having lost their employment, the Claimants filed a labour complaint at Kampala Capital City Authority, Kawempe Division Labour Office. The complaint was not resolved and was referred to this Court. By an amended memorandum of claim dated 7<sup>th</sup> August 2019, the Claimants sought various remedies, including declarations that their termination was unfair and unlawful and that deleting their names from Government Payroll was unlawful and illegal. The Claimants sought compensation for these alleged infringements of



their rights and statutory benefits under the Employment Act 2006, terminal benefits, general damages, interest, and costs of the claim.

- [2] The Respondent opposed the claim on the ground that a general meeting of its management, held on 2<sup>nd</sup> July 2013, resolved not to renew all temporary contracts which expired on or before 30<sup>th</sup> June 2013. The Respondent contended that the General Notice of 2<sup>nd</sup> July 2013 was not a termination as the Claimants' contracts had ceased to exist on 30<sup>th</sup> June 2013 by effluxion of time.

**Issues for determination by Court:**

- [3] At the scheduling conference, four issues were framed for determination viz:
- (i) Whether the Claimants were unlawfully terminated by the Respondent?
  - (ii) Whether the actions of the Respondent of giving 18 days of annual leave from 2006 to 2013 were lawful and, if not, whether the claimants are entitled to compensation for the leave days not given?
  - (iii) Whether the Claimants are entitled to repatriation under the law?
  - (iv) What remedies are available to the parties?

**The Proceedings:**

- [4] The Claimants called two witnesses, who testified and were cross-examined on the 27<sup>th</sup> of September, 2022. The Respondent's sole witness testified on the 27<sup>th</sup> of September 2022 and the 3<sup>rd</sup> of October 2022. The parties were directed to file written submissions, and the Court is grateful for the succinctly written arguments.

**Analysis and Decision of the Court:**

**Issue 1. Whether the Claimants' were unlawfully terminated by the Respondent?**

**Submissions of the Claimants:**

- [5] Mr. Jonan Nuwandinda Rwambuka, appearing for the Claimants, submitted that under **Section 68 of the Employment Act 2006**, the Respondent was



required to prove the reason for the Claimants' termination and failed to do so, rendering the termination unfair.

- [6] Counsel submitted that the evidence of Mutwalanda Paul (CW2) was that by General Circular No. 851 of 12<sup>th</sup> April 2000 (Exhibit C51), the Claimants' employment with the Respondent was regularized. They became permanent employees. It was submitted that General Notice 2027(Exhibit C57), resolving to terminate the claimants, was wrong because no claimant had an appointment letter dated 1<sup>st</sup> January 2013 that was due to expire on 30<sup>th</sup> June 2016. Counsel pointed out that Lawrence Sanyu's (RW1) evidence that the documents relating to the renewal of temporary contracts were burnt in a fire in October 2020 was not true because pretrial documents were required to be filed by 27<sup>th</sup> August 2018. By this date, the Respondent had not filed any pre-trial documents, so the fire was an excuse. He concluded that the Claimants were permanent employees entitled to notice and justifiable reasons for termination. He contended that their collective termination was contrary to the law.

#### Submissions of the Respondent:

- [7] Mr. John Fisher Kanyemibwa, appearing jointly with Mrs. Specioza Tayebwa for the Respondent, countered that the Claimants were, at all material times, on temporary contracts of six months severally renewed at the Respondent's discretion. None of the Claimants had an appointment letter on permanent terms. On the regularization of employment, Counsel submitted that the Respondent continued making temporary appointments and cited that re-appointment of 14 of the Claimants on 14<sup>th</sup> December 2001 vide Exhibits C29-C33 and C35-C50. For a definition of temporary employment, Counsel cited the case of **Cissy Nankabirwa Magezi v The Board of Governors St. Kizito Technical Institute Kitovu LDC No. 60 of 2016**, in support of the proposition that the Claimants' contracts expired on 30<sup>th</sup> June 2013 and the Respondent was under no legal obligation to renew the same. The contracts had no renewal clause and were deemed to terminate under **Section 65(1) (b) of the Employment Act 2006**. Counsel asked the Court to dismiss the claim.

#### Claimants' Rejoinder:

- [8] In rejoinder, it was submitted for the Claimants that each had different appointment dates ranging from 3<sup>rd</sup> August 1987 to 14<sup>th</sup> December 2001. None



of the Claimants was appointed on 1<sup>st</sup> January 2013. Counsel repeated the assertion that the Respondent had an opportunity to file its evidence on 1<sup>st</sup> November 2018 and could not suggest that the same was burnt in the September 2020 fire. The Claimant maintained that the Respondent had not discharged the burden to prove the existence of temporary contracts under Section 101 of the Evidence Act Cap.6 and proof of the reason for termination under **Section 6 of the Employment Act 2006**. Counsel added that other staff members terminated at the same time as the Claimants had been compensated.

**Resolution of issue 1:**

- [9] Establishing the status of the Claimants' employment with the Respondent is imperative. It was a common position that the Claimants were employed on temporary terms by the Respondent between 3<sup>rd</sup> August 1987 and 14<sup>th</sup> December 2001. It was also common to all parties that the Claimants' employment with the Respondent ended in July 2013. From exhibits CEXH4 to CEXH 50, a categorization regarding salary, deployment, and reporting lines comes to the fore. There are also some common threads in the letters of appointment. For a fuller appreciation of these categories and threads, it is essential to employ the full text of the exhibits representing the categories:

**CEXH 4**

**"MAKERERE UNIVERSITY  
OFFICE OF THE PERSONNEL SECTION**

Your Ref:.....

Date 25<sup>th</sup> August, 1987

Our Ref:.....

Miss Robina Nalukenge

Kabanyolo Farm

*Dear Mr/Mrs/Miss Nalukenge,*

*I am authorized to offer you temporary appointment as General Farm Worker in the Department of Kabanyolo Farm for a period of 6 months with effect from 3.9.87. The salary for this post is Shs .....per month in Group M-A.*

*The duties and hours of work will be described to you by the Farm*



Manager to whom you will be responsible. The post is terminable by one week's notice on either side.

If you accept the post, please sign one copy of this letter in the space provided and return it to me

Yours sincerely

Signed

Secretary to Council

c.c Farm Manager

c.c Wages Officer-to note

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To: The Secretary to Council,  
Makerere University.

I accept your offer of appointment on the terms and conditions prescribed in your letter above and I took/shall be taking up my duties on 3.8.87.

Signature of Appointee Robinah Nalukenge Date 28.8 87

QUOTATION OF REF . NO IS ESSENTIAL"

CEXH 29

" MAKERERE UNIVERSITY

OFFICE OF THE UNIVERSITY SECRETARY

PERSONNEL SECTION

Your Ref:

Our Ref: PP

December 14, 2001

Mr. Dominic Ndenzyaho,  
Kaweru Primary School,  
P.O.Box 990,  
Kabale.

Dear Mr. Ndenzyaho



I am authorized to offer you an appointment as a General Farm Worker for six months in the services of the university. You will in the first instance, be posted for duties to Makerere University, Agricultural Research Institute, but may be transferred to another Department as the University authorities may decide. The salary for the appointment is at the rate of shs. 84,967.36 per month on Group M-A.

You are requested to take up your duties as soon as possible. Your duties and hours of work will be described to you by the Director to whom you will be responsible.

The General Conditions of Service governing the appointment are contained in the Uganda Public Service Standing Orders Part II Group Employees.

If you accept the offer of appointment, please sign one copy of this letter in the space provided below, and return it to me, together with the annexures to it completed by you.

Yours sincerely,

Harriet Hawa

for: SECRETARY TO COUNCIL

c.c The Director-MUARIK

Wages Officer to note

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To: The Secretary to Council,  
Makerere University,

I accept the appointment on the terms prescribed in your letter above which I have signed and return herewith. I shall be taking/took up my duties on 18<sup>th</sup> December 2001.

Signature of Appointee.....Date 17<sup>th</sup> Dec 2001

Please pay my salary into Bank.....A/C  
No.....

Branch.....or to me in Cash."



- [10] What is discernible from these letters of appointment is that the Claimant's initial terms were for six months. Exhibits CEXH4 to CEXH 23 are worded similarly. The duration is six months, the Group is M-A and the reporting line is to the Farm Manager. Exhibits CEXH23 to CEXH 28 are also similarly worded. The duration of the employment is six months, terminable with one week's notice. Salary is set at UGX 67,167.87 per month; the reporting line is the Director. In the case of Exhibits CEXH 29 to CEXH 33 and CEXH 36 to CEXH 50, the appointments are in the position of General Farm Worker for six months in the first instance, at a monthly salary of UGX 84,967.36 in Group M-A. The reporting line is the Director, and the contracts are governed by the Uganda Public Service Standing Orders Part II: Group Employees. What is clear, as a starting point, is that the appointments all commenced with an initial six-month period.
- [11] During cross-examination and re-examination, BERNARD AYEBAZIBWE (CW1) confirmed that EXHIBITS C4-C28 did not refer to the Public Service standing orders. Instead, the terms of service were given to him by the Administration of Makerere University Agriculture Research Institute, Kabanyoro.
- [12] MUTWALANDA PAUL (CW2) testified that he accepted employment subject to the Uganda Public Service Standing Orders. He did not receive any letter appointing him on permanent terms. He did not receive any other appointment.
- [13] It was also common to all parties that the Claimants continued to serve the Respondent until General Circular No. 851 was issued on the 12<sup>th</sup> of April 2000. By this circular, the Principal of Makerere University Business School, the Deans and Directors, and all Heads of Department at the Respondent University were informed that the 328<sup>th</sup>, 329<sup>th</sup>, and 337<sup>th</sup> meetings of the University Appointments Board had resolved that all staff members on temporary appointment should be regularized. The circular indicated that there would be no more appointments or renewals of staff on temporary appointment after 31<sup>st</sup> December 2000 except with strict advice of the Board. During cross-examination, Sanyu Lawrence (RW1) confirmed that Claimants' contracts ended on 30<sup>th</sup> June 2013. RW1 also testified that he was unaware that any of the Claimants had worked for the Respondent for over 10 or 20 years. He also confirmed that no contract was issued to any of the Claimants on 1<sup>st</sup> January 2013.



- [14] The Claimants suggest that their temporary employment was regularized by General Circular No. 851 on 12<sup>th</sup> April 2000. Their information was recorded in the HURIS form CEXH52. This is what Counsel for the Claimants regarded as regularization. General Circular No 851 read as follows:

"

GENERAL CIRCULAR NO. 051

0301.27

To: The Principal, MUBS  
The Dean/Directors  
The Heads of Department  
Makerere University.

RE: STAFF MEMBERS ON TEMPORARY APPOINTMENT.

This is to bring to your notice that at its 328<sup>th</sup>, 329<sup>th</sup> and 337<sup>th</sup> meetings, the University Appointments Board resolved at all the above category of staff should be regularized. The effective staff members are advised to take note that way that by 31<sup>st</sup> December 2000, there will be no more appointments or renewals of temporary appointments, except strictly on the advice of the Board.

The Principal, Deans, Directors and Heads of Department are therefore requested to forward in time, particular of their staff to the Appointments Board in order for the regularization process to begin.

Please give this matter the urgency it serves

Avitus K. M Tibarimbasa

UNIVERSITY SECRETARY

c.c Chairman Appointments Board


Vice-Chancellor

Deputy Vice-Chancellor

Academic Registrar

Dean of Students

University Bursar





*Deputy Secretary(Appointments Board*

*Senior Assistant Secretary(Personnel) "*

- [15] By this general circular, it was intended that a process of regularization of the Claimants would begin. However, no evidence of such regularization was presented before this Court.
- [16] In our view, it is useful to consider the Respondent's Human Resources Manual 2009 (CEXH 65 and, hereafter the manual) to appreciate the Respondent's appointment process. Starting with the Claimants' assertion of regularization, under Section 2.9(c) of the manual, all new employees of the Respondent are required to file their personal information in a bio-data form. The filing of these forms follows a very elaborate procedure of formal appointment and acceptance of work into the Respondent's service. In the discussion below, we shall review the manual in some detail.
- [17] In the definition section of the manual, an employee is defined as person employed by the university under a contract of service on permanent, temporary, probationary, or casual terms. There is a distinction between temporary and permanent employees. According to the manual, an employee on permanent terms shall mean an employee who has satisfactorily completed the prescribed probationary period and has been confirmed in service and notified in writing to that effect. To amplify these distinctive categories, the manual defines a volunteer as an individual authorised to render services to the Respondent without pay. From these definition sections of the manual, it is quite clear that even after the General Circular No 851 (CEXH 10), the manual still recognizes temporary workers.
- [18] Section 2.1(b) (iv) of the manual provides for contractual terms of appointment into the Respondent's service. In this type of employment, the terms of employment are as defined in a particular contract of employment between the University and an employee and include temporary/administrative appointments authorised by the Vice-Chancellor or a delegate. In Section 2.6.3(iii) the manual provides that the temporary/administrative appointments of support staff shall be done by the Director Human Resources on behalf of the Vice-Chancellor or in the case of a Constituent College, the Principal of the College can appoint temporary staff on the recommendation of the Dean of a particular faculty/school/institute and such appointment shall be reported to the Vice-Chancellor and Director, Human Resources for noting. At section 2.6.3



v. an employee appointed on a temporary basis shall enjoy such terms and conditions of service as may be specified in his /her letter of appointment.

[19] The process of appointment is very elaborate. Salient features of the manual on process and procedures of appointment into the Respondent's service include:

- (i) Section 2.11 of the manual which provides for a probationary period. Under Section 211(e) the appointing authority may waive the whole or part of the probationary period of service in certain cases especially where the employee has offered prolonged service beyond the probationary period on temporary terms.
- (ii) Section 2.12 of the manual provides for confirmation of an employee who has successfully completed his/her probation who may be confirmed in the University service with effect from the date of expiry of their probationary period. A procedure for confirmation requires the employee to submit an application to the Director of Human Resources before the expiry of the probationary period and if found satisfactory with a recommendation from the Departmental Appointments and Promotions Advisory Committee that the employee should be confirmed. The Section sanctions Heads of units who fail to process confirmations of employees within the probationary period and;
- (iii) Under Section 3.1 of the manual all posts in the University shall be classified by title and salary scale in accordance with the duties and responsibilities carried by the post as established by the University and for full time employees salary is payable into the employee's salary bank account at the end of every month. Section 3.2(n) provides for overtime allowance for employees on salary scales M-A to M-P who work beyond the gazetted working hours.

[20] In the evidence presented before us, CEXH2 to CEXH26 indicate that 24 claimants were appointed as Farm Workers for a period of 6 months between 25<sup>th</sup> August 1987 and 9<sup>th</sup> March 1998. CEXH29 to CEXH33 and CEXH35-CEXH50 indicate that 19 claimants were on 14<sup>th</sup> December 2001, appointed as farm workers on the M-A Scale under the Public Service Standing Orders as Group Employees. The Acting Director of the Respondent's Agricultural Research Institute in Kabanyolo confirmed that Claimant Kagugube Henry and Claimant George Shembeza had reported for duty. These are contained in CEXH34 and CEXH35. There were also a few renewals of the contracts over time. A collective exhibit CEXH 53 relates to commencements, designations, redesignations, transfers and renewals of various temporary staff. Ms. Nagujja Sarah's



temporary appointment was renewed on 1<sup>st</sup> July 2006 for another period of 6 months. No further evidence was presented to this Court to show that the rest of the Claimants had fresh appointments, contracts, renewals or regularization. The evidence was that each of the claimants was initially employed on a fixed term of 6 months. This means that under **Section 65(1) (b) of the Employment Act 2006**, the contracts would end at the expiry of the 6 months period unless renewed by the Respondent. The Respondent suggests that these contracts were renewed multiple times over a 10-year period. Staff ID's were renewed annually and some had expiry dates in 2015. General Farm Workers were considered Group Employees serving under the General Conditions of Service governed under the Uganda Public Standing Orders Part II. Group Employees. There was no other evidence in respect of progressing the Claimants beyond these initial appointments. The Respondent submitted that the records relating to renewal were burnt in a fire at the Respondent's main building. However, the Respondent did not deny renewal of the temporary contracts. It is evident therefore that no formal process of permanent appointment and regularization of the Claimants was carried out in accordance with the manual. What is certain is that the Claimants remained in the employment of the Respondent for various periods ranging 10.7 years for Claimant Ndenzaho Dominic who was appointed on 14<sup>th</sup> December 2001 to 25.10 years for Claimant Robina Nalukenge who was appointed 25<sup>th</sup> August 1987.

- [21] Mr. Nuwandinda submitted that under Section 101 of the Evidence Act Cap. 6, the Respondent had the burden of proving the existence of the contracts. The contracts were not produced on account of a fire that gutted the Respondent's main building on 20<sup>th</sup> September 2020. While no reason to doubt what documents were destroyed in the fire has been presented to this Court, under Section 59 of the Employment Act 2006, an employer is required to furnish an employee with written particulars of employment. These particulars include the names and addresses of the parties to the contract, the date the employment began specifying the date from which the employee's period of continuous service is, the title of the job, the employees duties, wages, overtime pay if any, hours of work, leave entitlement, sick pay, length of notice and terms and conditions relating to incapacity. This information is required to be given to the employee not later than 12 weeks after the date on which the



employment commences.<sup>1</sup> In the case of **Akoye David vs Libya Oil LDC 082/2014**, it was 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....The employer is expected to keep written records of all employees employed by him or her, even for a number of years after they have been terminated.*

- [22] It is therefore inexplicable that between 24<sup>th</sup> day of May 2006 when the Employment Act 2006 commenced under Statutory Instrument No. 33 of 2006 and the 30<sup>th</sup> June 2013, the Respondent did not issue any notice as provided under section 59 of the Act to any of the Claimants. None of the Claimants was in possession of written particulars if indeed the Respondent had complied with the statute before the Respondent's own records were consumed by the September 2020 fire. In the result, on the basis of the evidence presented to this Court, we would conclude that the initial terms of employment would be the starting point in establishing the Claimants' employment terms and conditions.
- [23] We are of the persuasion that the terms and conditions of employment would be maintained over the entire period of continuous service. It is our view that the Court cannot find that the Claimants were regularized in the employment of the Respondent when the regularization procedure was not carried out. Regularization is a process and no evidence of the same was presented to this Court. As an illustration, under Chapter 2 of the Standing Orders 1991 in force at the time of some of the Claimants' employment, Regular or Probationary Employees are required to have satisfactorily completed a qualifying period of service and be declared to be either a regular or group employee by the Responsible Officer. Indeed, under the Public Service Standing Orders 2010, a very elaborate legal framework sets out the requirements and procedure for appointments and promotions in the public service and roles of Responsible Officers in that regard. The terms of appointment therefore remain a preserve of the employer in accordance with the employer's policy. Appointments, regularization, promotions and transfers are policy decisions of the

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<sup>1</sup> Section 59(3) Employment Act, 2006



Respondent. The Court cannot create terms and conditions of employment of a temporary worker where a policy of the Respondent categorically creates posts, their responsibilities, salaries and all other terms and conditions. Any attempt to do so would amount to an appointment on terms by Court Order or an appointment by litigation.

- [24] In the result and having considered the facts, evidence and submissions before us, it is our finding that each of the Claimants was employed by the Respondent on temporary terms for initial periods of 6 months. The Claimants continued to serve the Respondent until the 2<sup>nd</sup> day of July 2013, when the Respondent directed that all appointments of staff on temporary contracts had expired on 30<sup>th</sup> June 2013. While Counsel for the Claimants argued that none of the Claimants had a contract dated the 1<sup>st</sup> of January 2013, we are of the persuasion and find, that absent of formal renewals, the Claimants were employed by the Respondent on temporary 6 month contracts which contracts were automatically renewed on the same terms and conditions until 30<sup>th</sup> June 2013 when the Respondent terminated the contracts. We are fortified in this view by the decision of this Court in the case of **Nuwagaba Patrick V Housing Finance Bank Ltd LDR No. 005/2019** in which this Court cited the case of **Ochuru Henry vs ACE Global Ltd LDR No. 164/2017**, where it was held that:

*"Where the contract has expired and it is not renewed within 7 days as provided under Section 65(1) (b) (supra) but the employee continues in the service of the employer, the contract is presumed to have been automatically renewed."*<sup>2</sup>

- [25] Having established their employment status, we must now determine whether their termination was lawful. The Claimants make the case for unlawful termination on the account of no reason for termination having been adduced under **Section 68(1) of the Employment Act, 2006**. On the other hand, the Respondent suggests that the contracts came to a lawful end when they expired. The Respondent anchored this argument on the provisions of **Section 65(1) (b) of the Employment Act**.
- [26] The Respondent's Human Resource Manual provides for an elaborate procedure for termination. Under Section 5.9 (c) of the manual, the power to terminate the services of an employee is vested in the appointing authority which may terminate an employee's employment contract with or without notice should it believe that the continued employment of such a person would prejudice or affect other employees' performance or compromise the

<sup>2</sup> The case was also cited in **Labour Dispute Appeal No.24 of 2015 Daisy Owomugasho V Balaba Bill**



University's interest. Under Section 5.9(c) (ii), termination shall be with benefits as the appointing authority shall decide. Section 16(1) of the manual specifically provides that services of an employee shall be terminated under any of the following circumstances: a) Death of an employee; b) Incapacity to continue in employment; c) Abscondment; d) Resignation; e) Retirement; f) Expiry of Contract; g) Redundancy; h) Persistent Absenteeism from work; i) Professional and or ethical misconduct

- [27] In the present case, the Respondents' case is that the Claimants' contracts terminated by effluxion of time. Section 16.3(c) of the manual provides for termination by expiry of contract in these terms:

*"On expiry of contract of the employee, the University may terminate the employment contract or re-engage the employee based on the initial provisions in the expired contract. ii. In case an employee on contract does not inform the appointing authority in writing of intentions to renew the contract, their contract shall be deemed to have lapsed upon its expiry iii. For contracts of four (4) years and above, application for renewal shall be forwarded to the appointing authority at least six (6) months before the expiry of the contract. For contracts between two (2) to three (3) years, submission of application for renewal shall be at least three (3) months before expiry of the contract and for contracts less than two (2) years submission of application for renewal shall be one (1) month before the expiry of the contract."*

- [28] The procedure is that the manual requires the employee to write to the appointing authority requesting intention to renew the contracts. The present case would ordinarily fall under a submission one month before the expiry of the contract. However, excepting the original 6 month contracts contained in CEXH 4 to CEXH50, no other 6 months contract was presented in evidence. This is important because this Court has also found that no written particulars of employment were given to any of the Claimants in accordance with **Section 59 of the Employment Act, 2006**. Section 16.5 of the manual lays out the procedures of termination as follows:

*"The procedures for termination shall be as laid out in the specific employment letter/contract and in conformity with the **Employment Act, 6 of 2006** and any other relevant law."*

CEXH 4 and CEXH 29 were reproduced in full in paragraph 9 above. Neither of these employment letters contained a specific procedure of termination. It follows that recourse, on the procedure of termination of the Claimants' must be had to the Employment Act, 2006.

- [29] CEXH 57 was dated the 2<sup>nd</sup> July 2013 and stated that all Appointment Contracts for temporary staff in the University service had expired on 30<sup>th</sup> June 2013.



There was no evidence of any specific Claimant who had a contract due to expire on the 30<sup>th</sup> June 2013. CEXH 57 was a General Notice No. 2027 and affected all Temporary staff at the Respondent University. It was not limited to the Claimants alone. The Respondent contended that the contracts expired by effluxion of time and buttressed the point on the provisions of Section 65(1) (b). The provision reads as follows:

*"(1) Termination shall be deemed to take place in the following instances-*

*--*

*(b) where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and 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."*

[30] We have already found that the Claimants' temporary contracts were automatically renewed. However, the Respondent has not proven that any of the contracts were due to expire on the 30<sup>th</sup> day of June 2013. According to CEXH 4, Miss Robina Nalukenge was employed on a 6 month temporary contract on 25<sup>th</sup> August, 1987. The automatic renewal would mean reckoning 6 months from September and hence the renewal over the course of the contract in March of every calendar year over the course of 26 years. According to CEXH 10, Mr. Kaggwa, a general farm worker was appointed on 15<sup>th</sup> August 1989. His 6 month automatic renewal would be February of each calendar year over the course of 24 years. Florence Adongo (CEXH 40) was appointed on December 14<sup>th</sup> 2001. Her automatic date of renewal of the contract would be the 14<sup>th</sup> of June of each calendar year over the course of 12 years. In effect, the varying dates of appointment which would lead to the inescapable conclusion of varying dates of expiry of the contracts. It is therefore not realistically arguable in our view that the temporary contracts all expired on the 30<sup>th</sup> of June 2013. These were fixed term contracts with definite start and end dates. None of the Claimants' contract was shown to have expired on 30<sup>th</sup> June 2013. The Respondent made a general termination notice and we think this to be unfair for the reasons below.

[31] CEXH 4 to CEXH 50 demonstrate that the Claimants had served the Respondent for periods ranging from 10.7 to over 25 years. During this time, the Claimants were undoubtedly paid for their work and served the Respondent continuously over the respective service periods. Under **Section 83(1) of the Employment Act**, continuous service means an employee's period of uninterrupted service with the same employer. The basis of continuity, under **Section 82 of the Act**, is that continuous service begins from and includes the first day on which the employee begins to work and continues and includes the last day on which that



work is completed. In the case of Claimant Robina Nalukenge who commenced work on 3<sup>rd</sup> September 1987 and would be assumed to have left work on the 2<sup>nd</sup> of July 2013 after the communication in CEXH 57, she would have been in continuous employment for 25 years 9 months and 29 days. The question that this Court must address is whether, considering all the circumstances of Claimants' termination, such termination was fair. For the Respondent, it is argued that the contract expired by effluxion of time. For the Claimants, it was unfair termination.

- [32] What this question brings to the fore is the state of fixed term contracts under the Laws of Uganda. Under the **Employment Act, 2006**, there is only one provision on fixed term contracts and that is under Section 65(1) (b) which speaks to termination of a fixed term contract at the expiry of the term such term not being renewed within one week from the date of expiry. Under Objective XIV (b) of the National Objectives and Directive Principles of State Policy in the Constitution of the Republic of Uganda, 1995, the State is called to endeavor to fulfill the fundamental rights of Ugandans to social justice and economic development and to ensure that all Ugandans enjoy rights and opportunities to work, pension and retirement benefits. We think that a termination by effluxion of time of a temporary contract renewed variously over 25 years of continuous service would be inimical to the National Objectives and Directives of State Policy.
- [33] We suggest so because under the International Labour Organization, Termination of Employment Recommendation 1982 (No. 166) which has not been enacted into our legislation, it is recommended that fixed term contracts should have adequate safeguards because typically fixed term contracts offer lower levels of protection than indeterminate contracts. One such safeguard is deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.<sup>3</sup> The Employment Act is silent on converting temporary workers into permanent workers. However, Regulation 39(2) of the Employment Regulations 2011 provides that a casual employee engaged continuously for four months shall be entitled to a written contract and shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him or her. No such provision is made for temporary workers. In comparative jurisdictions, Section 37 of the Kenya Labour Relations Act 2007 enacts into law the ILO safeguards

<sup>3</sup> <https://eplex.ilo.org/fixed-term-contracts-ftcs/> last accessed 3.3.2023 8:22 p.m.



and provides for conversion of a casual employee who works for a period of not less than one month; or performs work which cannot reasonably be expected to be completed within a period, or number of days amounting in the aggregate to the equivalent of three months or more, to where the casual employee is entitled to such terms and conditions of service as he would have been entitled to under this Act had he not initially been employed as casual employee.

- [34] In the case of **Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers v Technical University of Mombasa & 2 others [2018] eKLR** the petitioner alleged that the grievants had worked for the respondent continuously for about 12 years on casual basis until January 2017 when they were given one year contract each. It was contended that the respondents had breached clause 10 of the Collective Bargaining Agreement (CBA) which provided that all casual and temporary employees shall be confirmed to permanent status after serving for a period of one year effective 1.1.2017, in line with section 37 of the Employment Act. The Court found that all, the positions being served by the grievants were not temporary. They had served in the said positions for many years. Theirs were crucial jobs without which the University would not operate effectively including accommodation, cleaning, catering, library, finance, mail office. The Court found that they had all along been doing the job to the satisfaction of the employer while serving on casual basis and it would be unfair labour practice to terminate them after suing to demand better terms of employment. The Court concluded that all the grievants qualified for conversion from temporary appointment to permanent employment under **Section 37 of the Employment Act.**
- [35] The Kenyan case espouses the safeguards envisaged under the International Labour Organization Standards. While Kenya has enacted into law an automatic conversion of casual employees into permanent employment after serving a 2 month period no such enactment subsists in the Employment Act 2006. However, the principle enunciated in the case has some considerable persuasive influence on our view on automatic renewal of the contracts in the instant case. It cannot be said that the Claimants, having served the Respondent over such long periods, should be relieved of their employment without adequate provision for retirement and pensions as spelt out in the National Objectives and Directives of the Constitution as discussed in paragraph 31 above.
- [36] Following our findings on automatic renewal and continuous employment above and considering comparative jurisprudence, a conclusion that termination of any of the Claimants on the basis of effluxion of time was lawful would be wholly inconsistent with the provisions of the Employment Act, 2006.



The Claimants served the Respondent for varying periods ranging from 10 to 25 years. Under **Section 58(1) of the Act**, a contract of service shall not be terminated by an employer unless he or she gives notice to the employee. Under Section 58(3) (d), an employee who has served for 10 years or more would be entitled to 3 months' notice. Having served the Respondent for 10 years or more, the Claimants would be entitled to notice of 3 months. They were terminated without notice. To this extent therefore, the termination of the Claimants, without notice would be unlawful and we so find.

- [37] We are also of the further inclination that the termination would not be just and equitable within the meaning of **Section 73(b) of the Employment Act** because there was continuity of service over a very long period and the Claimants were terminated for no fault of their own. We have also found that the Respondent did not provide written particulars in respect of the duration of the Claimants' employment. Had such particulars indicating terms and conditions of service as well as duration been available, there might be recourse for the Respondent to **Section 65(1) (b) of the Employment Act**. However, in the circumstances of the present case, we find that this mode of termination of the Claimants' employment was not available to the Respondent.
- [38] Counsel for the Claimant invited us to conclude that no reason was given for the termination and that this was therefore in contravention of **Section 68 of the Act** which renders a dismissal without reason unfair. General Circular No. 2027 provided as follows:

*"CEXH 57*

*GENERAL NOTICE No. 2027*

*2<sup>nd</sup> July 2013,*

*To All Heads of Department/Units  
And All Staff, Makerere University.*

*EXPIRY OF APPOINTMENT CONTRACTS FOR TEMPORARY STAFF IN THE  
UNIVERSITY SERVICE ON 30<sup>th</sup> JUNE 2013*

*This is to inform you that Administrative/College/School/Unit  
appointments of all staff on Temporary Terms expired on 30<sup>th</sup> June 2013.*

*The University Management at its 8<sup>th</sup> meeting held today the 2<sup>nd</sup> July  
2013, decided that staff whose temporary contracts expired on or earlier  
than 30<sup>th</sup> June 2013, should not be renewed. This is irrespective of  
whether such contracts were issued by the Vice Chancellor, the Director*



*Human Resources or College Principals, Deans, Heads of Department/Units.*

*Accordingly, this is to request the relevant College Principals/Dean School of Law/Heads of Department/Units to ensure that all the affected categories of staff above, effectively handover all University property in their possession to their immediate Supervisors in the presence of the designated Human Resources/Unit Administrative Representatives who should in turn forward the same to the Director, Human Resources and the Director, Internal Audit. The information on handover should be received by the office of the undersigned with a copy to the Director, Internal Audit and the Bursar not later than Friday, the 5<sup>th</sup> July 2013.*

*By a copy of this letter, all the College Human Resource Representatives, School/Unit Administrators are accordingly informed.*

*Mary K. Tizikara (Mrs)  
Director Human Resources*

*Copy to: Vice Chancellor  
Deputy Vice Chancellor....."*

- [39] CEXH 57 was a common document to the parties. The contents of the letter were not contested by either of the parties to the claim. The letter simply stated that all temporary contracts that had expired on or before the 30<sup>th</sup> June 2013, would not be renewed. We considered that Claimants employment at some great length because it was critical to the determination of the lawfulness of their termination. We have found that the Respondent has not established that any of the Claimants' temporary contracts expired or was due to expire on the 30<sup>th</sup> of June 2013. In view of that finding, we do not think that the Respondent has provided a justifiable reason for termination within the meaning of **Section 68 of the Employment Act**. In the evidence before us, there was no contract that could reasonably be said to have expired on 30<sup>th</sup> June 2013 to fit within the meaning of **Section 65(1) (b) of the Employment Act**.
- [40] For the above reasons, we are unable to accept the Respondent's submission that the Claimants' termination was lawful and it is our determination and declaration that the Claimants' termination was unlawful. Issue No.1 is answered in the affirmative.

**Issue II. Whether the actions of the Respondent of giving 18 days of annual leave**



from 2006 to 2013 were lawful and if not, whether the claimants are entitled to compensation of the leave days not given?

- [41] It was submitted for the Claimants that the grant of 18 days of annual leave from 2006 to 2013 was illegal because **Section 54 of the Employment Act** guarantees a minimum of 21 days of annual leave for every year worked. In reply, the Respondent submitted that under the Public Service Standing Orders, the grant of 18 days of annual leave was consistent with their terms of service.
- [42] Under **Section 54(1) (a) of the Act**, an employee is entitled to seven days' leave for every continuous four months service. We agree with the Claimants' contention that **Section 4 (a) of the Act** renders void any agreement or contract of service that excludes or limits the operation of any provision of this Act to the detriment of the employee. The Employment Act applies to any person employed by or for the Government of Uganda, including the Uganda Public Service. We find that between the period 2006 and 2013, the Respondent disentitled the claimants of 3 days of their annual leave as any leave entitlement was below the statutory minimum. In the result, we would answer issue No. 2 in the affirmative.

**Issue III. Whether the Claimants are entitled to repatriation under the law?**

- [43] It was submitted for the Claimants that each of them had worked for the Respondent for over 10 years having been recruited from various places. Under **Section 39(1) of the Employment Act**, an employee who is recruited at a place more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer in case of expiry of period of service, termination by reason of sickness, termination by agreement between the parties and on termination by order of the labour officer or Court. Under **Section 39(3) of the Act**, every employee who has been in employment for at least 10 years is entitled to repatriation irrespective of his or her place of employment. In the instant case, we have found that the Claimants had been in the employment of the Respondent for varying periods ranging from 10.7 years to over 25 years. In view of a very clear provision of the law, we find that the Claimants are entitled to repatriation to the respective homes.
- [44] Our attention was also drawn to Section 13.6(b) (ii) of the Respondents Human Resource Manual which provides that the maximum University liability for any particular journey on retirement or termination shall be provision of a seven tonne lorry or the equivalent of hiring one at the prevailing market rate to the employee's home. We note the Counsel for the Respondent conceded to providing repatriation for the Claimants in paragraph 11 of the written



submissions while relying on the testimony of RW1 during cross-examination. There is therefore a broad measure of agreement by the parties to the present reference that the Claimants are entitled to repatriation. Issue No. 3 is also answered in the affirmative.

**Issue IV: What remedies are available to the parties?**

**Declaration of unfair termination:**

- [45] The Claimants sought a declaration that they were unlawfully terminated. We have answered issue No. 1 in the affirmative and accordingly declare that the Claimants were unlawfully terminated from employment with the Respondent.

**Leave:**

- [46] Having found as we have in respect of leave days in paragraphs 39 and 40, in CEXH 61, the Claimants set UGX 230,000/= as their monthly pay at the date of termination. Accordingly, we award each of the Claimants the sum of UGX 23,000/= representing 3 days of leave for each year of service between 2006 and 2013, multiplied by 8 years totaling to UGX 184,000/=. The total award for leave is **UGX 11,040,000/=**.

**Reinstatement:**

- [47] The Claimants sought reinstatement under **Section 71(5) (a) of the Act** or in the alternative salary arrears in the sum of **UGX 5,763,000,000/=**. The Respondent maintained that the termination was lawful. **Under Section 71(5) of the Act**, if the Court finds that a dismissal was unfair, the court may order the employer to reinstate the employee or order the employer to compensate the employee. The remedy of reinstatement is at the discretion of the Court. At **Section 71(6) (c) of the Act**, the Court may not order reinstatement where it is not reasonably practicable for the employer to reinstate or re-employ the employee. In the matter before us, the Claimants were terminated in the year 2013. There has been a passage of 9 years since the termination. It is this Court's determination that owing to the passage of time, it is not reasonably practicable for the Claimants to be reintegrated into the Respondent's service. There is good grounding for this view in the dictum of this Court in the case of **Grace Tibihikirra Makoko V Standard Chartered Bank(U) Ltd LDR No. 315 OF 2015** where it was held that the court is empowered to order a reinstatement where it considers it reasonable to do so. The court can only order reinstatement in very rare circumstances where it establishes that the trust and confidence between the employer and employee still exists, or that the duration between the termination and the resolution of the dispute between the employer and



employee is recent. In the case of **Omunyokol vs Attorney General**<sup>4</sup>, the Supreme Court of Uganda held that a most compelling reason why reinstatement was not practicable was the long passage of time between the dismissal and the conclusion of the case in the High Court. In that case, both the Court of Appeal and the Trial Judge had found that the circumstances of the case did not favour an order of reinstatement. The courts considered the passage of time, whether the employee would be welcomed back at the place of employment, the idea that an employer should not be forced to take back an employee who is not wanted and whether there is evidence that the employer would welcome the employee. In the case before us, no such evidence was led beyond Counsel for the Claimants suggesting that the Claimants were ready to work until retirement age. We are not satisfied that the remedy of reinstatement is practicable in the circumstances and it is denied.

**Notice:**

- [48] Under **Section 58(3) (d) of the Employment Act**, where an employee has been in employment for a period of more than ten years, the employee would be entitled to not less than three months' notice. Having found as we have in paragraph 34 above, we award the sum of UGX 690,000/= to each of the claimants representing 3 months' pay in lieu of notice. The total award under this head shall be **UGX 41,400,000/=**.

**Severance Allowance:**

- [49] Under **Section 87(a) of the Employment Act**, an employee who is unfairly dismissed is entitled to severance allowance. We have declared that the Claimants were unfairly terminated. We adopt this court's reasoning in **Donna Kamuli Vs DFCU Bank Ltd**<sup>5</sup> where the Court held that absent of a negotiating machinery, the claimant's calculation of severance shall be at the rate of one month's pay per year worked. In the result, we award the sum of **UGX 248,814,000/=** as severance allowance. The said sum is to be applied as follows:

	<b>Claimant</b>	<b>Severance Allowance UGX</b>
(i)	Ajok Beatrice	5,451,000
(ii)	Adongo Florence	2,691,000
(iii)	Akello Suzan	5,451,000
(iv)	Alison Samuel	2,691,000
(v)	Assimwe Rwansigazi Z	2,691,000
(vi)	Auma Maria	5,451,000

<sup>4</sup> S.C.C.A No. 6 of 2012 Per B.J Odoki(C.J Emeritus)

<sup>5</sup> The reasoning was left unchanged by the Court of Appeal in DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016.



(vii)	Ayo Aida	5,451,000
(viii)	Baligeya David	5,681,000
(ix)	Birungi Proscovia	5,451,000
(x)	Bizzola Steven	5,520,000
(xi)	Byaruhanga Richard	3,381,000
(xii)	Kaggwa Babru	5,520,000
(xiii)	Kagugube Henry	2,691,000
(xiv)	Karungi Stella	2,691,000
(xv)	Kasolo Dominic	5,290,000
(xvi)	Kawaluko Stephen	2,691,000
(xvii)	Kayiwa Henry	2,691,000
(xviii)	Kikabi Robert	3,450,000
(xix)	Kimera Edward	5,451,000
(xx)	Kitabuse Jackson	5,520,000
(xxi)	Kyagaba Joseph	3,450,000
(xxii)	Kyambadde Margret	2,691,000
(xxiii)	Kyomuhendo Maria	2,691,000
(xxiv)	Maliselina Misango	5,520,000
(xxv)	Mbabazi Duncan	5,681,000
(xxvi)	Mbabazi Sarah	5,451,000
(xxvii)	Mubbale Wycliff	2,691,000
(xxviii)	Mutwalanda Paul	3,450,000
(xxix)	Nabatanzi Hadijah	5,451,000
(xxx)	Nagujja Sarah	2,691,000
(xxxi)	Najjuma Betty	5,451,000
(xxxii)	Nakaizi Ritah	2,691,000
(xxxiii)	Nakibule Agnes	5,520,000
(xxxiv)	Nakirayi Juliet	2,691,000
(xxxv)	Nakonde Joyce	2,691,000
(xxxvi)	Nalukenge Robinah	5,980,000
(xxxvii)	Namusala Sylvia	2,530,000
(xxxviii)	Namusisi Norah	5,520,000
(xxxix)	Namusisi Tepoista	5,681,000
(xl)	Namutebi Safina	5,520,000
(xli)	Namugaya Lovisa	3,450,000
(xlii)	Namayanga Mary	2,691,000
(xliii)	Nandawula Suzan	2,691,000
(xliv)	Nanfuka Ruth	5,520,000
(xlv)	Nankya Rose	5,520,000
(xlvi)	Nansubuga Clare	2,691,000
(xlvii)	Nassaka Mary	5,681,000
(xlviii)	Ndenzaho Dominic	2,461,000
(xlix)	Nsubuga Richard	2,691,000



(I)	Nyakuru Janet	5,520,000
(li)	Oduru James	2,760,000
(lii)	Ombaru Eunice	3,450,000
(liii)	Sajjabi Wilson	2,760,000
(liv)	Sekiziyivu Robert	2,760,000
(lv)	Semambo Joseph	5,520,000
(lvi)	Ssemakula Amis	5,520,000
(lvii)	SSendagire Yahaya	5,520,000
(lviii)	Ssenyonjo Fred	5,681,000
(lix)	Werwe Shembeza George	2,530,000
(lx)	Zziwa Mathias	3,450,000
	<b>TOTAL</b>	<b>248,814,000</b>

#### General Damages:

[50] The issue for this Court to consider is whether the Respondent should pay general damages. Counsel for the Claimant proposed to the Court a quantum of UGX 50,000,000/= (**Fifty Million Uganda Shillings**). According to their Counsel, persons in the Claimants' salary scale were earning UGX 850,000/= per month at the time of their termination. Counsel cited several case in support of the claim for UGX 50,000,000 in damages. He cited **Jonan Kayiwa and others v A. G LDR 085 of 2017**. In that case the Claimants were earning UGX 9,161,920 per month on a five year contracts and were summarily dismissed 7 months into employment. Counsel also cited the case of **Patrick Musakiriza v African Vending System LDR 72 of 2017**, where the Claimant was earning UGX 1,000,000 per month on a three year contract, he was awarded UGX 10,000,000 in general damages. Finally, Counsel cited the case of **Nyakana Joseph vs Victoria University LDA No. 029 of 2019**, where the Appellant was earning UGX 6,500,000/= and had served the Respondent for 2 and a half years. He was awarded UGX 50,000,000/= in general damages. For the Respondent, it was contended that the circumstances in each of the cases cited were drastically different and did not involve expiry of a temporary contract. Counsel for the Respondent cited the case of **Josephine Kitata vs Kampala Capital City Authority LDA 003 of 2020** in support of the proposition that no damages would be payable where a temporary contract expires.

[51] We have found that the Claimants were unfairly terminated. They had worked for the respondent for periods ranging from 10 to 26 years. They were earning the sum of UGX 230,000 per month at the time of their termination. Considering their respective earnings and time served the sum of UGX 5,520,000/=(**Five Million Five Hundred Twenty Thousand Shillings**) per claimant as general damages, will suffice. In total the Respondent shall pay the



sum of UGX 331,200,000/=(Three Hundred Thirty One Million, Two Hundred Thousand Shillings Only) in general damages.

**Terminal Benefits:**

- [52] Counsel for the Claimant suggested that under Section 18.2 of the manual, the Claimants were entitled to Commuted Pension Gratuity. Section 18. 2 of the manual relates to a Non-Contributory scheme, a scheme to which the employee does not make any contribution. The In-House Retirement Benefits Scheme (IHRBS). The text of the manual clearly reads that IHRBS was non-contributory in nature and fully funded by the University from its Internally Generated Funds (IGF). It was meant for employees on permanent terms of service who had served the University for at least ten years. The scheme closed on 31st March 2009. This implies that employees who assumed office with effect from 1st April 2009 would not benefit from the scheme; and, those still in service by 31st March 2009 and after, who fulfill the above conditions would get benefits calculated up to that date. The benefits would be passed on to the new scheme for those still in service. Under 18.2(a) the entitled staff are all permanent employees on established positions (M.1 – M.15) and Scales (A – P) but not temporary and casual employees. We have found that the Claimants were employed on temporary contracts automatically renewed over the course of their years in service. We must maintain the terms of the temporary contracts. Benefits extended to permanent workers cannot be extended to temporary workers. They would be entitled to benefits in the terms of their contracts. The Claimants are not entitled to terminal benefits within the meaning of the manual and we so find. The claim is denied.

**Interest:**

- [53] Given the inflationary nature of the currency, the total sum awarded in this Award shall attract interest at the rate of 10% per annum from date of Award till payment in full.

**Costs:**

- [54] In respect of costs of the claim, we have ruled in the case of **Joseph Kalule v GIZ LDR 109/2020** that whereas costs follow the event, in labour disputes the award of costs is unlikely to follow the event on account of the nature of the employment relationship. There has to be some form of misconduct on the part of a party for costs to be awarded against a party to an employment dispute. Such misconduct relates to filing a frivolous or vexatious claim, abuse of process or otherwise unreasonable behavior. We do not find any such misconduct on the part of the Respondent. As such, there shall be no order as to costs.

**Orders of the Court:**

- [55] The orders of this Court are:



- (i) It is declared that the Claimants were unfairly terminated from employment with the Respondent.
- (ii) The Respondent is ordered to pay to the Claimants the following sums:
- A sum of **UGX 11,040,000/=** being compensation for leave days.
  - A sum of **UGX 41,400,000/=** being three month's salary in lieu of notice.
  - A sum of **UGX 248,814,000/=** as severance allowance and;
  - A sum of **UGX 331,200,000/=** in general damages.
- (iii) The sums in Paragraph 55(ii) above shall attract interest at the rate of 10% per annum from the date of this Award until payment in full.
- (iv) The Respondent is ordered to repatriate the Claimant's to their home districts.
- (v) There is no order as to costs.

It is so ordered and declared.

Delivered at Kampala this 6<sup>th</sup> day of March 2023

**SIGNED BY:**

**THE HON. JUSTICE ANTHONY WABWIRE MUSANA,**

**THE PANELISTS AGREE:**

- 1. MS. ADRINE NAMARA,**
- 2. MS. SUSAN NABIRYE &**
- 3. MR. MICHAEL MATOVU.**

Delivered in open Court in the presence of:

Mr. Jonan Nuwandinda Rwambuka for the Claimants.

Claimants Mubbale Wycliff and Mutwalanda Paul in Court.

Respondent is absent.

Court Clerk. Mr. Samuel Mukiza.