



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE: REFERENCE No. 013 OF 2021
ARISING FROM BUGIRI-LC/BGR/009/2020

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BIRUNGI JOHNPAUL **CLAIMANT**

VERSUS

BUSIANO FRUITS & HERBS**RESPONDENT**

BEFORE:

10 **THE HON.AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1. MS. ROSE GIDONGO

2.MR. CHARLES WACHA ANGULO

15 **3.MS. BEATRICE ACIRO**

AWARD

BRIEF FACTS

20 According to the Claimant, he was orally employed by the Respondent as her Manager from 17/05/2016, earning Ugx.200,000/- per month and his duties included hiring workers, supervising progress of nursery beds, baselining as well as managing Busiano farmers' Co-operative society. By the time of his termination, he had worked for 2 years. He contended that he was abruptly terminated from employment and he was not paid for a period of 21 months, amounting to Ug, 4,200,000/=.

25 According to the reply to the memorandum of claim, the claimant was one of the
licensees on land on which the Respondent and her husband cultivated various
fruits. The licensees were allowed to grow crops on the land for their own
sustenance, but they were not authorized to harvest the Respondent's fruits. The
claimant was apportioned 5 acres on which he grew maize beans and soya. In
30 2020 when he stopped cultivating on the land, it was given to someone else, but
he had never been appointed to hold any position of responsibility.

ISSUES

1. Whether there existed an employee- employer relationship between
the Claimant and the Respondent?
- 35 2. Whether the Claimant was unfairly terminated by the Respondent?
3. Whether the Claimant is entitled to the remedies sought?

REPRESENTATION

The Claimant was represented by Ms. Erina Kawakya of Platform for Labour
Action, Kampala, the Respondent did not enter appearance.

40 RESOLUTION OF ISSUES

The Respondent in this case did not file a trial bundle or witness statement and
by the time the matter was called for pre-session, on 15/03/2022, none had been
filed, despite being effectively served from as far back at December 2021.

Counsel Kawalya for the Claimant, therefore prayed to proceed *ex parte*, which
45 Court granted, having satisfied itself that the Respondent was effectively and
served severally and there was no explanation why the Respondent had not
completed filing of her pleadings. Counsel also prayed for leave to admit
additional documents on behalf of the Claimant in accordance with Order 18 rule
1 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act, which
50 Court granted.

The case was set down for formal proof on 22/03/2022 and evidence was adduced by the Witness himself and on his behalf by a one Owori Alex.

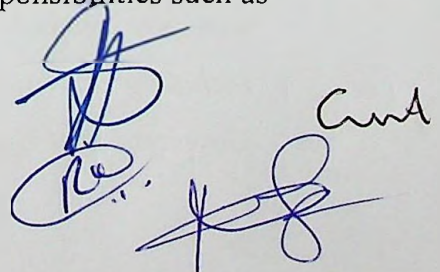
EVIDENCE

The Claimant testified that on 17/05/2016, he was orally employed initially as the Respondent's assistant Manager and later on 18/05/2016, as the Manager, 55 earning Ugx. 200,000/- a month. He worked for 24 months and was only paid for 3 months that is, July 2016, January 2017 and December 2017. He claimed that he was assaulted and hospitalized for 1 month with no support from the Respondent and when he returned to work he found that, he had been replaced by 60 someone else. According to him he was not given the reasons for his replacement. He also stated that, the Respondent refused to pay him resulting in him filing a complaint before the labour officer. The Respondent denied ever engaging him as an employee but rather as a potter whom she paid per piece rate. He contended that he was unlawfully terminated.

Alex Owori who testified on his behalf, stated that farmers who wanted land for 65 cultivation on the Respondent's land, were directed to go through the Manager who was the Claimant. According to him, he paid a fee of Ugx, 35,000- as registration and for hire for land for cultivation purposes, for a period of 2 years and during this period, the Claimant was the Manager.

70 **1. Whether there existed an employee- employer relationship between the Claimant and the Respondent?**

It was submitted for the Claimant that, Section 39 of the Employment Act is to the effect that, a casual employee can only be employed for such for a period not exceeding 1 month, and would cease to be considered as a casual employee 75 if he or she engaged as such for 4 continuous months. The employee would then be entitled to a written contract granting him or her all rights and benefits enjoyed by employee. Therefore the, Claimant having been given responsibilities such as



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banking money for the cooperative society which is ordinarily carried out by managers, this was evidence that, he was not a casual worker or potter but an employee. She further argued that, According to Counsel the cash deposits the Claimant made on behalf of the cooperative society in December 2017, are evidence that the Claimant was still rendering services from May 2016, beyond the 4 months provided for under section 39 (supra). She argued that the fact that he signed on behalf of Busiano Fruits and Herbs, the Respondent's Company as evidenced on Receipt marked "E2" was proof that he used to receive money for registration and shares for the Cooperative, on behalf of the Co-operative society therefore he was not a stranger.

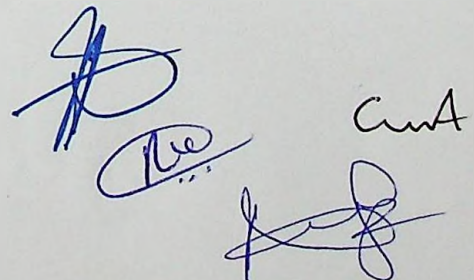
DECISION OF COURT

This Court in Kasito Robert vs Services and Computer... State that, *the term "employment status" denotes the legal status and classification of persons in employment. It is an agreed principle in labour relations that, there are 3 main categories of employment status under the law. These are the workers, the employees and the self-employed. According to the Employment Relationship Recommendation No. 198 of 2006, these should be defined by statute bearing in mind that an employment relationship relates to the performance of work and whether there is remuneration of the person seeking work, whether the work is carried out according to instructions and control of the employer which involves integration of the person into the organization, whether it is performed solely for the benefit of the employer, or it is carried out personally by the person and it is carried out within specific working hours or at a specified work place or one agreed by the person seeking work among many others.*

The Employment Act defines an "employee" under section 2 as "...any person who has entered into a contract of service or an apprenticeship contract, including and without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Police Service, a local authority

or parastatal organization but excludes a member of the Uganda people's forces...". Therefor from the onset the employment relationship or status is based on a contract of services or apprenticeship, whether written or oral, express or implied. Although the responsibility of preparing a written contract is placed on the shoulders of an employer, any person claiming employment rights must prove the existence of an employment relationship, even in the absence of any documentary evidence of employment or termination of employment , the claimant is expected to adduce evidence to prove the existence of such an employment relationship.

115 The Claimant in the instant case claims he was employed as the Respondent's Manager on oral terms for a period of 24 months and he was only paid for only 3 months (July 2016, January 2017 and December 2017). It was also his testimony that, his duties included hiring workers, supervising progress of nursery beds, baselining as well as managing Busiano farmers' Co-operative society. The only evidence he adduced to support his claim however, was a receipt which was adduced by CW2 which was in support of his allegedly role as collector on behalf of the Farmers cooperative Society. A cooperative Society by its nature is a membership organisation with Corporate identity (see Section 4(3) of the Cooperative Societies Act Cap 112,) therefore it cannot be owned by an individual such as the Respondent. Therefore his role had to be governed by the bylaws of the cooperative union. In any case we failed to draw a nexus between this purported role as collector for the Farmers' co-operative society which ais supposed to be an independent entity and his alleged employment with the Respondent. In any case, the receipts which he adduced as evidence, marked "E1 and "E2" are all in the names of the Busaino Fruits and Herbs and not in the names of the Cooperative society which should ordinarily have an independent identity. We also noted that on the face of it, the signatures on the 2 receipts were different and the claimant did not provide a sample/specimen signature to

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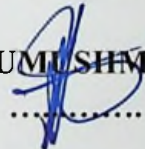
enable Court to determine whether he actually signed the said receipts especially
135 given that each receipt had a different signature. Similarly, the training
certificates he attached as evidence that the Respondent sent him for training, did
indicate anything to link the training or the Claimant to the Respondent.

In addition, he did not adduce any evidence regarding the other duties he claimed
he performed for and on behalf of the Respondent. In the circumstances we found
140 it hard to believe that he was continuously serving the Respondent from May
2016, until the purported termination, moreover without receiving any payment
for 21 months, and without making any complaint about it. It seems to us that in
fact he was engaged on casual basis given that he only received payment in July
2016, January 2017 and December 2017. There was no evidence to indicate that
145 he served for 4 continuous months as provided under section 39(supra). It is
therefore not farfetched to believe what the Respondent stated in her reply that
the Claimant was actually a licensee on her land and nothing more.

In conclusion, it is our finding that the evidence adduced by the claimant has not
established that there was an employee- employer relationship between him and
150 the Respondent, therefore this claim has no basis.

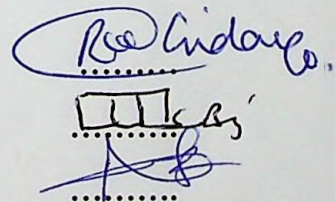
This claim therefore fails, it is therefore, dismissed with no order as to costs.

**THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSHIME
MUGISHA**



PANELISTS

- 155 1. MS. ROSE GIDONGO
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DATE: