



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA,
LABOUR APPEAL NO. 002 OF 2022
(Arising from Labour Dispute No. MGLSD/LC/018/2020)

MUSINGUZI TIMOTHY:.....APPELLANT

VERSUS

EBBO SACCO LTD:.....RESPONDENT

Before:

1. The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

Representation:

1. Ms. Gloria Abaruhanga of M/s. Jason & Co Advocates for the Appellant.
2. Mr. Frank Semmuju for the Respondent.

AWARD

Introduction

- [1] This is an appeal against the decision of Mr. Apollo Onzoma, Labour Officer at the Ministry of Gender, Labour, and Social Development (MGLSD), who, on the 3rd of December 2021, found that the Appellant had been unlawfully terminated and awarded one month's pay in the sum of UGX 683,000/= as compensation for failure to give a hearing under Section 66(4) of **the Employment Act, 2006(from now EA)**, UGX 1,730,266/= as three months unpaid salary, UGX 2,049,000/= as severance allowance and one month's notice pay. No order for damages was made.

The Appellant's case at the Labour Office

- [2] In his memorandum of claim, the Appellant sought recovery of salary for his residual contract term and aggravated and general damages for wrongful and unlawful dismissal and breach of contract. He led evidence of having been employed on a two-year fixed-term contract on the 25th day of March 2016. Owing to his performance, he was promoted to branch manager at the Respondent's Bwizibera Branch. On 25th February 2019, he was sent on forced leave; on 7th May 2019, he was arrested on allegations of theft. He testified that he did not receive his terminal benefits from the time he was sent on forced leave. He suggested that the Respondent was complicit in fraud and misrepresentation and had falsely complained to the Uganda Police. He asked for about UGX 180,000,000 under various heads of special damages.

The Respondent's case at the labour office

- [3] The Respondent opposed the claim, generally denying the Appellant's claim. The Respondent admitted having sent the Appellant on forced leave after he had been unprofessional, was suspected of theft, and absconded from duty. He was given a warning, but the fraud went unabated. The transfer was in mitigation of the Claimant's conduct. He later attended a disciplinary hearing on the 25th of February 2019, in which he admitted his misdeeds and promised to repay the Respondent in 21 days. He made further promises to make refunds but did not do so.

The Labour Officer's award

- [4] The Labour Officer, considering the lawfulness of the claimant's termination, found that the suspension for two months was illegal and contrary to section 62EA. He also concluded that the Respondent's asking the Appellant to clear with the Uganda Police after his arrest was unreasonable conduct, and the Appellant was constructively dismissed. The Labour Officer determined the termination to be unlawful because the Claimant was asked to appear before a disciplinary committee, and no evidence, including the investigation report, was adduced to enable the Claimant to defend himself. The Labour Officer also found this contrary to Sections 66 and 68EA. He awarded the Claimant one month's pay in the sum of UGX 683,000/= as compensation for failure to give a hearing under Section 66(4) of the **Employment Act, 2006(from now EA)**, UGX 1,730,266/= as three months unpaid salary, UGX 2,049,000/= as severance allowance and one month's notice pay. He declined to grant a repatriation allowance and any damages.

The ground of appeal

- [5] By a memorandum of appeal dated the 23rd of November 2022, the Appellant filed this appeal on the following ground;

"The Learned Labour Officer erred in law when he wrongly computed the monthly salary payable to the Appellant thus arriving at an erroneous decision."

We were asked to admit the appeal, set aside the Labour Officer's award, reevaluate the evidence, and properly compute the salary.

- [6] On the 20th of October 2023, we invited Counsel to address the Court through written submissions. As at the dates of coram, preparation, and rendering of this award, neither Counsel had placed any written submissions before the Court. While there is no requirement to file submissions nor a penalty for failure to file submissions is stated under both the Labour Disputes(Arbitration and Settlement)(Industrial Court) Procedure Rule, 2012 (*from now IC Rules*) and the Civil Procedure Rules S.I 71-1(*from now CPR*), under Order 17 Rule 4 CPR, the Court has discretion to decide how to proceed with the suit if a party has failed to do as directed.¹ We have also counseled that filing written submissions or making oral submissions is an opportunity for parties in a case to articulate their respective arguments. It is a significant opportunity to put context to the law and, in the case of an appeal, to direct the appellate Court to the fault of a trial Court. The practice of not filing submissions is inimical to the pursuit of justice. It does not aid to the course

¹ Per Rugadya Atwoki J. in *M.K Creditors Ltd v Patrick Owora H.C.M.A No. 143 of 2015* <https://ulij.org/akn/ug/judgment/ugcommc/2017/105/eng@2017-09-12/source.pdf>

of justice. That notwithstanding, we have a bounden duty and will, therefore, proceed to determine the appeal.

Analysis and decision of the Court

- [7] The Labour Officer was faulted for wrongly computing the salary payable to the Appellant. The evidence from the lower court record demonstrates that on the 25th of March 2016, the Appellant was employed as a loan officer with the Respondent. The appointment letter was attached as annexure "A" to the memorandum of the claim. In paragraph 10 of the said letter, the Appellant was granted a salary of UGX 1,252,000/=. He was also to be paid reimbursement for housing, medical, welfare, and telephone charges. The Appellant accepted the terms and conditions of the appointment. On the 26th of March 2018, the employment contract was renewed, and the gross salary was indicated as UGX 500,000/=. All other terms and conditions remained the same. On the 29th day of January 2019, the Appellant was transferred to the Respondent's Bwizibera Branch as assistant Branch Manager. The transfer was stated to result from the Appellant's misconduct. On 11th February 2019, the Appellant prepared a handover report. On the 25th day of February 2019 he was sent on forced leave without pay. On the 28th of March 2019, the forced leave was extended without pay.
- [8] For recap purposes, the Labour Officer determined the suspension to be unlawful. Regarding earnings, the Labour Officer referred to the account statement at the hearing showing that the Appellant was earning UGX 683,000 as salary in February 2019 when he was suspended.
- [9] The documentary evidence laid before the Labour Officer included the appointment letter dated 25th March 2016. This indicated a gross monthly salary of UGX 1,252,000/=. The renewal of the contract letter dated 26th March 2018 stated a gross monthly salary of UGX 500,000/=. The other document was a bank statement in the name of the Appellant and for account number 200200.6889. This bank statement contains 30 entries indicating payment of salary to the Claimant. The Labour Officer relied on this statement.² They are as follows:

Date	Value Date	Trx No.	Description	De bit	Credit	Balance	Days without
	22/04/2016	7024662G	SALARY APRIL 2016	0	1,000,000	1,112,000	
	20/05/2016	6222082G	SAL MAY 2016	0	1,000,000	1,022,000	
	22/06/2016	5062814G	SAL JUNE	0	1,000,000	1,022,000	
	01/07/2016	4156734G	SAL JULY	0	1,000,000	1,132,000	
	01/07/2016	4161428G	SAL ADVANCE AUGUST-TIMOTHY	0	600,000	1,732,000	
	24/08/2016	4877567G	SAL TOP-UP AUGUST	0	400,000	422,000	
	24/09/2016	5102915G	SAL SEPT	0	1,000,000	1,012,000	
	24/10/2016	6851560G	SAL OCT	0	1,000,000	1,042,000	
	22/06/2016	5062814G	SAL JUNE	0	1,000,000	1,022,000	
	01/07/2016	4156734G	SAL JULY	0	1,000,000	1,132,000	
	01/07/2016	4161428G	SAL ADVANCE-TIMOTHY	0	600,000	1,732,000	
	24/08/2016	4877567G	SAL TOP-UP AUGUST	0	400,000	422,000	
	24/09/2016	5102915G	SAL SEPT	0	1,000,000	1,012,000	
	24/10/2016	6851560G	SAL OCT	0	1,000,000	1,042,000	
	03/11/2016	3788035G	SAL NOV	0	1,000,000	1,532,000	
	20/12/2016	5017980G	SAL DEC	0	1,000,000	1,026,000	
	23/12/2016	3235930G	SALARY	0	1,000,000	1,026,000	
	23/01/2017	7478107G	SAL	0	1,000,000	1,030,000	
	24/02/2017	5439532G	SAL FEB	0	426,000	487,250	

² Mr. Onzoma indicates so in paragraphs 7 and 8 of the award on page 9 of the Record of Appeal.

22/03/2017	6563512G	SAL MARCH	0	426,250	513,250	
20/04/2017	5492099G	SALARY FOR APRIL 2017 TIMOTHY	0	426,250	498,200	
19/05/2017	5460183G	MAY SALARY FOR TIMOTHY	0	426,250	549,200	
20/06/2017	6844588G	JUNE SALARY TIMOTHY	0	426,250	549,200	
18/07/2017	3047816G	JULY SALARY FOR TIMOTHY	0	426,250	426,250	
11/08/2017	6314984G	AUGUST SALARY FOR TIMOTHY	0	426,250	1,800,000	
20/09/2017	3536350G	SEPT SALARY FOR TIMOTHY	0	426,250	428,799	
24/10/2017	5983222G	OCT SAL FOR TIMOTHY	0	426,250	640,532	
20/11/2017	6416508G	NOV SAL FOR TIMOTHY	0	426,250	645,865	
18/12/2017	6679968G	dec sal for timothy	0	426,250	2,628,092	
10/01/2019	190110687473 771Y4	Salary Jan 2019	0	683,000	2,518,282	
06/02/2019	190206676150 6771Y4	Salary Feb 2019	0	683,000	(683,000)	

- [10] The three pieces of evidence on the salary payable to the Appellant are the appointment letter, the renewal letter, and the bank statement. The initial appointment letter had the sum of UGX 1,252,000/=. The renewal letter listed a monthly salary of UGX 500,000/=. The statement of account that the Labour Officer relied upon listed a final monthly salary of UGX 683,000/= at the time of the Appellant's exit from the Respondent. During the hearing before the Labour Officer, the Appellant did not provide evidence to demonstrate that he opposed the variation of his salary from UGX 1,252,000/= to UGX 500,000/=. He did not plead to such variation, which would have been determined to be unreasonable conduct by the employer.³ The Appellant accepted the transfers and only made the case for unlawful termination after he was sent on forced leave in February 2019. The sole ground of appeal was that the Labour Officer erred in the computation of salary, but our review of the evidence is that upon the materials placed before the Labour Officer and contained in the entire lower record shows that the Appellant was earning UGX 683,000/= at the time of his termination. He adduced the statement of account as his evidence and attached it as Annexure "A" to his rejoinder. In his written submissions before the Labour Officer, the Appellant suggested that his salary was UGX 3,400,000/= per month. This was not supported by the evidence adduced at the hearing. The claim for UGX 3,400,000/= as monthly salary was unsupported by the evidence and remains unproven. In this case, the reasoning and finding of the Labour Officer cannot be faulted. On the evidence available, the finding that the exit salary was UGX 683,000/= per month was correct. As a result, the sole ground of appeal fails.

Final decision

- [11] We decline to set aside the Labour Officer's finding that the Appellant was earning UGX 683,000 per month at the time of his termination. We determine that the Labour Officer did not erroneously compute the monthly salary.
- [12] On costs, our dictum is that costs do not necessarily follow the event in employment disputes.⁴ In the case before us, the Respondent appeared for the hearing and did not file a cross-appeal or any arguments or submissions contesting the appeal. Beyond appearing before the Court, the Respondent took no other step. We are, therefore, not inclined to find any exception to our dicta in the Kalule case. There shall, therefore, be no order as to costs.

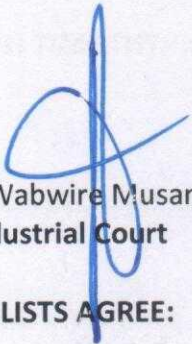
³ In *Tibenkana Edith v London Distillers Ltd LDR 146 of 2019*, the Industrial Court, relied on the Philippines Supreme Court decision in *Albert Tinto Vs Smart Communication Inc (G.R. No. 171764)* for the proposition that a reduction in salary on transfer was unreasonable conduct.

⁴ See *Joseph Kalule v GIZ LDR 109 of 2020*

[13] In the final analysis, the appeal is dismissed with no order as to costs.

[14] I direct the Registrar of this Court to deliver the award in the presence of the parties.

Signed in Chambers at Kampala this 8th day of December 2023


Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga.







Date 15th December 2023

Time: 2:30 p.m.

Appearances

- | | |
|------------------------|-----------------------|
| 1. For the Appellant: | Ms. Gloria Abaruhanga |
| 2. For the Respondent: | None |

Court Clerk: **Ms. Juliet Nabuuma**

Court: Award delivered in open chambers

Sylvia Nabbagala Mbuga,
Registrar, Industrial Court