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**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT JINJA**  
**LABOUR DISPUTE REFERENCE No. 001 OF 2023**  
**ARISING FROM BUSIA LABOUR COMPLAINT 01/2022**

10 **WANDERA JOHN .....CLAIMANT**

**VERSUS**

**BUSIA DISTRICT LOCAL GOVERNEMENT ..... RESPONDENT**

**BEFORE:**

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

15 **PANELISTS**

**1. MR. EBYAU FIDEL**

**2. MS. HARRIET MUGAMBWA NGANZI**

**3. MR. FX MUBUKE**

**AWARD**

20 **BACKGROUND**

About 1991, the Claimant was employed by the Respondent, as a grade 111 Education Assistant and he was earning Ugx. 450,000/= per month. According to



him, he stopped receiving his monthly salary in June 2016, but he continued rendering his services to the Respondent until 2020, when he attained mandatory retirement age. Upon successfully completing his tour of duty, the District Service Commission under minute no 15/2020 agreed to regularize his appointment, however despite making numerous demands for his retirement benefits, his pension and his wages were not paid. Instead, he was advised to rectify his birth date, which he did. He was later informed that his file got burnt when the district records office caught fire, therefore, he could not access his retirement benefits. He contended that having worked for the Respondent for over a period of 29 years, he was entitled to retirement benefits as provided for under the law. On 19/10/2022, he filed his complaint at the Labour Officer Busia District, who he referred it to this Court after he failed to resolve it, hence this suit.

The Respondent denied his claims and stated that, he was struck off the payroll because he absconded from duty. She further contended that the Respondent should not be faulted for the discrepancies on the Claimant's date of birth, which was the reason he was not paid his retirement benefits.

### **REPRESENTATION**

The Claimant was represented by Julius Ibembe of M/s BIS Associated Advocates & Legal Consultants, Kampala, while the Respondent was Represented by Olocho , State Attorney, of M/s Attorney General's Office, Mbale Regional Office.

### **ISSUES**

1. Whether the Claimant's Claim is time barred?
2. Whether the Claimant absconded from duty and if so, what is the effect?



3. Whether the Respondent followed the established procedures in deleting the Claimant from the pay roll?

4. What remedies are available to the parties?

## SUBMISSIONS

### 50 Issues 1: Whether the Claimant's Claim is time barred?

Counsel for the Respondent submitted that any claims for salary arrears incurred before October 2019 are time barred, because they are brought after more than 3 (three) years contrary to Section 3 (2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 which provides that: *no action founded on*  
55 *contract shall be brought against the Government or against a local authority after the expiration of three years from the date on which the cause of action arose.*

He further submitted that, the Claimant filed this matter before the labor officer of Busia in October 2022 and the instant suit in 2023, wherein he is claiming among other things salary arrears from 2016 June up to 2020, when he retired, which is  
60 more than 3 years therefore his claim is time barred.

In reply, it was submitted for the Claimant that, Section 41 of the Employment Act entitles an employee, to wages for work done, and 47(2) (a) and (b) requires an employer who violates section 41 to pay an employee for work performed not later than 6 years. He insisted that the Claimant having complained to the Labour officer,  
65 within this period his claim was not time barred.

He further submitted that, the Claimant retired in 2020 and prior to his retirement, the Respondent kept promising that, he was going to pay his salary. He lodged a complaint with the Labour officer of Busia on the 19/10/2022, because the expectation was that his salary would be paid in 2020, following the regularization





70 of his employment on 15/10/2020, when he was confirmed in employment.  
Therefore, time started running from 15/10/2020 and by then the 6 years had not  
lapsed.

Counsel for the Respondent argued that, Counsel Claimant wrongly applied Section  
47 of the Employment Act 2006, because this section only deals with unlawful salary  
75 deductions by an employer, yet the Claimant's claim was for among other things  
salary arrears and not unlawful deductions. He relied on **Nabisere vs Mutebi and  
Another, Civil Suit No.565 of 2012**, in which it was held that:

*"Statutes of limitation are by their nature strict and inflexible enactments. Their  
overriding purpose is interest republicae ut fins litum, which means that litigation  
80 shall automatically be stifled after a fixed length of time irrespective of the merits of  
the case. Statutes of limitation are not concerned with the merits. Once the axe falls,  
it falls and a defendant who is fortunate enough to have acquired the benefit of the  
statute of limitation is entitled of course to insist on his strict rights."*

According to Mr. Olocho part of the claims in this suit are now time barred and  
85 particularly, the claim for salary arrears which arose before October 2019, because  
it was brought after more than 3 (three) years contrary law applicable. He prayed  
that Court should not consider any claims for salary arrears before October 2019 as  
time barred by law.

### **DECISION OF COURT**

90 Indeed, statutes of limitation are strict and inflexible in nature. It is therefore  
important to establish when time began to run. After carefully analyzing the record,  
we established that this case has had a unique and checkered history. According to  
the letter dated 15/10/2012, marked annex. "D" at page 69 of the Claimant's trial



bundle, the Claimant was employed in Government Service as grade III Education  
95 Assistant on 1/05/ 1991. According to him he was earning Ugx. 450,000/- per month  
and this was not disputed. It is also not in dispute that, he served in various schools,  
before his name was expunged off the pay roll in June 2016. However, the  
attendance book on the record did not show that he worked during the year 2016,  
because it shows that he started registering his name in it from 2017. It was his  
100 evidence that, he was not allowed to sign in the book because he did not have his  
posting instructions at the time and this was confirmed by the Head teacher in her  
letter to the CAO dated 26/06/2019 at page 3 of the Claimant's trial bundle. In this  
letter she acknowledged that she received his posting instructions in June 2019.  
However, he only accessed the attendance book in 2017. This in our considered view  
105 strongly suggested that, he did not work from June 2016, until 2017 when he started  
signing in the book, therefore it would not be farfetched for this court to presume  
that, he resumed work formerly in 2017, even if the Headteacher acknowledged  
receipt of his posting instructions in 2019. This is because the evidence shows that,  
he assumed duty at Masafu primary school on 19/06/2017.

110 It is also not in dispute that, there were discrepancies with his date of birth, which  
he rectified. Subsequently his employment was regularized. We reiterate that, even  
if the Integrated Personnel and Payment System, (IPPS ) indicated that, he was  
deleted from the payroll, the attendance book on the record and the Head teacher's  
letter to the CAO(supra), demonstrates that, he returned to work in 2017. RW1  
115 Ojambo Wyclif Sumba, the Respondent's PHRO testified that, the Claimant's  
records were burned in a fire that gutted the District Office in November 2022,  
however he attached a document Marked "A" on his witness statement which  
showed that the Claimant sought to be reinstated on the payroll in 2018. It is also on





record that the Head Teacher of Masafu recommended the Claimant's reinstatement  
120 on the grounds that, he was a hardworking teacher. This was indication that, the  
Claimant resumed work in 2017, and after resumption of duty he worked without  
pay, until he retired in 2020. It is clear from this letter which was tendered on the  
record by the CAO, that, the Claimant requested for reinstatement, but he was not  
assisted, despite the fact that he continued to render services to the Respondent, at  
125 Masafu Primary School and this was confirmed by the Head Teacher in her letter to  
the CAO in 2019 and the note she made on his request for reinstatement in 2018.

The chronology of evidence therefore suggests that, whereas the Claimant was  
deleted from the payroll in June 2016, he resumed his duty in 2017 and he continued  
working at Masafu primary school, until he attained his statutory retirement age. The  
130 record further shows that he tried to exhaust the administrative means to get  
reinstated on the payroll and to process his retirement, and as a result his employment  
was regularized by the Respondent on 15/10/2020.

Clearly, he only resorted to seeking redress from Court in 2022, when he failed to  
get justice under the same administrative processes, yet up to 15/10/2020, there was  
135 indication that his matters were being resolved, especially following the  
formalization of his employment in the Respondent's service. It was also clear to us  
that, he only filed a complaint with the Labour Officer after he failed to process his  
pension with the Respondent, and this was in accordance with the law.

We believe that the legislature was alive to the requirement to undertake Alternative  
140 Conflict Resolution mechanisms in all Labour Disputes, such as internal  
inquiries, investigations, internal disciplinary hearings, given the provisions under  
Sections 62 on disciplinary penalties, 63 on suspension, 64 on employee complaints  
and 66 on a fair hearing, of the Employment Act. Therefore before a complaint is



formally filed before a Labour Officer, the complainant must be subjected to a  
145 disciplinary mechanism, therefore, such processes should be taken into  
consideration when computing time.

It is not in dispute that the Claimant in the instant case, filed his complaint before  
the Labour Officer after he failed to get his salary arrears paid and his pension  
processed, following his confirmation in service on 15/10/2020 and not in 2016 as  
150 counsel for the Respondent asserts. It is our considered opinion, that having  
reinstated him in service he was entitled to receive his earnings for the period he  
served from 2017 until his retirement and as already discussed the evidence on the  
record indicates that he demanded for the payment of his arrears and pension until  
his retirement in 2020, when he decided to make a formal complaint to the Labour  
155 Officer.

We are therefore inclined to agree with Mr. Ibembe, for the Claimant that, time  
began to run from 15/10/2020, when no further action was taken by the Respondent  
to resolve the payment of his salary arrears and his pension and not in 2016, when  
he was removed from the payroll, as Counsel Olocho for the Respondent would like  
160 this Court to believe.

Therefore, the complaint he filed before the Labour Officer, in respect of the non-  
-payment of his salary arrears and pension when he retired, was done within the  
time prescribed under Section 3 (2) of the Civil Procedure and Limitation  
(Miscellaneous Provisions) Act Cap 72 which provides that: "... *no action founded*  
165 *on contract shall be brought against the Government or against a local authority*  
*after the expiration of three years from the date on which the cause of action*  
*arose.....*" which is still good law, because Mr. Ibembe's, assertion that, section  
3(2) (supra) was rendered unconstitutional by the Constitutional court in **Nampogo**





**Robert and Another vs Attorney General**, is not the correct. This is because the  
170 Constitutional Court in this case considered the constitutionality of **Section 2 (1) of  
the Civil Procedure and Limitation(Miscellaneous Provisions ) Act Cap 72** and  
not section 3(2).

In conclusion, it is our finding that this claim is not time barred.

**ISSUE 2: WHETHER THE CLAIMANT ABSCONDED FROM DUTY AND  
175 IF SO WHAT IS THE EFFECT?**

The Claimant in his evidence in chief under Paragraph 3 of his supplementary  
witness statement, denied ever absconding from duty. He relied on his letter to the  
Respondent's CAO, dated 13/06/2018, requesting for reinstatement to the payroll in  
2016, marked as Annexure A. and the Headteachers recommendation that his is  
180 reinstated .

Counsel Ibembe refuted the evidence from the Integrated Personnel and Payment  
System(IPPS), which was adduced by Mr. Ojambo the Principal Human Resources  
Officer, because it was not authenticated, and its source was not established. He  
took issue with the fact that during cross examination, Mr. Ojambo failed to prove  
185 its source, therefore Annexure "C" failed the test contained under Section 8(2) of the  
Electronic Transactions Act 2011 relating to proof of its authenticity.

He further refuted the assertion that, the Claimant absconded because, his immediate  
Supervisor, the Head Teacher was recommended his reinstatement as evidenced by  
her comments on annexure "A" attached to the RW1's witness statement, indicating  
190 that, the claimant was hard working.

He further contended that, although the Respondent claimed that the Claimant's  
documents which were in her possession, were burnt among the records which burnt



in fire that occurred at the district, she managed to attach some of the documents the claimant had submitted to her but none indicated that the Claimant absconded from  
195 duty. He contended further that there was no record of any hearing relating to the  
Claimant having committed this offence even though he continued to work for the  
Respondent. He prayed that court makes a finding that the claimant never absconded  
from duty since there was no report and/or any complaint given either to the DEO  
or CAO stating that the claimant had absconded warranting action of the respondent  
200 to delete the claimant from the pay roll.

In reply, Counsel for the Respondent submitted that, RW1, Mr. Ojambo, the  
Principal Human Resource Officer testified on Oath during cross examination in  
Court that, there was Report which was prepared which he personally saw, and  
which demonstrated that, the Claimant absconded from duty and it was the basis  
205 upon which the Claimant was removed from the pay roll. Counsel argued that even  
if the Report was not adduced in Court, the fact that the Principal Human Resource  
Officer testimony on oath was sufficient, because he personally worked on the  
claimant's abscondment case and besides, the Claimant's Counsel did not apply for  
production or discovery of this Report. According to him, this, was further proved  
210 by Annexure A (REX 1) the Claimant's letter requesting for reinstatement, on which  
he inscribed at the bottom left corner of this letter, a comment to the effect that, the  
Claimant absconded from duty and could not be reinstated without a disciplinary  
process and he personally wrote that note, therefore the Claimant absconded from  
duty because he personally worked on this case.

215 He refuted the Teacher's attendance book, which the Claimant relied on because it  
starts from 2017 and yet he was removed from the pay roll in 2016 due to  
abscondment. According to him, the Claimant failed to prove that, he was actively





working between 2016-2017. He contended that the Public Service Standing Orders provide that, an officer who has not reached retirement and is alive can only be removed from the pay roll due to abscondment. Therefore, the Claimant could not be reinstated without a disciplinary process as required by Section A-n of the 2010 Public Service Standing Orders. He further relied on the evidence of RW1, who said that, upon checking the IPPS (Integrated Payment Personnel System) system/website, a screen shot/grab of which was attached as REX3, showed that the claimant's pay was stopped because of abscondment from duty.

He relied on the case of **Amongin Jane Frances Okili versus Lucy Akello and Electoral Commission Election Petition No.1 of 2014**, in which Justice Mutonyi held inter alia, in regard to digital evidence that, the person who recorded or collected the digital evidence in Court should be present in Court to testify on the authenticity of the digital evidence so as to fulfill the requirements of Section 8(5) and 6 of the Electronic Transactions Act, therefore RW1 having testified that he is the one who personally accessed the IPPS system on computer and took the screen grab/shot, the evidence met the requirements under ETA.

He further asserted that, under Section A-n, paragraph 17-19 of the Uganda Public Service Standing Orders 2010 provided that, it is the responsibility of a public officer to inform in writing the responsible officer about his or her absence from duty. The responsible Officer shall require a public officer who is absent from duty for fourteen days to resume duty immediately with a written explanation for his/her absence. In the absence of communication from the officer or failure to resume duty within thirty days, the officer shall be deemed to have abandoned duty. The responsible officer is then enjoined in mandatory terms to stop the salary immediately and submit to the appointing authority a formal directive of his or her removal from public service on



abandonment of duty. If the officer abandons duty, then he/she shall forfeit all rights and privileges attached to his/her office with effect from the date of abandonment.

245 He insisted that the effect of the above-mentioned provision of the Uganda Public Service Standing Orders is that if an officer absconds from duty, then his/her salary shall be stopped. The Claimant could not be reinstated without a disciplinary process as required by Section A-n of the 2010 Public Service Standing Orders. The Claimant's salary was stopped due to abscondment pursuant to the above cited  
250 provisions of the then Uganda Public Service Standing Orders.

### **DECISION OF COURT**

#### **WHETHER THE CLAIMANT ABSCONDED FROM DUTY AND IF SO WHAT IS THE EFFECT?**

The Guidelines from the Public Service Commission, to the District Service  
255 Commission(revised), 2021, provide that:

*Abandonment of duty or abscondment from duty occurs when an employee stops reporting for duty on his own will without being forced to, with or without giving justifiable reasons to his or her immediate supervisor. When this happens the supervisor should make an effort to call him or her  
260 back giving a specific time period, after which, in event of failure, the cases should be submitted to the relevant Appointing Authority to regard the employee as having abandoned duty and resigned accordingly with effect from a specified date. It is the onus of an officer to inform his supervisor of his absence, otherwise he or she will automatically be regarded as having  
265 abandoned duty and resigned accordingly after an absence of thirty (30) continuous working days."*



Therefore, the Court must examine the following before making a determination that an officer absconded from duty:

- a) *He or she stopped reporting for duty on his or her own volition.*
- 270 b) *He or she did not give his or her immediate supervisor justifiable reasons why he stopped reporting for duty.*
- c) *The immediate supervisor made an effort to contact the officer and give him or her a specific time to report back.*
- d) *The officer failed to report back within the time specified.*
- 275 e) *The Supervisor reported to the relevant Appointing Authority regarding the Officers abandonment of duty.*
- f) *The Officer should have been absent without justifiable reason for 30 continuous days.*

We have already established that the Claimant did not adduce any proof that, he  
280 worked between June 2016 when he was deleted from the pay roll until 2017 when he started signing in the attendance book at Masafu Primary School. **Did this mean that he absconded from duty?**

Whereas it is established that the Claimant was absent without any explanation, because he had no documentary evidence to account for his absence between June  
285 2016 and 2017, as guided by the Definition of abscondment(supra), the Respondent through the Claimant's immediate supervisor should have contacted the Claimant about his absence and issued him with a specific date in which he was expected to return, failure of which a submission ought to have been made to the District Service Commission which is the Appointing Authority regarding his absence from duty.

290 There is nothing on the record to indicate that the Respondent made any submission in that regard. It is not sufficient that the PHRO Mr. Ojambo, testified on oath that,



there was a report to that effect without producing the report. It is immaterial that he stated that he personally handled the case. If the report did exist, as the custodian of the everything pertaining to Human Resources at the Respondent, he should have produced it in court, but he did not do so. . We do not associate with the submission that his testimony on oath without the documentary evidence for the court's evaluation. There was no further evidence to indicate that the matter was referred to the DSC as required.

The description of what must be done by the supervisor as provided in the Public Service guidelines, where an officer has absented himself or herself, suggests that such an Officer would not be automatically penalized. In our understanding such an Officer was supposed to be given an opportunity to explain his or her absence from duty before any penalty could be imposed on her.

Just like PW1 stated that, he found it ridiculous that the Claimant should be reinstated onto the payroll without subjecting him to a disciplinary process, we equally found it peculiar that the Claimant was deleted from the same payroll without subjecting him to a disciplinary process which is well set out in the guidelines under chapter 12.3 including but not limited to preliminary investigations, submissions to the Solicitor General to prefer charges, notification and interdiction, an opportunity for the Officer to respond, a fair hearing to the accused Officer and the decision taken. This procedure is very similar to the provisions under section 66 of the Employment Act, which makes it mandatory for an employer who intends to terminate or dismiss an employee on grounds of misconduct or poor performance to notify the accused employee of the reasons he or she intends to dismiss the employee in addition to giving the employee an opportunity to prepare a response to the infractions leveled against him or her and an opportunity to make



representations orally or in writing to an impartial disciplinary committee or tribunal before the decision to terminate or dismiss he is made. Section 68(2) further provides that the employer must prove the reasons he or she is considering the dismissal or  
320 termination of the employee and the employer genuinely believes that the reasons for the dismissal or termination exist at the time. The Respondent did not adduce any evidence to indicate that the procedure laid down under the Public service guidelines(supra) or section 66 of the Employment Act was followed by the Respondent before the Claimant was deleted from the pay roll.

325 In the circumstances, we are inclined to believe the Claimant when he said that he could not sign the attendance book because he had no posting instructions, which as we already established were received by the Headteacher in June 2016. In any case the issuance of the posting instructions is the responsibility of the Appointing Authority, which is the District Service Commission(DSC), therefore the Claimant  
330 cannot be faulted for not receiving them. We also found it peculiar that the DSC only confirmed the Claimant in service on 15/10/2020, we therefore found it unusual that the Respondent was willing to assist him to get his pension yet he had been expunged off the payroll as PW1 testified. It seems to us that the Claimant had a legitimate claim otherwise the Respondent would not have made efforts to assist him to access  
335 his pension as it did.

In the absence of any evidence to indicate that, the Claimant was subjected to a disciplinary process to prove that he had absconded from duty and given the efforts he made to get his posting instructions, it is our finding that the Claimant did not abscond from duty therefore his deletion from the payroll was not justified.



340 **ISSUE 3: WHETHER THE RESPONDENT FOLLOWED THE ESTABLISHED PROCEDURES IN DELETING THE CLAIMANT FROM THE PAY ROLL?**

The resolution of issue 2 resolved that his deletion from the payroll was unlawful. We have already established that the Respondent did not follow the correct  
345 procedure.

**ISSUE 4. WHAT REMEDIES ARE AVAILABLE TO THE PARTIES?**

Having established that the Respondent did not follow the correct procedure, before deleting his name from the payroll, the claimant is entitled to some remedies.

**1. Declaratory orders**

350 We are persuaded by **Koni vs Kanje Naranee (1968) E.A 233**, where it was established that an employer has an obligation to pay the employee remuneration for services rendered as agreed under the contract. We are satisfied that, the Claimant was deleted off the payroll without following the correct procedure and therefore the deletion was unlawful. The Claimant is therefore entitled to restitution. In the  
355 circumstances, the Respondent is ordered to pay the Claimant's his salary arrears from January 2017 to May 2020 when he retired at Ugx, 450,000/- per month, amounting to **Ugx. 18,450,000/=**.

**2. Retirement Benefits**

It is the correct position that, Article 254, of the Constitution of Uganda entitles a  
360 Public Officer "*(1) A public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.*" Section 12 of the Pension Act is to the effect that an Officer who clocks retirement age shall be paid



his pension. It is a fact that the Claimants was confirmed in service and he attained retirement age on 1/5/2020. It was clear from the record that he followed all the procedures in order to access his pension and this was frustrated by the loss of his pension file as a result of a fire that damaged the District Offices, and this was no fault of his.

Therefore, the Respondent having formalized his employment on 15/10/2020 and having unlawfully deleted him off the payroll, in addition to his salary arrears, the Claimant is entitled to be paid his pension in accordance with Pension's Act Cap 286.

The Respondent is ordered to pay the Claimant his retirement benefits for the services he rendered from 1/05/ 1991 until May 2020 when he retired, less the 6 months he could not account for from June 2016 to January 2017.

### 3. General damages.

General Damages are presumed to be the direct consequence of the injuries inflicted on the Claimant by the Respondent. **The Court of Appeal in Stanbic Bank (U) Ltd vs Constant Okuo**, Madrama JJA (as he then was) held that, General damages are based on the Common Law Principle of *restitutio integrum*. According to the Court of Appeal, appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how services were terminated and the inconvenience and uncertainty of future employment prospects. Damages are assessed at the discretion of Court, taking into consideration what the Claimant earned, his rank at the company/organization, his or her age, and how long he or she had served at the Respondent.



The Claimant in the instant case had cloaked retirement age, however his salary for 2017,2018,2019 and 5 months of 2020 were unlawfully withheld. We take the cognizance that a person's wages for work done, are a source of his or her livelihood, the denial of which is a fundamental breach for which he or she is entitled to be compensated. We think that an award of **Ugx.25,000,000/-** is sufficient as general damages for withholding his wages.

#### 4. Exemplary Damages

We found no basis to grant exemplary damages. They are denied .

#### 5. Interest

An interest rate of 12% will accrue on the general damages from the date of this award until payment in full.

#### 6. Costs

This court has held that granting costs is an exception than the rule. In the circumstances, no order as to costs is made.

Delivered and signed by:

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

#### PANELISTS

1 MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

DATE: 3/7/2023