



5

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT JINJA
LABOUR DISPUTE REFERENCE No. 002 OF 2022**

10

**ARISING FROM MBALE CITY COUNCIL LABOUR COMPLAINT NO.
MBL/MC/LD/013/2022**

ORIJABO GEOFREYCLAIMANT

VERSUS

INTRA HEALTH INTERNATIONAL INCRESPONDENT

BEFORE:

15

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

1. MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

20

AWARD

BACKGROUND

25

The Claimant brought this claim by way of Memorandum of Claim seeking orders for: A declaration that the Respondent ended his employment with her in an unlawful, unfair, unjust, wrongful, malicious, and irregular manner, General Damages, Aggravated and exemplary damages, interest and costs.

BRIEF FACTS

The Claimant was initially employed by the Respondent in May 2018 as a District Program Officer. He was promoted to the position of Senior Maternal Newborn & Child Health (MNCH) Officer from 15/2/2019 to 13/5/2019. This contract was renewed, from 14/5/2019 to 30/9/2019. On 20/9/2019, he was issued a new contract to serve as Senior Technical Officer — Family Health for a period of one (1) year, with effect from 18/10/2019 to 30/09/2020. Before the expiry of this contract, the position of Maternal Newborn & Child Health/ Family Planning (MNCH/FP) Advisor fell vacant on 19/11/2019. He assumed this position from 1/12/2019 to 30/9/2020. On the 7/9/2020, this contract was renewed with effect from 1/10/2020 to 30/9/2021. On 31/8/2021 the contract was further renewed with effect from the 1/10/2021 to 28/02/2022.

During one of his field work trips, he was taken ill, due to an abrupt and sudden back pain which resulted in his hospitalization on 11/02/2022. On 15/02/2022, he was given 1 month notice about the non-renewal of his contract due to budget constraints. However, in the same notice, his contract was extended by two weeks with effect from the 28/02/2022 to the 15/3/2022. The Claimant's employment with the Respondent ended on the 15/3/2022 and all his terminal/ end of contract benefits were paid into his bank account. He contended that his termination was unlawful, hence this suit.

The Respondents on the other hand, contended that the Claimant's contract was a fixed term contract, and he understood that it would end on 15/03/2022. He was also aware that the Respondent was phasing out most of its projects and in the process it was downsizing and restructuring its human resources.

REPRESENTATION

The Claimant was represented by Mr. Bundu Richard of M/s BUNDU & Co. Advocates, Arua City. While the Respondent was represented by Mr. Joseph Okiya of M/s BKA Advocates, Kampala.

ISSUES

1. Whether the termination of the Claimant's contract of employment by the Respondent was unlawful, unfair, and malicious?

55 2. Whether the Claimant is entitled to reliefs sought?

SUBMISSIONS

Issues 1: Whether the termination of the claimant's contract of employment by the Respondent was unlawful, unfair, and malicious?

It was submitted for the Claimant that the purported extension of his contract based on a document titled extension of employment/end of contract notification dated 15/02/2022, was not a valid extension of the Claimant's contract from 28/2/2022 to 15/3/2022, because he did not sign it. Counsel for the Claimant argued that the Claimant was supposed to be issued with a notice of termination on 28/1/2022 and in any case he attended work until 11/2/ 2022 as shown on the Respondent's Trial Bundle (Vol 2) at page 5. Citing **Steam Investments LTD Vs Isolux Ingenieria Cs No. 91 of 2021** and Section 2 and 10 (1) of the Contracts Act 2010, Counsel further argued that, for a contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus ad idem, valuable consideration, legality of purpose and sufficient certainty of terms. According to him Sections 58(3)(b) & 65(1)(b) of the Employment Act 2006, entitled the Claimant to a minimum of 1 months' notice before terminations and the Court of Appeal in **Uganda Development Bank (UDB) vs Florence Mufumba, CA No. 241 of 2015**, confirmed this requirement. He also relied on **Olweny Moses vs Equity Bank (U) Ltd LDC No. 225 of 2019**, whose holding was of the same legal proposition. He refuted the assertion that, the Claimant was always aware of his contract's expiry date because he was not given any notice. He insisted that it was the Claimant's evidence in chief under Paragraph 28 and page 5 of his trial bundle was that. According to the evidence, on the 3/1/2022, he got a

back problem. On 11/02/2022 he requested for sick leave to enable him go for surgery, which the Respondent denied him as evidenced by exhibit "N" at Page 82 of his trial bundle. He contested the admission of the electronic evidence (electronic leave sheet history), at pages 3-7 of Vol2 of the Respondent's trial bundle, to the effect that, the Claimant was granted leave, because the Respondent's witness failed to prove to Court that the Claimant filed an application for leave, and also because the leave sheet had discrepancies caused by its manipulation by Management. He invited Court to find that the major reason why the Respondent hurriedly exited the Claimant from employment was purely because of his bad health, which resulted into permanent disability, and this was confirmed by the Consultant Orthopedic Surgeon at Mulago National Referral Hospital on 31/5/2022, as indicated under Vol 1 of the Respondent's trial bundle at page 17. He vehemently argued that, the termination was inconsistent with the Constitution of Uganda and Sections 62(3), and 73 of the Employment Act 2006. He contended further that, it was discriminatory, unfair, and unequitable and it was contrary to the Respondent's own policy marked "Ex R7" at page 66 of its Trial bundle and Section.6 of the Intra Health's Uganda Employee Handbook which states that "*all employees are to be treated with dignity decency and respect and any form of discrimination or harassment is misconduct that undermines the integrity of the employment relationship and is detrimental to fulfilling the mission of the office and for these reasons intra health prohibits the above in its programs, services, and policies and practices that is sexual, racial or religious in nature or is related to gender, race, national origin, age sexual orientation, disability or any other status protected by federal, state, or local laws*". According to him, the termination of the Claimant's contract of employment was unlawful, unfair, unjust, wrongful, malicious, and irregular.

In reply, Counsel for the Respondent submitted that, the Claimant's employment was ended in accordance with the law and without any unfairness and/ or wrongful intention or bad

faith on the part of the Respondent. Counsel submitted that, it was the Human Resources and Administration Manager, Mr. Tasiku Fred ("RW1") evidence under paragraph 4 of his witness statement that, on the 15/2/2022, he sent an email to the Claimant with a letter attached marked "Exb. R1" at page 1 of the Respondent's trial bundle, giving the Claimant a one 1-month end of contract notice. The notice clearly indicated that, the Claimant's contract was due to expire on the 28/2/2022 and since the notice of end of contract was being given on the 15/2/2022, it was necessary to extend the contract by two weeks i.e., from 28/02/2022 to 15/3/2022, to give full effect to the notice period. According to RW1, this is what informed the structure, style, and wording of the employment extension & end of contract notification letter.

He further submitted that, during cross examination, the Claimant confirmed that, he acknowledged receipt of the said communication by email (Exb.R1 page 2) and that he was aware of the new end of contract date 15/3/2022. During re-examination, RW1 testified that, the communication was done through the Claimant's official email address because the Claimant was away from duty. It was also RW1's evidence that, the acknowledgment by email was sufficient to signify receipt on the Claimant's part, although this was ordinarily done by signing off, by letter. He insisted that it was incorrect for the Claimant to assert that RW1 failed to explain the notice of end of contract/ employment extension and in any case it was not an extension of the contract but an extension of the end of contract notification. It was also not a new offer of employment because the extension of employment by two weeks was intended to accommodate the 1month notice period at the end of the Claimant's contract of employment because the Claimant worked with the Respondent for a period of four (4) years. He further submitted that whereas the notice for end of contract was only communicated on 15/2/2022, that is two weeks before expiry of contract, the Claimant did not suffer any prejudice because his contract was duly extended



by an additional two weeks to accord him the full benefit of the 1 month notice period and his salary for the 1-month notice period was fully paid.

130 He contended that it was not true that, the Claimant's application for leave on the 3/1/2022 was not granted because during cross examination, RW1 only mentioned that, there was no express approval of leave in the email thread referred to by Counsel for the Claimant. According to him, RW1 testified under paragraphs 13, 15 and 18 of his witness statement that, on 14/2/2022, the Claimant sought sick leave of 10 days and the same was approved.

135 According to Counsel, during cross examination, RW1 further stated that, the Respondent has an electronic Daily Work Time Sheet marked "Exh. R9 Vol. 2" on pages 5 -7, which was accessible to and had to be filled by every employee of the Respondent. It was his submission that, the time sheet is used to account for every employee's work hours per day and to justify payment of salaries. Counsel further submitted that, the Claimant filled

140 the work sheet for the hours worked during the period 15/2/ 2022 to 15/3/2022, as sick leave and the said entries were approved by his supervisor. According to him, RW1 testified under paragraph 16 of his witness statement that, on 7/3/2022, the Claimant's Supervisor wrote an email ("Exb R6" at page 38) to the Claimant raising concerns about his absence from duty, following his absence for 10 days on sick leave and in response, via

145 email (marked "Exb 6 at page 37"), the Claimant informed him that, he had been discharged from hospital but he was continuing with medication and physiotherapy. The Supervisor was, therefore, aware that the Claimant was away from work on account of sickness and according to Exb.R6 at page 36, he was responding positively to the specialized medical treatment. The Claimant confirmed that, he did not attend work from

150 15/2/2022 to 15/3/2022, which proof that he was away on sick leave. Therefore, since the Claimant was able to update the Respondent about his health by email, when he underwent surgery and when he requested sick leave, he was able to fill out his electronic daily work time sheets. In any case the electronic Time Sheet could only be filled out by the employee

and nobody else and it was only the Supervisor and or HR Manager who could approve or
155 reject the entries and there was no provision for them to make any new entries to an
employee's time Sheet.

He refuted the assertion that the Claimant's employment with the Respondent was ended
on account of his bad health condition, because it was ended on account of budget
constraints (Exb.R1 at page 1) which the Claimant was aware of and as stated by RW1's
160 stated by under paragraphs 6, 7 and 8 of his witness statement that, the Respondent's Donor
(USAID) resolved to transfer the implementation of the USAID RHITSE Project under
which the Claimant was employed to local partners with effect from 30/09/2021 and it had
significantly cut the Respondent's budget for the period October 2021 to 30/9/ 2022 by
50% and another 50% before the final Project closure on 30/9/2023 as evidenced in "Exb.
165 R8 Vol. 2" on pages 1 and 2. Counsel further stated on 30/9/2021, Exb. R2, the Respondent
notified the Labour Officer, Mbale City about the planned phased Project closure which
would affect over 122 of her employees and as a result over forty (40) other employees
were terminated, while other contracts including that of the claimant were not renewed
during the period January 2022 to March 2022. He further argued that, had the Claimant's
170 end of contract been malicious and for health reasons, he would not have been allowed to
continue accessing the medical insurance benefit after his contract ended. This is because
the Claimant's Insurance utilization summary report with UAP Old Mutual Uganda,
(identification was Insurance no. UU025439), Exb "R10 Vol.2" at pages 8-9, indicates
that the Claimant's was allowed to access the employee medical services under the
175 Respondent's employee medical insurance cover until the 26/10/ 2022, 6 months after his
contract had ended.

In rejoinder, it was submitted for the Claimant that Section 58(3)b of the Employment Act
2006; the Claimant was entitled to one-month notice and in this case it should have been 1
months' notice. The Claimant's contract was supposed to expire on 28/2/2022, therefore

180 he ought to have been given notice by about 28 or 29 January 2022, which was not done. Counsel contended that, on 15/2/2022, when the Respondent gave the Claimant notice of termination/ contract extension, it was not clear whether there was valid contract extension without the Claimant's acceptance. He further argued that, the mere fact that, the termination/extension letter was served on the Claimant did not amount to an acceptance,
185 because an offer was made by way of an the extension letter and for the contract extension to be valid, the Claimant ought to have unequivocally accepted it. In Counsel's view, there was no contract between the Claimant and the Respondent between 1/3/2022 to 15/3/2022 and even if the termination and extension letter dated 15/2/2022, were to be taken into consideration, the period did not add up to 1 month he was entitled to. According to him,
190 the effect of all these was that the Claimant wasn't given the full 1 months' notice contemplated under section 58(3)(b) of the Employment Act and he invited this court to find so.

With regard to leave, Counsel contended that the Respondent should concede to the mistake on their part, because the Claimant's additional' trial bundle had email
195 correspondences between the Claimant and the Respondent which indicate that the Claimant sought leave and no permission was expressly given for no reason.

He insisted that, the time sheet Which the Respondent was relying on was forged forged because she was not able to prove that the Claimant had filled the said time sheet. Counsel argued that the Respondent's failure to agree with the medical evidence of the Claimant's
200 diagnosis from National Referral Hospital, was clear indication that, she denied the him sick leave.

He reiterated their earlier submission that, the Claimant's termination was on grounds of his bad health therefore, the termination was discriminatory, malicious and illegal. The circumstances surrounding the termination coupled with the letter by the Respondent's

205 lawyers in page 105 of the claimant's trial bundle make the Claimant's termination illegal and invited court to find so.

DECISION OF COURT

210 **1. Whether the termination of the Claimant's contract of employment by the Respondent was unlawful, unfair, and malicious?**

It is trite law that the existence of an employee/employer(employment) relationship is based on a contract of employment, which sets out the particulars of employment, including the duration of the contract. It is not in dispute that on 20/09/2019, the Claimant entered a contract of employment with the Respondent, for the period 1/10/2019 to 30/09/2020. The same contract was extended from 1/10/2020 to 30/09/2021 and again from 1/10/2021 to 28/02/2022. All the extensions maintained the same terms and conditions which were issued under the initial/original contract. Clause 1 of the contract particularly provided as follows:

"1. Employment

220 *The employment is to commence on October1, 2019 and shall end on September 30,2020. Its renewal is contingent upon the employee's performance and continued funding for the project, this clause does not create an obligation to renew this contract even where the employee's performance is deemed satisfactory and there is available funding for the project. In case intrahealth intends to renew the employee's contract,*

225 *intrahealth shall notify the employee of its intention to do so, at least one month before the expiry of the contract..."*

Clearly the Claimant's contract was a fixed term contract with a possibility for renewal, provided, the employee performed satisfactorily and there was availability of funding and

the Respondent was desirous of renewing the contract. As seen above, the Clause goes
230 further to provide that the employer remained with the prerogative to exercise her
discretion not to renew, even when the employee performed satisfactorily and the
organisation had funding, therefore the contract would terminate on expiry.

The Employment Act under section 2 defines termination to mean "... *the discharge of an
235 employee from employment at the initiative of the employer for justifiable reasons other
than misconduct such as expiry of contract, attainment of retirement age etc...*"

In the Kenyan case of **D.K Njagi Marete vs Teachers Service Commission Industrial
Cause number 379 of 2009**, which is persuasive court defined termination as follows:
"*Termination of employment as a general term, means the coming to an end of the contract
of employment. The end may come voluntarily, involuntarily or consensually.*" It comes
240 *voluntarily when, for instance the employee resigns, involuntarily when the employee is
dismissed or has his position declared redundant ; or consensually when a fixed term
contract lapse (emphasis ours)...the overall terminology of the end of employment
contract is termination...*"

The Claimant in the instant case contends that he was terminated on account of his poor
245 health and not on account of the expiry of his fixed term contract. A careful analysis of the
evidence on the record indicated that, his last contract was scheduled to expire on
28/02/2022. However, on 15/02/2022, he received a letter from the Respondent extending
the contract for 15 days. The letter further notified him of the Respondent's intention not
to renew the contract. The letter stated in part as follows:

250 "... dear Geoffrey,

Employment Extension &End of contract Notification.

*Reference is made to your employment contract with Intrahealth International
Inc(intrahealth) under USAID Regional Health Integration to enhance services in*

255 *Uganda(RHITES-E Activity) that ends on February 28/2022. This is to confirm that your current employment contract is extended from March 1, 2022 to 15 March 2022.*

In the same vein, given the ongoing budget constraints, I regret to inform you that Intrahealth is unable to continue your employment contract beyond March 15, 2022. This is therefore, to notify you of Intrahealth decision to end this contract on March 15, 2022 by issuing at least one (1) month notice as required under clause 1 of your original employment contract. Accordingly, when your contract comes to an end on March 2022, you will be required to handover to your supervisor...”

260

A reading of clause 1 of his contract indicates that, the grant of notice of 1 month, in this case, applied to situations where the Respondent had intentions of renewing a contract and not the contrary. The letter of non -renewal(supra), however clearly indicates that the Respondent had no intentions of renewing the Claimants contract beyond the fixed term, but she chose to grant him 1 months’ notice of non-renewal by extending the contract by 15 days. It also stated the reason, for not renewing the contract as budget constraints, even if it was not required for a reason to be given under the contract and under the law where a contract ends by effluxion of time. Section 65(1)(b), of the Employment Act provides that, a contract of employment shall be deemed to be terminated,

265

270

“(b) Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the fixed term or specified task 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 the terms not less favorably to the employee...”

275

This section implies that, after a fixed term contract expires, there is no obligation on the part of the employer to renew it or to give any reasons for not renewing it. (Also see **Tindyebwa & Anor vs Kabale University LDR No. 156/2018**).

It is our considered opinion that, by the Respondent choosing to provide for notice, for
280 non-renewal and by giving the Claimant a reason for not renewing his fixed term contract,
the Respondent was exercising her management prerogative to provide more than the
irreducible minimum standard required of her under section 65(1) (b) where a fixed term
contract of employment expired. In any case section 27 (b) of the Employment Act
provides that,

285 *“(2) Nothing shall prevent the application by agreement between the parties, of
terms and conditions, which are more favourable to the employee than those
contained in the Act.”*

Therefore, Mr. Bundu Counsel for the Claimant’s argument that, the extension of the
Claimant’s contract by 15 days was illegal because the Claimant did not accept it cannot
290 hold. This is because the contract did not provide for the issuance of notice where the
Respondent had no intention of renewing the contract, the contract did not provide for
mandatory issuance of months’ notice for non-renewal but rather for 1 months notice
where there was no intention to renew. Similarly the law does not impose such an
obligation on an employer where a fixed contract has expired. For emphasis an employer
295 is under no obligation to renew an expired fixed term contract, or to give notice or a reason
for not renewing such a contract.

We also do not associate ourselves with the assertion that, by giving him this notice while
he was sick, as a result of purported service induced- injuries, the Claimant’s termination
was based on the incapacity resulting from his injuries and not as a result of the expiry
300 of his fixed term contract. This is because save from stating so, the Claimant did not adduce
any evidence to prove that his injuries were service induced, to warrant this court to believe
that his termination was ended because of the said injuries and not the expiry of his fixed
term contract. We also found nothing on the record to indicate that the Respondent had
created any expectation for renewal of the Claimant’s contract. It would not be farfetched

305 to believe that, the Organisation was experiencing some financial constraints because the
impugned contract was renewed from 1 /10/2021 to 28/02/2022, which was 4 months as
opposed to the previous contract which had been renewed for 12 months. We are further
fortified by the fact that the Claimant accepted the 4 months without any protestation. We
also found nothing on the record to indicate that the Respondent had given him any reason
310 to expect that this contract would be renewed after it expired. We reiterate that, the
Respondent had discretion to decide whether to renew or not to renew the contract, in any
case after giving 1 months' notice, as clearly stated in clause1 of the contract that: "... *In
case Intrahealth intends to renew the employee's contract, Intrahealth shall notify the
employee of its intention to do so, at least one month before the expiry of the contract...*"

315 According to this clause the Claimant was only entitled to notice if the Respondent had
intentions to renew the contract. Where it expired the only reason the Respondent was
expected to give was that the fixed term contract had come to an end and nothing more.
We are satisfied that this was done in the instant case and the Respondent went a step
further to give notice of non- renewal, which was beyond the required minimum standard
320 provided for under section 65(1)(b) of the law and his contract of employment.

It is therefore our finding that, the Claimant's contract terminated by effluxion of time and
not because of his ill health. Therefore, his termination was lawful. Having found that his
termination was lawful, the Claimant's claims cannot succeed they are denied.

In conclusion this claim fails, with no order as to costs. Delivered and signed by:

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

PANELISTS

1. MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

330 **DATE: 6/09/2023**

