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THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT JINJA
LABOUR DISPUTE REFERENCE No. 17 OF 2022
ARISING FROM BUGIRI 01/2020

10 **OMWOSI YOWANA** **CLAIMANT**

VERSUS

BUGIRI DISTRICT LOCAL
GOVERNMENT **RESPONDENT**

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

The Claimant brought this Claim for the recovery of salary arrears of Ugx. 17,277,034/=, general damages, compensation for unlawful termination of employment contract, terminal benefits, payment in lieu of notice, exemplary damages, severance allowance,
25 interest on the above and costs of the claim.

The genesis of this claim is that, the Respondent employed the Claimant in 2013 on probation as a Nursing Officer at the scale of U5 on probation. He was confirmed in employment in April 2017. According to him, in January 2018, his salary was unjustifiably withheld. He allegedly complained about it in vain. According to him on 18/10/2018, the Respondent recommended him to Stanbic Bank for a salary loan. On 12/09/2019, he was transferred from Bulesa Health Center III to Bugiri General Hospital. He contended that, his transfer letter was withheld by the Respondent, who ordered her agents at the hospital not to allow him to work unless he produced the transfer letter. In his view this amounted to constructive dismissal, hence this suit.

The Respondents were served with the memorandum of claim on 1/07/2022, but they did not file a reply within 7 days as provided under rule 5 of the Labour Disputes (Arbitration and Settlement) (Industrial Court)(Procedure rules) 2012. On 16/05/2023, the Chief Administrative Officer was served with a hearing notice for a pre-session hearing scheduled for 22/05/2023, at 2.30 pm. He acknowledged service in person, however, on 22/05/2023, the Respondent did not appear. The Claimant then prayed to proceed exparte. The Matter was set down for hearing on the 7/06/2023. Subsequently, on 5/6/2023, the Respondent filed an Affidavit of reply instead of a Memorandum of reply on 5/06/2023, moreover without seeking leave of court. However, on 7/06/2023, when the matter was called for hearing, at the Industrial Court session in Jinja, the Respondent was absent, and no reason was rendered for their nonappearance. This notwithstanding, the record showed that, they were properly served as evidenced by the Affidavits of service of the Court process server. In the circumstances, When Counsel for the Claimant's orally applied for the Claimant to proceed exparte, Court granted him leave, to do so hence this award.

REPRESENTATION

The Claimant was represented by Matende Derrick of Balidawa- Ngobi & Co. Advocates, Iganga. The Respondent did not enter appearance.

ISSUES

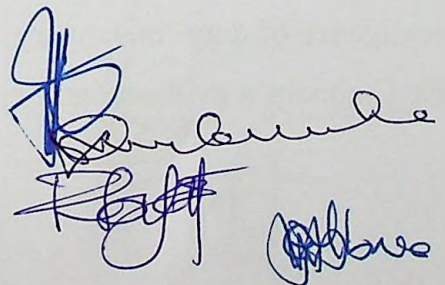
1. Whether the Claimant was unlawfully terminated from employment?
- 55 2. Whether the Claimant is entitled to Ugx. 17,277,034/= as salary arrears
3. What remedies are available,

EVALUATION OF EVIDENCE AND DECISION OF COURT

Issues 1: Whether the claimant was unlawfully terminated from employment.

60 According to the paragraph 4(c) of the Claimant's Memorandum of claim, the Claimants last posting was on 12/09/2019, to Bugiri General Hospital, as evidenced by his transfer letter attached to the claim as annexure "C". It was also his evidence that, his salary was unjustifiably withheld. It was the submission of his lawyer that, when he was transferred from Bulesa Health Center III to Bugiri General hospital on 12/09/2019, the Chief Administrative Officer refused to give him a transfer letter and as a result, when he 65 reported to the new, station he the Medical Superintendent, Mr Oundo, informed him, that he was ordered not to allow him to commence duty unless he produced the transfer letter, he therefore worked for only 2 days. He contended that, in the process of trying to get the transfer letter he realised that he had been tactfully dismissed without notice or a reason, because he ceased to receive any salary.

70 After carefully evaluating the Claimant the evidence, we established that, indeed he was transferred from Bulesa Health CIII to Bugiri General Hospital on 12/09/2019. Although he testified that his letter was withheld by the Respondent, he attached the same to his claim as annexure "C". However the letter did not indicate when he received it for this court to be able to determine, whether it had actually been withheld from him as



75 claimed. Whereas he claimed that, the Respondent unjustly withheld his salary from
January 2018, he attached a letter from the Chief Administrative Officer to him, dated
19/02/2020, marked "EX12" on his trial bundle. In the letter the CAO expressed
dissatisfaction about his frequent absence from duty which was contrary to the Public
Service Standing Orders F-b (1) which required him to be on duty from Monday to
80 Friday and warned him about impending disciplinary action against him including
withholding of his salary. The same letter required him to give an explanation within 14
days, failure of which he would be subjected to disciplinary proceedings. There was
nothing on the record to indicate that the Claimant made a response to this letter or that
he took any steps to exculpate himself of the allegations that had been leveled against
85 him by the CAO. He also filed a letter from the Principal Human Resource Officer Bugiri
to the Chief Administrative Officer(PHRO) dated 12/10/2020. The letter explained the
reasons why he was deleted from the pay roll and the reasons included his frequent
absence from duty, his poor attitude towards attendance to duty, which lead to the loss of
funding for a project. The letter further stated that when he was transferred from Bulesa
90 Health CIII to Bugiri, on 12/09/2019, he reported on 10/10/2019 and only worked for
only 2 days and absconded from duty. His immediate supervisor reported his absence on
7/11/2019. It also stated that when he did not respond to the CAOs requiring him to
explain his abscondment, he was deleted form the pay roll. According to the same letter,
on 4/09/2020, he was invited to appear before the Bugiri District Service Commission to
95 provide his defend himself and he acknowledged receipt of the letter. It also indicated
that together with other staff the Claimant was subjected to a disciplinary hearing before
the rewards and sanctions Committee that sat on 22nd and 27th December 2017,
respectively. His salary was subsequently halted on grounds of chronic absenteeism, and
negligence of duty for January, March, April, May and June 2018. Interestingly, this was
100 the Claimant's evidence and he did not refute it or provide anything to the contrary, in

125 5. *The attendance of public officers shall be monitored using a system, modality, mechanism or any other approved system including Biometrics, attendance registers applications or any other tool or device a Responsible Officer may deem appropriate which allows for monitoring attendance to duty.*

6. *The Responsible Officer shall extract and analyse information on attendance to duty by the 30th day of every month which shall be used to take management decisions.*

130 7. *The Government reserves the right to take disciplinary action against a public officer including making deductions from his or her pay for any period during which he or she is absent from work without permission.*

8. *A public officer who is unable to attend to duty due to illness will be handled in accordance with Section M-a, paragraphs 8 and 9.*

135 9. *The Responsible Permanent Secretary shall issue guidelines on management of attendance to duty”*

The Claimant did not adduce any evidence to indicate that he was absent with authorization. Subsection (7) of Section(f-b)is instructive on the action to be taken
140 against an errant officer and for emphasis, it provides that:

7. The Government reserves the right to take disciplinary action against a public officer including making deductions from his or her pay for any period during which he or she is absent from work without permission.

This is in line with the Section 41(6) of the Employment Act which entitles an employer
145 not to pay an employee who is absent from work without authorization or good cause,
which provides as follows:

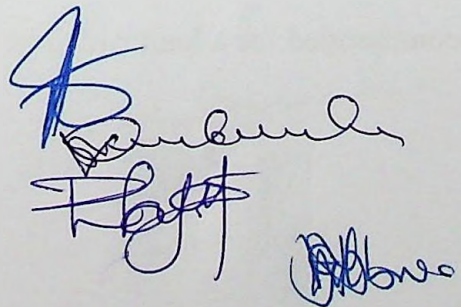
150 “... (6) An employee is not entitled to receive wages in respect of any period where
he or she is absent from work without authorization or good cause except, that, in
the case of an employee who has completed at least 3 months continuous service
with his or her employer, the following shall not constitute absence without good
cause.

(a) absence attributable to the occurrence of exceptional events of or from
working:

155 (b) absence attributable to summons to attend a court of law or any other
public authority having power to compel attendance or

(c) absence attributable to the death of a member of the employee's family
or dependent relative, subject to a maximum of six days in any one calendar
year...”

The Claimant did not adduce any evidence to indicate that he suffered any of the
160 exceptions stated under section 41(6) and having not rebutted the evidence in the
PHRO's letter, which he attached himself, as evidence, we find no reason to fault the



Respondent for depriving him of his salary for the period he was absent without authorization in January, March, April, May, and June 2018. It is not in dispute that he was posted to Bugiri on 12/09/2019 and according to the PHRO's letter he reported to work on 3/10/2019. It was his evidence that: paragraph 19 of his witness statement, "...
165 *that while there, I worked for only 2 days and the medical superintendent, Mr. Oundo stopped me from working unless I provided him with a copy of the transfer letter...*" We already established that he always had the transfer letter therefore this assertion cannot stand. Therefore, the claim that, he was constructively dismissed in accordance with
170 section 65(1) (c) of the Employment Act 2006, cannot hold. Therefore, **Tibenkana Edith Versus London Distillers (u) Ltd LDR No.146 of 2019** in which **Nyakabwa Abwooli versus Security 2000 Ltd LDC 108 of 2018** was cited, is not applicable to his case.

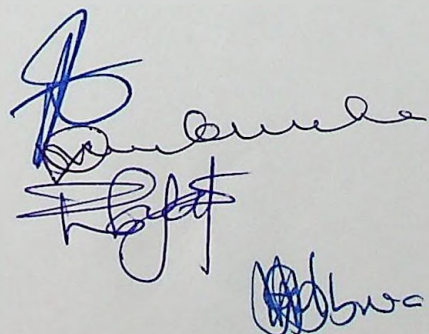
In conclusion, it is our finding that, the Respondent was correct to remove him from the pay roll for absconding from duty. His termination was therefore lawful.

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Issue 2 ;Whether Claimant is entitled to Ugx. 17,277,034/= as salary arrears.

It was the Claimant's evidence under paragraph 12 of his witness statement that, he was denied his salary amounting to Ugx. 17, 277,034/- arising from an increase of salary from Ugx.893,337/ to Ugx.1,200,000/- for the period, August 2019 to October 2020, yet
180 he worked. It was also his evidence that, despite withholding his salary he was recommended for a loan which he received.

We had an opportunity to analyse the loan application forms and established that, the loan would be deposited on Account 9030009373488, which was not described as a salary account. A perusal of the account itself indicated that the funds deposited were from MU SPH- RESEARCH 00000000000010 DERNUM. In addition, the Claimant did not attach any evidence to prove that his salary had been increased as claimed or that he was not receiving salary from August 2019 to October 2020. His reliance on a copy of salary slip for July 2018 alone was not sufficient, in the absence of a comprehensive Bank statement to show that, he received his salary on the Account and when it ceased to be deposited on to the Account. The slip itself did not indicate the Stanbic Account number on which the salary was to be deposited and ExC9 did not show any deposits regarding his salary. All the deposits on the account were from MU SPH- RESEARCH 00000000000010 DERNUM1, and each deposit was in excess of the Ugx.1,200,000/- he claimed was his monthly salary at the time. In fact, based on the salary slip, the total amount of Ugx.1,200,000/- allowances and a total deduction of Ugx.521, 675/- leaving a net of 822,800/- per month, was not reflected anywhere. What is reflected are deposits ranging between Ugx.1.611,980/-and Ugx. 1,698, 193/- and as already stated they are all from MU SPH- RESEARCH 00000000000010 DERNUM. There was nothing in the Claimant's evidence to indicate that, at any one time he received a deposit of Ugx.1,200,000 on this Account for this Court to conclude that, this was his salary. In fact there was nothing on the record to indicate at what point the purported salary was increased, when the Respondent started paying /depositing it or at what point it ceased to be paid. In the absence of a Bank statement clearly reflecting payments from the Respondent in form of salary and when it ceased to be made on to the Account we have no basis to determine that his salary was actually increased and that he had salary in the sum of Ugx.17, 277,034/- as claimed. In the same vein, in the absence of evidence to



indicate that the loan he acquired, was a salary loan, solely premised on his salary for its recovery, we had no basis to make a determination that, he had a salary loan as claimed.

210 In conclusion, having not adduced any evidence to prove that he was constructively dismissed, and given his own evidence that he absconded from duty, it is our finding that, his dismissal was justified. In the circumstances this claim fails.

3.What remedies are available?

Having established that, his termination was lawful, he was not entitled to any of the remedies claimed. No order as to costs is made.

215 Delivered and signed by:

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

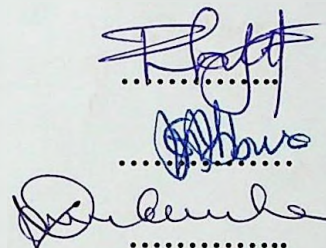
PANELISTS

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220 3. MR. FX MUBUKE

DATE: 23/06/2023



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