



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 074 OF 2022
(Arising from LD No. KCC/RUB/L.C/08/2022)

MAKUMBI NICHOLAS DAVID:.....CLAIMANT

VERSUS

ESSUUBIRYO-ZAMBOGO CO-OPERATIVE
SAVINGS AND CREDIT SOCIETY LTD:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu

Representation:

1. *Mr. Brian Serungoji of M/S Serungoji & Co Advocates for the Claimant.*
2. *Mr. Twaha Mukasa of M/S Buganda Royal Law Chambers for the Respondent.*

AWARD

Introduction

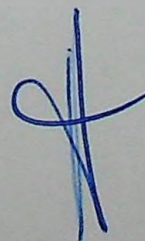
- [1] On the 17th of January 2019, the Claimant was employed as a Manager for the Respondent for three years. On the 4th of October 2021, the Respondent asked the Claimant to take his untaken leave from 2017 to 2021. The Claimant took leave. On the 6th of December 2021, the Respondent asked the Claimant to hand over office on the 30th of December 2021. The Claimant argued that his contract was expiring on 1st February 2022. He filed an action for unlawful termination seeking recovery of UGX 21,600,000/= as payment in lieu of leave, unpaid salary, payment in lieu of notice and severance allowance, UGX 50,000,000/= as punitive damages and UGX 30,000,000/= as general damages. He also asked for a certificate of service.
- [2] The Respondent opposed the claim, contending that the Claimant had a fixed term contract, which expired on the 31st December 2021. The Respondent argued that the Claimant had an outstanding loan of UGX 5,670,000/= and was given his untaken leave of 28 days, which was extended to 82 days until the expiry of his contract. It was suggested that any untaken leave could be offset against the outstanding loan, and the Claimant stole his file, making it difficult for the Respondent to issue the certificate of service. The Respondent also suggested that the Claimant had altered his employment contract.

[3] On the 14th of March 2023, the following issues were agreed upon and framed for determination;

- (i) *Whether the Claimant's termination from employment was lawful?*
- (ii) *What other remedies are available to the parties?*

The evidence of the parties

- [4] We have not reproduced the parties' evidence; we have only provided a summary.
- [5] The Claimant testified that on the 17th of January 2019, he entered a 3-year employment contract with the Respondent with a gross salary of UGX 1,800,000/= per month. He was asked to forgo leave for 2017, 2018 and 2021. He said in October 2021, he was permitted to take leave for 2017, 2019 and 2020. When he returned to work, he was taken to a staff validation exercise on the 21st of November 2021. On 6th December 2021, he received a letter advising him of the end of his contract on 31st December 2021. In cross-examination, he told us that he was stopped from working in December 2021 and had one more month of work remaining. He said he did not protest the termination letter. When he was shown REX1, he said if the commencement date was 1st January 2019, the notice of termination would be in time. He said REX1 was work in progress, a draft, and writings on it directed him to make certain changes. He told us that he incorporated the changes in CEX2 and changed the commencement date without written instructions. He also said that the loan balance from the employer was UGX 4,400,000/= by the time he left employment.
- [6] In re-examination, he said his contract commenced on 1st February 2019, and the issues in REX1 included the crossings in the document and comments on the weekly allowance of UGX 70,000/=. The word annually was to be added to clause 4(i). He said the final document was CEX1, with a commencement date of 1st February 2019. He said he did not get any notice, did not hand over because he was still on leave, and tried to reach the Respondent's Chairman to object to his termination. He said that REX1 was fraudulent.
- [7] The Respondent called Dennis Kaggwa Ssebyuma (RW1) who testified that he was Board Chairperson of the Respondent's SACCO from 2019 to March 2022 during the Claimant's tenure as Manager. He told us the contract commenced on 1st January 2019 and was due to expire on 31st December 2021, and the Respondent communicated the non-renewal to the Claimant. He said the Claimant was sent on leave on 4th October 2021, and the Respondent could not find the Claimant's personal file. He also told us that he only saw CEX1 in Court. He told us the Respondent did not terminate the Claimant, but the contract expired. He also told us that the Claimant owed the Respondent UGX 5,760,000/= and that it had withheld the December salary of UGX 1,800,000/= to act as a set-off on the outstanding loan. He said that the extension of 82 days of leave was to cover all untaken leave. He could not issue a certificate of service because the Claimant had stolen his personal file. In cross-examination, RW1 said REX1 was the draft contract, and CEX 2 was the final employment contract signed by the parties. He conceded that there was nothing strange about it. He was asked to read it and said it expires at the end of January 2022. He said no report of theft of documents was made to the Police. He also said that a board member, Dr. Peter Kibuka, wrote on REX1. He confirmed that he signed CEX2. Regarding leave, he conceded that the Claimant had not taken leave for over five years. He said he did not have evidence that the Claimant owed the Respondent UGX 5,760,000/= or that he took any advance of UGX 1,000,000/=. He confirmed that the Claimant's December 2021 salary was not paid.



- [8] In re-examination, RW1 confirmed that all parties signed REX1 and CEX2 and that he based on REX 1 to write the notice because he did not have CEX2. He told us that the commencement date was altered from 1st January 2019 to 1st February 2019. He clarified that he was not permitted to return to work after the Claimant's leave. He was shown REX3 and said this was evidence of the Claimant's loan.

Analysis and decision of the Court.

Issue 1. Whether the Claimant's termination of contract was lawful?

The Claimant's submissions

- [9] Mr Serungoji, appearing for the Claimant, argued that REX1 was a working document and the final contract was dated 17th January 2019(CEX2). He submitted that RW1 conceded under cross-examination that he signed CEX2, and there was no record of the police case on the alleged forgery and theft of documents by the Claimant. For this reason, it was Counsel's view that CEX2 was the correct document. He submitted that the termination was unlawful because the Claimant was entitled to three months' notice or payment in lieu thereof under Clause 6 of CEX 2. He cited Section 69(1) and (2) of the Employment Act, 2006(*from now EA*) in support of the proposition that the termination was unfair. Counsel relied on **Tommy Otto v Uganda Wildlife Authority(2008) HCB 69** and **Bank of Uganda v Betty Tinkamanyire(2008) HCB 25** to support his propositions.

The Respondent's submissions

- [10] Mr. Mukasa, appearing for the Respondent, submitted that the Claimant was never terminated but ended by the employment contract's expiration. He invited us to review REX1 and REX2. He cited **H.C.C.S 0580 of 2003 Greenboat Entertainment Ltd v City Council of Kampala** for the proposition that a contract terminates automatically upon expiry of the contract period. Counsel suggested that even if the Court were to believe CEX2, whose date of expiry was 31st January 2022, it would be impractical to issue a three-month notice in lieu of the expiration date being only a month away. He said the Respondent only learnt of CEX2 in Court. We were invited to find that the notice of expiry of the contract was lawful since the contract had expired.

Rejoinder

- [11] Citing **H.C.C.S 747 of 2005 Kirunda Faisal v Juuko James**, Counsel submitted that under the four corners doctrine, the Court should consider the terms set out in the contract. Counsel maintained that REX1 was a draft agreement, and all parties signed CEX2 after the insertions in the draft had been incorporated. Counsel maintained that the notice should have been three months.

Decision

- [12] The undisputable facts in this matter are that on the 6th of December 2021, the Respondent issued the Claimant with a notice of non-renewal of an employment contract. The relevant parcel of the notice reads as follows:



“Under Paragraph 1(ii) of the Employment Contract, your contract was to run for a period of 3(Three) years effective from the 01st day of January, 2019 and the same is due to expire on the 31st day of December, 2021,

Please be informed that the Board has resolved that it shall not renew your employment contract upon expiry and you are expected to prepare a hand over report by the 30th day of December, 2021.”

From this letter, the Respondent made it clear that it did not wish to renew the employment contract.

- [13] Non-renewal of a contract of employment is a form of termination of a contract of employment. Under Section 2EA, termination of employment means the discharge from employment at the employer's initiative for justifiable reasons other than misconduct, such as the expiry of the contract or attainment of retirement age. Under Section 65(1)(b) EA it is provided that;

“where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within one week from the date of expiry on the same terms or terms not less favourable to the employee.”

- [14] On the premise that the contract of employment REX1 was commencing on 1st January 2019 for a duration of three years, the contract was due to expire on the 31st of December 2021, and as such, the Respondent was well within its rights to issue a notice of non-renewal. Such notice would be consistent with the decision of this Court in **Joseph Tindyebwa and Another v Kabale University**¹, where the Court observes that an employer is not obligated to give a reason for not renewing the contract or to renew a fixed-term contract after its expiry unless the contract expressly provides that it is renewable.

- [15] The Claimant's contention in this matter is that his three-year contract commenced on the 1st of February 2019 and was, therefore, valid until the 1st of February 2022. This version of the contract was admitted as CEX2. It is the contention that the notice of non-renewal dated the 6th of December 2021 amounted to unlawful termination because the Respondent did not give the Claimant three-month notice. There is, therefore, a question as to which of the two contracts, CEX2 and REX1, was the operative contract? REX1, which the Claimant argues was a draft commenced on 1st January 2019. It was signed on 17th January 2019. It contained some hand written notes. At the top right-hand corner were two notes: First, the weekly allowance was to be maintained at UGX 70,000/=, and second, all staff contracts were to carry NSSF Contributions. In the body of REX1, the weekly allowance was UGX 150,000/=. In CEX2, also signed on the 17th of January 2019, the weekly allowance was adjusted to 70,000/=. What changed was the commencement date. Under cross-examination, the Claimant conceded that he altered the commencement date without written instructions. Mr. Kaggwa testified that he signed CEX2 and the one on which Dr Kibuuka had made notes, REX1. Taking the notes on REX1 in particular, it is most plausible that this was in draft form. It contained the terms that the parties were discussing. In our view, it was not the final document. While the Respondent tried to distance itself from CEX2 and suggested that the Claimant had it

¹ LDR 156 of 2018 . See also Ochuru Henry v Ace Global(U) Ltd LDR 164 of 2017

executed and held it to himself, this was the final contract of employment that RW1 signed, and he agreed that he had signed all the pages of the contract. Given this concession, we hold that CEX2 was the final contract of employment executed between the Claimant and Respondent; therefore, the terms contained therein represent the parties' agreement. We are fortified in this decision by the dicta of this Court in **Akonye David vs Libya Oil**², where it was held that "*the burden of preparing a contract is placed on the employer because it is the employer who sets the terms and conditions of the employment.*" RW1 owned up to CEX2, and we cannot find that REX1 was the operative contract.

- [16] Because of our finding in paragraph [15] above, the expiry of the fixed-term contract was on the 1st of February 2022 and not the 31st of December 2021. What would be the legal effect of issuing a notice of non-renewal? In our view, the contract was terminated prematurely before its expiry date. In **Angella Birungi v NLS Waste Services**³ the Industrial Court held that a fixed-term contract can only be terminated on the date agreed upon by both parties unless there is a material breach or repudiation of the contract. In the present case, the contract was set to expire on 1st February 2022, and the Respondent required the Claimant to hand over the contract on the 31st of December 2021—clause 6 of the contract of employment permitted for termination with three months' notice. Because the contract had not yet come to an end and the Respondent unilaterally decided to bring the contract to an end, being that this was no-fault termination as there had been no repudiation by the Claimant, we would find that the termination was procedurally unfair and therefore unlawful. We are fortified in this decision by the dicta of the Court of Appeal in **Bank of Uganda v Joseph Kibuuka and Others**⁴ where Mulyagonja J.A where it was held that unilateral early retirement of the Respondents was found to have been unlawful. Issue one would be answered in the affirmative.

Issue II. What remedies are available to the parties?

Payment of three months' salary in lieu of notice

- [17] Under Clause 6 of the contract of employment, any of the parties was entitled to terminate the contract at any time by either party giving three months' notice or payment in lieu thereof. Mr. Mukasa submitted that since there was only one month remaining before the expiry of the contract, it would be impracticable to give three months' notice. We disagree with this proposition. The requirement of three months' notice is during the pendency of the fixed-term contract. In the circumstances, as the Respondent was in breach of its contract, we award the Claimant **UGX 5,400,000/=** as three months' salary in lieu of notice. We are fortified in the finding by the decision of the Court of Appeal in **Joseph Kibuuka (ibid)**.

Unpaid salary for December 2021

- [18] It was undisputed that the Respondent withheld salary for December 2021. It was also not contested that the Claimant worked until the end of December 2021. As he did not work for January 2022, we award the Claimant his December salary in the sum of **UGX 1,800,000/=**.

² LDC No. 82 of 2014 UGIC 44

³ C.A.C.A. No. 281 of 2016

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Payment in Lieu of Leave

- [19] Mr. Serungoji argued that in CEX3, the Respondent sympathised with the Claimant for not taking leave for 2017, 2018 and 2021. Counsel also argued that this evidence was not rebutted. Conversely, the Claimant acceded to taking 28 days of leave, which was extended to 82 days. The contract of service stipulated a leave entitlement of 14 days per annum. Under **Section 54(1)(a)EA**, employees are entitled to seven days each four months. This means employees are entitled to at least 21 days of paid leave per annum. RW1 admitted to having written to the Claimant in CEX 3 indicating that the Claimant had not taken leave for five years. RW1 cited **Section 54(a)EA**, and because of this, we do not think **Kyazze Tucker v Busoga College Mwiri**⁵ LD No. 143 of 2016 cited by the Respondent would be applicable. In the case before us, the Respondent wrote to the Claimant asking him to take outstanding leave. The Claimant would not be required to prove that he requested leave, which was denied. Therefore, the Claimant would have been entitled to 105 days of leave over five years. He admitted to taking 82 days and would have an outstanding 23 days. We, therefore, award the Claimant UGX 1,380,000/= in untaken leave days.

Severance Allowance

- [20] Mr. Serungoji suggested that he was unfairly dismissed because the Claimant was unfairly stopped from work. We have found that the Claimant was unfairly terminated. The expressions termination and dismissal have been used interchangeably within EA. However, under **Section 2 EA**, termination means a discharge from employment at the initiative of the employer for the expiry of the contract or attainment of retirement age. At the same time, dismissal implies a discharge of an employee from employment at the initiative of his employer when the said employee has committed verifiable misconduct.⁶ The present case is not a case of unlawful dismissal but unlawful termination, and the Kibuka case(*op cit*) makes it clear on page 40 of the decision that severance would be payable for dismissal and not termination. In the circumstances we decline to grant any severance allowance.

Damages

- [21] The Claimant asked for general and punitive damages of UGX 50,000,000/=. General damages have been described as those damages the law will presume to be the direct natural consequence of the action complained of⁷. We think the case of **Betty Tinkamanyire**(*op cit*) cited by the Counsel for the Claimant is not applicable because it concerned an unlawful dismissal. The present case concerns an unlawful termination whose contractual circumstances provide for payment in lieu of notice. In **Stanbic Bank (U) Ltd v Constant Okou**⁸ Madrama, JA (*as he then was*) awarded general damages for a unilateral summary termination where the Claimant was given notice of one day. It was also held that general damages are based on the common law principle of *restituto in integrum*. Appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. On

⁵ LD No. 143 of 2016

⁶ See also *Tumusiime Richard & 5 Ors v Mukwano Personal Care Products Ltd* LDR 22 of 2014

⁷ *Stroms v Hutchinson*[1950]A.C 515

⁸ Civil Appeal No. 60 of 2020

the quantum of damages in *Donna Kamuli v DFCU Bank Ltd*,⁹ the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. In *Kibuuka (opcit)*, the Court considered the suffering and inconvenience of the unilateral termination and the lost earnings as a basis for an award of general damages. The Claimant was earning **UGX 1,800,000/=** per month and had worked for the Respondent for five years. He had one month to end his contract, during which he would have earned a sum of UGX 1,800,000/=. His salary for December 2021 was also withheld, and he was inconvenienced. Considering all the circumstances, we determine that based on his monthly salary, the sum of **UGX 3,600,000/=**, which we award as general damages, will suffice. This would be consistent with the jurisprudence, which holds that the measure of damages for wrongful termination should be the amount the plaintiff would have earned had he continued with the employment.¹⁰

- [22] In respect of punitive damages, in *DFCU Bank Ltd v Donna Kamuli*,¹¹ the Court of Appeal held that punitive damages are awardable in employment disputes but with restraint as punishment is not for the civil and contract law. We have not found any circumstances that would invite an award of punitive damages and decline to grant the claim for punitive damages.

Salary Loan

- [23] Counsel for the Claimant suggested that the Respondent had not proven the salary loan. This is not entirely correct. The Respondent pleaded in paragraph 5(f) of the memorandum in reply that the Claimant took a salary loan of UGX 10,000,000/=:, and at his exit, he owed UGX 5,760,000/=: . The loan agreement was attached to the pleadings. Paragraphs 16 and 17 of RW1's witness statement made reference to the loan. In his evidence under cross-examination, the Claimant said, "**I am not disputing the loan**". The Respondent adduced the loan application form, agreement, a demand letter and client ledger sheet. All these documents show that the Claimant took a salary loan and UGX 5,760,000/=:, was due to the Respondent at the time of the Claimant's exit. RW1 also testified that it withheld the December 2021 salary against this loan. This Court has ruled that where it is found that an employee has been unfairly dismissed or terminated, and there is a salary loan entirely dependent on salary for repayment outstanding, the employer shall be responsible for the same. In this case, having found that the Claimant was unfairly terminated, the Respondent shall be liable for the salary loan of **UGX 5,760,000/=**. In keeping with the dicta in *Okou(opcit)*, however, it will be offset against the sums awarded to the Claimant.

Costs

- [24] This Court has held that Labour and Employment Relations Courts do not readily award costs against the losing party on account of a need to balance the employment relationship and in keeping with the dicta in *Joseph Kalule v GIZ*¹². We do not find that the Respondent misconducted itself in any way. There shall be no order to costs.

⁹ LDC No. 002 of 2015

¹⁰ *Addis v. Gramophone Company Ltd.* [1909] A.C. 488 at page 491.

¹¹ C.A.C.A 121 of 2016

¹² LDR 109 of 2020

Final orders

[25] In the final analysis, we make the following orders.

- (i) We declare that the Claimant was unfairly and unlawfully terminated.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
 - a) UGX 5,400,000/= in payment in lieu of notice,
 - b) UGX 1,800,000/= in salary arrears,
 - c) UGX 1,380,000/= in untaken leave
 - d) UGX 3,600,000/= as general damages.
- (iii) We declare that the Respondent is responsible for the salary loan of UGX 5,760,000/= but it is to be offset from the monetary awards to the Claimant immediately above.
- (iv) There shall be no order as to costs. *gh*

Signed in Chambers at Kampala this 17th day of May 2024.

[Signature]
Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

- 1. Hon. Adrine Namara,
- 2. Hon. Susan Nabirye &
- 3. Hon. Michael Matovu.

[Signature]

[Signature]

[Signature]

17th May 2024
11.49 a.m.

Appearances

- 1. For the Claimant: Mr. Brian Serunjogi.
- 2. For the Respondent: Absent

Parties: Claimant t in Court.

Court Clerk: **Mr. Samuel Mukiza.**

Mr. Serunjogi : Matter is for the award; we are ready to receive it.

Court: Award delivered in open Court.

[Signature]
Anthony Wabwire Musana,
Judge, Industrial Court