THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 163 OF 2020
(Arising from Labour Dispute No. KCCA/RUB/276/2019)

TAYEBWA ISRAEL ::CLAIMANT

VERSUS

CHINA RAILWAY NO. 10 ENGINEERING GROUP COMPANY 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. Abel Bainomugisha of M/S Mushabe Advocates for the Claimant.*
2. *Ms. Carol Omoro of M/S Frederick, Francis & Associates Advocates for the Respondent.*

AWARD

Introduction

[1] The Claimant, Israel Tayebwa, was employed as a primary contact person for the Respondent in October 2017. He contended that his salary was US$ 2500 per month. It was agreed as a fact that he resigned in June 2019 and was replaced. He filed a complaint with the Directorate of Gender Community Services and Production at the Kampala Capital City Authority Labour Officer. Following an unsuccessful mediation, the matter was referred to this Court.

[2] By a memorandum of claim dated the 14th of October 2020, the Claimant sought recovery of unpaid wages, special damages, general damages, exemplary/punitive damages, aggravated damages, a compensatory order, severance pay, interest at Court rate, and costs of the claim.

[3] The Respondent opposed the claim contending that the working relationship between the Respondent and Claimant was that of an independent contractor and he was paid for work and tasks done. Additionally, his duties as primary contact required him to drive, and he was

performing well until he started indulging in alcohol which in turn affected his work. He stopped coming to work in February 2018, and as a result of this absconding, the Respondent was forced to employ another person. The Respondent asked that the claim be dismissed with costs.

[4] At a scheduling conference held on the 13th of March 2023, the following issues were framed for determination:

(i) What quantum of wages is the Claimant entitled to?
(ii) What other remedies are available to the parties?

The proceedings and evidence of the parties

The Claimant's Evidence

[5] The Claimant testified that he was recruited by the Respondent's Director, Ji Kunshang in 2017 and formally employed as the primary contact person by way of a resolution on 30th October 2017. A certified copy of the resolution was exhibited as "CEXH1". That he was offered a salary of US$ 2500(United States Dollars Two Thousand Five Hundred) per month but he was not given a formal contract. He did all the administration work on his own and was in charge of drawing receipts on instructions of Mr. Kunshang. He testified that he performed all his duties including processing a TIN number, licenses and other necessary documentation. In January 2018, the Respondent recruited one Barnabas Bright as Administrator. Mr. Kunshang left the country and he continued to carry out his work out of office. He worked through 2018 to early 2019 when Mr. Kunshang introduced him to the new Country Manager one Lui Yadin who also later introduced him to one Mr. Dong. It was his evidence that Mr. Dong was evasive and did not pay him his salary. In June 2019, the Claimant made a demand for his salary arrears the standing at US$ 50,000. He also handed in his resignation letter. Following this, the Respondent filed a resolution indicating that he had ceased to be an employee and local primary contact.

[6] In cross-examination, he confirmed his recruitment as a primary contact for the Respondent. He also conceded that he did not have a letter of offer of US$ 2500 as salary or US$ 500. He was shown receipts for US$ 500 being a consultancy fee for one month. He conceded that he did not have any evidence of his work on bids. He maintained that he had worked between 2017 and 2019 and that the evidence was on company emails. He suggested that he made a complaint for salaries.

[7] In re-examination, he clarified that he trusted the directors of the Respondent would pay him the agreed salary of US$ 2500 per month. That he was the top-most executive in Uganda and there were promises to formalize his employment. The directors convinced him that he would be paid as soon as the Respondent got big contracts. He clarified that the director asked him to draw receipts in his own name for all expenses including payments to consultants and other service providers. It was his evidence that he resigned because the director told him that the person who appointed him was not known to him.

The Respondent's evidence

[8] The Respondent called two witnesses. **Bright Barnabas** (RW1) testified that he had replaced the Claimant who worked as a driver of the Respondent from 30th October 2017 to January 2018. He exhibited a copy of his employment contract. He told us that the Claimant absconded from duty. He recalled receiving his wages for January 2018 at the same time as the Claimant who was paid in his presence and acknowledged receipt. It was RW1's testimony that the Claimants claim was overstated.

[9] In cross-examination, RW1 conceded that he did not have knowledge of salaries of all of the Respondent's other employees, nor did he have any idea of the agreement on the Claimants wages. He conceded that his contract of employment (which was exhibited as "REX2") did not show that he was replacing the Claimant. He also conceded that he did not have knowledge of the resolution dated 24th June 2018.In re-examination, he said that he last saw the Claimant in 2018 when he(RW1) had just reported to work.

[10] **Zheng Xiaofei**(RW2) testified that the Claimant worked for the Respondent as driver and primary contact from 1st October 2017 until 29th January 2018 when he signed for his January salary. That the Claimant did not work for 20 months. That the Claimant was paid for hours worked and not US$ 2500 per month. Mr. Xiaofei produced four salary payment receipts which were exhibited as REX1. He was not aware of any duty performed by the Claimant as a primary contract and the Claimant resigned his job after he was reprimanded for absconding from work or coming to work drunk. This was why the Respondent employed RW1. He maintained that the Claimant resigned voluntarily.

[11] In cross-examination, RW2 confirmed that he was not in Uganda in 2017. He started working for the Respondent in 2018 and came to Uganda in September 2021 by which time the Claimant had resigned. He said that he did not serve the human resources function of the Respondent and did not know much about the resolution terminating the Claimant's employment. In re-examination, he clarified that when he came to Uganda in September 2021, he communicated with Mr. Kunshang via "We Chat" and he prepared his witness statement on the basis of information he obtained from Mr. Kunshang.

Analysis and decision of the Court.

Issue 1: What quantum of wages is the Claimant entitled to?

The Claimant's submissions

[12] Mr. Bainomugisha, appearing for the Claimant, submitted that the Claimant was entitled to wages on a *quantum meruit* basis citing Black's Law Dictionary (8th Edn) and **Christine Bitarabeho v Edward Kakonge S.C.C.A No 2 of 2000** for its definition. Counsel submitted that the agreed salary was US$ 2500 and that this evidence was not rebutted. The resolution of appointment

(CEX1) was also not rebutted and both RW1 and RW2 were not employees of the Respondent at the same time as the Claimant. It was Counsel's view that the resolution had a contractual effect.

[13] In respect of REX1, Counsel submitted that the same be expunged from the record as hearsay. He submitted that the claim was unchallenged. Citing **Craven-Ellis v Canons Ltd(1936) 2 KB 403** Counsel argued that Respondent accepted and benefitted from the Claimant's services and did not pay and should not be allowed to escape this obligation. Counsel cited **Geomar Consult CC v China Harbour Engineering Company Ltd Namibia & Others (I 2115 of 2015) [2021]NAHCMD 455(05 August 2021)** for the proposition that a contract is proven upon consensus and reasonable reliance that a valid contract exists and where there is an implied promise to pay but the agreement is silent, *quantum meruit* lies and the Court should fix a reasonable and fair amount. It was submitted although the contract was oral, the salary was ascertainable at US$2500. Counsel relied on CEXH2 and CEXH3 for proof of employment and suggested that the evidence proved that the Claimant worked for the Respondent was never paid. Counsel asked this Court to grant the Claimant his prayers.

The Respondent's submissions

[14] Ms. Omoro, appearing for the Respondent, submitted that the Claimant is not entitled to wages of US$ 50,000 as claimed. All wages due to him were paid as per REX1. She argued that under cross-examination the Claimant had admitted his signature on the receipts which did not indicate any balances left. It was submitted that under **Section 44 of the Employment Act, 2006*(from now EA)*** receipt of wages due to any employee by another employee is prohibited. This, in Counsel's view, reinforced the argument that the Respondent Company does not owe the Claimant any wages. It was submitted that there was no contract, offer letter nor any document supporting the entitlement to such quantum of wages. Counsel submitted that the timelines in CEX2 and CEX3, corresponded with when the Claimant was last seen in January 2018. The Claimant did not have any paper work to prove tasks done after January 2018, was not aware that the Respondent had shifted office and Counsel invoked the maxim of "*Res Ipsa Loquitor*". Citing **Section 41(6) EA**, it was argued that an employee is not entitled to wages where he or she is absent from work without authorization or good cause.

[15] It was also submitted that the Claimant had not met the pre-requisite for applying the principle of *quantum meruit*. That according to **Powell v Braun[1954] ALL ER 484,** *quantum meruit* may be used to recover a reasonable price or reasonable remuneration where a contract has been made for the supply of goods and services and no precise sum has been fixed by agreement. That in the Claimant's case, it defeats the argument because US$ 2500 was the precise sum set and secondly this was not what one would consider "reasonable remuneration" for the kind of work that the Claimant carried out for four months. On the authority of **Steven v Bromley & Son (1919) 2 KB 722,** Counsel argued that where there are two parties under contract quantum meruit there must be a new contract and in order to have a new contract you must get rid of the old contract and that in the instant case there was neither an old nor a new contract. It was Ms. Omoro's prayer that we do not to apply the principle of *quantum meruit* to this case.

[16] Finally, Ms. Omoro's submitted that the primary contract relationship of the parties did not create an employment relationship because a primary contact is merely the main point of contact between an employer and employee and plays a communication role in promoting a good working environment. Counsel concluded that the Claimant was not entitled to claim as primary contact because his roles were defined and remuneration was not fixed and he was paid as and when he showed up for work during the four months.

Rejoinder

[17] In rejoinder, Mr. Bainomugisha submitted that REX1 demonstrated that the Claimant was paid salary for one month and the rest of the receipts indicated consultancy. Counsel suggested that Section 44EA was misplaced because the Claimant was not receiving salary on behalf of any other employee. Relying on **Section 2EA**, it was submitted that the definition of a contract of service includes an oral contract and it was therefore not mandatory to adduce documentary evidence of proof of the agreed amount where no written contract existed. It was argued that the employer failed to provide written particulars under **Section 59 EA** and CEX1 did not show a consensus between the parties. It was submitted that as **"the eyes and ears"** of the Respondent, the sum was reasonable. In respect of *Res Ipsa Loquitor*, on the authority of **Simon A. Nangiro and Anor v UEDCL C.A.C.A No 38 of 2013** it was submitted that this was a rule of evidence and inapplicable. On abseentism, it was submitted that **Section 41(6)EA** was wrongly cited there being no proof of any disciplinary hearing.

[18] It was also submitted that following the Respondent's breach of Sections 41 and 59 EA, the Claimant had opted for *quantum meruit* which ought to be viewed as a gain-based remedy. For this proposition Counsel relied on **Benedetti v Sawaris & Others [2013] UKSC 50.** It was also submitted that the Claimant was appointed by resolution and upon his constructive dismissal, a new resolution was filed. For this period the Claimant was not paid and yet the Respondent had gotten contracts in Uganda.

Analysis and determination

[19] The undisputable facts in this matter are that between 1st October 2017 and sometime in January 2018, the Claimant and the Respondent enjoyed an employment relationship. CEX1 was a resolution acknowledging the Claimant as the Respondent's employee. It read;

> *"That **ISRAEL TAYEBWA(ID No. 005588321)** is our employee and is hereby appointed to be our local Primary contact in Uganda"*

This paragraph is in stark contrast to the Respondent's unusual plea that the Claimant was an independent contractor. The evidence in the two resolutions (CEX1 and CEX5) point in the opposite direction of an independent contractor. These resolutions employ the term employee and confirm the Claimant as an employee and appoint him the primary contact and not an independent contractor and then indicate that he had ceased to be an employee. REX 1 which

consisted of two cash receipts showed that the Claimant earned a salary for November and December 2017. Therefore, we would find on the basis of these documents that the Respondent's plea of independent contracting is inconsistent with the evidence on record.

[20] The Claimant says an agreement was reached where his salary was US$ 2500 per month. He did not provide any document to support this assertion. The Respondent countered that it had paid all the Claimant's salary in cash. REX1 contained four receipts two of which were dated the 15th of November 2017 and 15th of December 2017. The receipts bore the following significant and important inscriptions and were written in both the English and Afrikaans languages.

" CASH RECEIPT/KWITANSIE

Date 2
Datum
15/11/2017

RECEIVED from China Railway No. 10 Engineering
ONTVANG Van Group Co. Ltd
The sum of Five Hundred USD Rand
Die bedrag van
cents
sents

500$ R :

With thanks/Met dank

In payment of Salary for 1 month
ter betaling van
"

[21] The second receipt for issued the month of December 2017 bore the same features of the November 2017 receipt. Both parties did not disown these documents. RW2 owned the same in paragraph 3 of his witness statement and referred to them as salary receipts. For the Claimant, under cross-examination, he suggested that this was his payment for consultancy work and said in examination in Chief, that when the negotiations were carried out, he was promised US$ 2,500 per month. The Claimant's is a difficult proposition to believe. Mr. Bainomugisha asked us to expunge the receipts from the record and render RW2 evidence hearsay. We do not agree with this approach because under cross-examination, the Claimant, when shown REX 1, admitted that he wrote these receipts and was paid the money for consultancy work. Ms. Omoro made this point in her submissions. And we agree that the Claimant did not disown his signature. In re-examination, he said REX1 consisted of receipts for administrative work for monies paid to consultants and other service providers. He said that the Respondent Director convinced him that he was the person to sign for payments. The evidence of the Claimant does not, therefore, point to his lack of knowledge of REX1 or, in fact, support the hypothesis that the receipts are for consultancy services, for the sum of US$ 2500. Conversely, the Claimant originated, under his own hand, REX1 and in his explanation, suggests that the Respondent's director convinced him

to make the entries therein. As we have indicated, this is not a believable proposition. If the Claimant was receiving US$ 500 for consultancy work for the months of November and December 2017, he did not indicate so in the receipts that he signed. He signed off on these receipts as his salary for the two months at US$ 500 each and cannot now come to Court and suggest that these documents do not speak to their contents. This would go against the parol evidence rule. The rule is that oral evidence is not admissible to substitute, change, vary or contradict a written document. As the Learned Author C.H Mukiibi observes on the rule in his treatise '**The Law of Evidence in Uganda'**[1], *if the rules were not observed, the benefits of writing would be lost with a resultant confusion and endless uncertainties*. We, therefore, find the REX1 speaks of salary at the rate of US$ 500 per month and nothing more.

[22] The other parcel of REX1 related to consultancy service was clearly inscribed to be for "**consultancy service fees**" and not salary. The sums were themselves different at US$200. Therefore, on the balance of probabilities, we would not be inclined to believe the Respondent's version and account of events on the agreement on salary. The inescapable inference from REX 1, written by the Claimant himself who when he appeared before Court was of good understanding, was a receipt for monthly salary of US$500 per month. It was evidence presented before this Court, for payment of salary for the months of November and December 2017. The sum of US$ 500 was not a deposit leaving outstanding US$ 2000 as the Claimant would want us to believe. And no such pattern was repeated in December 2017 to show a deposit and a balance due. It cannot have been coincidental that what transpired in November 2017 was repeated in December 2017 with no protest from the Claimant who suggests that he continued working as primary contact until he resigned.

[23] For the forgoing reasons and on the balance of probabilities, we find that the Respondent employed the Claimant as a primary contact on the 30th of October 2017 at a monthly salary of US$ 500 per month. And we are fortified in the above finding by the dicta of this Court on proof of wages which is fairly well settled now. In **Bateisibwa v Lake Victoria Authorities & Anor**[2] the Industrial Court held that *"a claim for wages must be based on the terms of the contract for services between the employer and the employee. It is this contract that guides the Court on whether the employee is entitled to the wages claimed and if so how much."* In that case, the Court found that the Claimant, whose salary was pegged to his raising of funding, was unable to prove that he had raised funds and, therefore, earned his salary or wages. Wages are therefore provable in like manner as special damages[3] before an ordinary civil Court by reference to the contract. In the case before us, there is ample proof of payment of a monthly salary at US$ 500 per month for two months, and we so find.

[24] Mr. Bainomugisha invited us to consider the Claimant's wages on a *quantum meruit* basis. Counsel for the Claimant argued that he was recruited at an agreed salary of US$ 2500 and performed certain services by which the Respondent got contracts. Counsel cited **Black's Law**

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[1] Page 108
[2] LDC No. 192 of 2014 reported in [2019] UGIC 2 (29 March 2019)
[3] See LDC No. 062 of 2014 Lukyamuzi Godfrey v Energo Project Niskogro-Anoja

Dictionary 8th Edn, Christine Bitarabeho v Edward Kakonge[4], **Craven -Ellis v Canons Ltd**[5]and the Namibian case of **Geormar Consult CC v China Harbour Engineering Company Ltd**[6]**.** The general thrust of these authorities is that if a person performs valuable services for another at that other person's request in pursuance of a transaction supposed by him or her to be a contract but which in truth is without legal validity, then the principle of *quantum meruit* applies.

[25] For her part, Ms. Omoro suggested that the principle was not applicable. She cited **Powell v Braun**[7] and **Steven v Bromley & Sons**[8] for the proposition that *quantum meruit* may be used to recover a reasonable price or reasonable remuneration where a contract has been made for the supply of goods and services and no precise sum has been fixed for the agreement and that there must be a new contract and an old contract that has been gotten rid of.

[26] The principle of *quantum meruit* has been applied to employment disputes. In **Craven***(supra)* the Plaintiff was appointed Managing Director of a company by an agreement under the company's seal which provided for his remuneration. Acting under the agreement, the plaintiff rendered services and sued for sums specified in the agreement or alternatively for a reasonable remuneration on *quantum meruit*. It was held that the agreement was void since the persons purporting to act as directors had no authority and could not bind the company. The claim in contract failed, but as services had, in fact, been rendered, the alternative claim on the *quantum meruit* succeeded. In **Geomar***(supra),* the Plaintiff relying on an oral agreement to provide certain pre and post -tendering stage services to the defendant who was a successful bidder in a 2,700,000,000 Namibian Dollars contract of works, sued the defendant who had refused to pay on the grounds that no valid agreement existed between it and the Plaintiff. Parker A.J, found that the plaintiff had not placed before the Court sufficient and satisfactory proof of expenses incurred in rendering services but that there was an express or implied promise to pay and that the agreement was silent on the amount. The Court was satisfied that *quantum meruit* lay and fixed a reasonable and fair amount of remuneration at 200,000 Namibian Dollars.

[27] We think that each of these cases is distinguishable from the facts before us. In **Craven** *(op cit),* it was found that the agreement was itself void. That is not the case or plea of the Respondent before us. The Respondent made a plea incompatible with the status of the Claimant as an employee suggesting he was an independent contractor on the one hand and then admitted that he was its primary contact and driver, and therefore employee, who overindulged in alcohol use on the other hand. These arguments are irreconcilable, in our view. One is either an employee or an independent contractor and certainly not both, as demonstrated in paragraphs 5(b),(d) and (e) the Respondent's reply to the memorandum of claim.

[28] **Geomar** *(supra)* concerned a case where the Plaintiff did not plead a specific amount of money it was agreed the defendant should pay the plaintiff for performing services and the plaintiff did

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[4] SCCA No 4 of 2000
[5] [1936] 2 KB 403
[6] [2021]NAHCMD 455
[7] [1954] 1 ALL ER 484
[8] [1919] 2 KB 722

not place before the Court evidence of expenses incurred in rendering those services. In the matter before us, the Claimant pleads that there was an agreed monthly salary of US$ 2500. In this way, we would agree with Ms. Omoro in the thesis that *quantum meruit* defeats the argument because US$ 2500 was the precise sum set. In our view, **Geomar***(supra)* is distinguishable on the facts.

[29] The point made in **David May v Busitema Mining CIE Ltd**[9] is a bit more helpful and applicable. In that case, the Plaintiff sought recover of US$ 120,902.89 being a claim for outstanding remuneration due to him under an employment contract. The High Court of Uganda rejected the claim. On appeal, Tuhaise J.A *(as she then was)* discussed the principle in **Craven**. In a passage explaining the application of *quantum meruit* to a claim for remuneration, her Lordship held;

> *"In this case, it is evident the Respondent accepted and benefitted from the services of the appellant and did not pay. It would be unjust to allow the Respondent to escape its obligation to pay for services it benefitted from, more so where it had a duty to ensure that the contract was attested as required by the law. The Respondent should not benefit from its omission to have the contract attested (which rendered it unenforceable) by insisting it is not obliged to pay the appellant under the said contract. It is like wanting to eat its cake and have it at the same time"*

[30] The general strand and thrust of the cases cited above is that where the employer seeks to avoid payment on account of a void agreement and, the employee renders services for which the employer takes benefit, the employer would not be entitled to avoid paying for the services on the account of a void agreement. Further, where no specific sum is provided for in the agreement, *quantum meruit* would apply. That is not the matter before us. Here, the Claimant seeks unpaid wages of US$ 50,000 from 30th October 2017 for 20 months. He argues that he was entitled to US$ 2,500. There is a resolution for his appointment as employee/primary contact dated 30th October 2017 and a resolution for his exit dated 24th June 2019. The principle of *quantum meruit* is not applicable because the Claimant seeks a fixed sum in salary. Further he does not show the services rendered for which this Court should set a reasonable and fair remuneration. The Claimant, in cross examination said he had work reports but he did not attach them to his witness statement. He also did not attach evidence of the large contracts he alluded to have negotiated on behalf of the Respondent. In our view, *quantum meruit* does not lie and we would reject Mr. Bainomugisha's argument on that point.

[31] Therefore, in our answer on issue 1, we would find that the Claimant was paid US$ 500 per month for November and December 2017 and are persuaded that this was the agreed monthly salary. We find no evidence to support his claim for US$ 2,500 per month. We reject the proposition that the Claimant's salary was agreed at US$ 2,500 per month. We have some obiter remarks which we shall make before taking leave of this case.

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[9] C.A.C.A No. 92 of 2010

Issue II: What remedies are available to the parties?

Unpaid Salary

[32] We were invited to enter a declaration that the Respondent owes the Claimant unpaid wages in US$ 50,000(United States Dollars Fifty Thousand). In view of our answer to issue one above, we cannot make such a declaration.

[33] The claim is mainly in respect of the work period between January 2018 and 18th of June 2019. Mr. Bainomugisha puts this at twenty months but we think the number would be seventeen months. Counsel suggested the CEX4 constituted the Claimant's resignation on the 18th of June 2019. This was a letter by the Claimant's lawyers M/S A. Mwebesa & Company Advocates by which they demanded backpay for twenty months and informed the Respondent of the Claimant's resignation. This letter was followed by a resolution some six days later, by which the Respondent resolved that the Claimant was no longer an employee of the Respondent. This second resolution (CEX 5) was registered at the Uganda Registration Services Bureau on the 8th of July 2019. The Respondent submitted that the Claimant is not entitled to any remedies in his memorandum of claim and in respect of salary particularly, it was submitted that the Claimant had been fully paid for work done as per REX1.

[34] In our view, CEX5 negates the Respondent's defence that the Claimant had absconded in January 2018. Between January 2018 and July 2019, the Respondent does not appear to have taken any action to revoke the resolution of the 30th of October 2017(CEX1). The Respondent brought as its witness, Mr. Barnabas Bright (RW1) who was said to have been recruited in January 2018. His contract of employment was admitted as REX2 and clearly indicated that he was a driver earning UGX 1,050,000 per month. RW1 testified that he had replaced the Claimant who was constantly missing work. He was informed that upon being reprimanded for drunkenness, the Claimant had taken offence and refused to return to work. That he was present when the Claimant received his January 2018 wages. Under cross-examination, RW1 admitted that he did not have full knowledge of the terms and conditions and salaries of all the Respondent's employees. That he did not have any idea of the agreement on wages between the Claimant and Respondent. In cross-examination, Zheng Xiaofei (RW2) testified that he came to Uganda in September 2021 and did not have knowledge of CEX5, the resolution removing the Claimant. From the chronology of events, CEX5 followed the notice of intention to sue CEX4. It was only after the Respondent had been served with a demand and notice of the Claimant's resignation that they thought it necessary to pass a resolution ending their relationship with the Claimant.

[35] The Claimant produced emails (CEX 2) from November and December 2017 and, January 2018 from the licensing department of the Uganda Revenue Authority in respect of Respondent's tax matters. He also produced an email dated 23rd December 2017(CEX3) from Ji Kunshang Ji to him asking him to review and revise a construction contract. Beyond this, there were no further reports or emails for the period January 2018 to June 2019. The Claimant testified that Ji Kushang left Uganda sometime in 2018 with the office or residence keys. His work was mainly fieldwork, and when Mr Kushang returned in mid-2018, work continued with field visits to possible projects

like roads, power plants and railway lines. There were also several hotel meetings, and in early January 2019, before leaving the country, Mr. Kushang introduced the Claimant to one Lui Yadin. The Claimant testified that he worked with Mr. Yadin until a new Manager, Mr. Dong came to Uganda. It was his evidence that it was Mr. Dong who became evasive, shifted residences and continued to deny him salary. This evidence was not controverted in cross-examination and the Claimant maintained that his claim was for salary as a local primary contact.

[36] After receiving the demand letter, a unanimous resolution that the Claimant was no longer the local primary contact of the Respondent, dated the 24th June 2019(CEX 5), was signed by Ji Kushang, who had signed CEX 1 appointing the Claimant primary contact, together with Xie Dong, The Respondent did not rebut this evidence and therefore it would follow that by executing and registering CEX 5, the Respondent had accepted the Claimant's resignation in CEX4. At law, resignation terminates an employment relationship. Having appointed the Claimant their employee/local primary contact on 30th October 2017 and removing him by resolution on 24th June 2019, he was in their employment between those dates. The evidence shows he was paid salary for the months of November and December 2017 and was not paid between January 2018 and June 2019. This would be a period of seventeen months and a rate of US$ 500 per month, the Claimant would be entitled to **US$ 8,500** (Eight Thousand Five Hundred United States Dollars Only) which we hereby award.

[37] We are fortified in this view by the decision of this Court in

Compensatory Orders,

[38] The Claimant sought compensatory orders for constructive dismissal citing **Mbiika Deniis v Centenary Bank Ltd**[10] and **Section 65(1)(c) EA** for the proposition on termination of a contract by an employee as a consequence of the employer's unreasonable conduct towards the employee. It was submitted for the Respondent that the Claimant was not entitled to a compensatory order under **Section 78EA** as he resigned and was not unfairly terminated.

[39] The principle in **Mbiika***(ibid)* is that constructive dismissal/termination occurs where an employee resigns as a result of intolerable working conditions or unreasonable conduct of the employer. In the matter before us, the Claimant did not adduce any evidence to show that the Respondent behaved unreasonably between January 2018 and June 2019. He did not adduce any evidence of his protests at being unfairly treated. For this reason we do not think it necessary to consider compensatory relief. This Court took this approach in **Kiggundu Thomas Edison v Fairer/Soser View Apartments**[11]where Ntengye H.J found;

> *"The resignation letter of the Claimant in the instant case did not state the unethical conduct exhibited by management. Because of the failure to disclose the unethical conduct exhibited by the Respondent, it is not possible for this Court to*

[10] LDC 023 of 2014
[11] LDR 061 of 2015

*gauge whether it was "**illegal or injurious**" or whether it made it impossible for the Claimant to continue working, causing him to file a resignation. Without the ethical conduct being disclosed in the resignation letter, it is not possible to discern whether it amounted to a serious or major breach of the contract of the Claimant."*

[40] We agree with this proposition of the law and find that since CEX4 did not disclose the unworkable working conditions in the Respondent, the Claimant would not be entitled to claim that he resigned as a result of the Respondent's unreasonable conduct.

[41] Further, this Court has ruled that an award of compensatory orders under **Section 78EA** are the Labour Officer's remit and not a matter for this Court as this Court grants general damages.[12] Under **Section 78(2)EA,** the Labour Officer is granted a discretion to award a compensatory order. We therefore decline to grant the Claimant a compensatory order.

General, Exemplary/Punitive and Aggravated Damages

[42] In respect of general, exemplary/punitive and aggravated damages, it was submitted for the Claimant that these were discretionary remedies that did not require proof. Mr. Bainomugisha cited **Luzinda v Sekamamtte [2020] UGHCCD 20** for the proposition the general damages are discretionary and **Obongo v Kisumu Council [1971] EA 91** for the proposition that malice and arrogance may be taken into account when awarding aggravated damages. We were directed to the case of **Pinnacle Finance Ltd v Kaddu Godfrey HCCS No. 94 of 2015** where the High Court held that interest is awarded at the discretion of the Court.

[43] For the Respondent, it was submitted that the Claimant had not demonstrated any damage, loss or injury suffered to warrant general damages. It was also submitted that the Claimant was not entitled to exemplary or punitive damages and did not meet the categories set out in **Rookes v Bernard [1964] AC 1129.**In respect of aggravated damages it was submitted that the Claimant had not shown aggravating circumstances. Counsel cited **David Bosa v Post Bank Uganda Ltd LDR 79 of 2018.** Counsel submitted that interest and costs of the claim should be denied.

[44] General damages are those damages such as the law will presume to be the direct natural consequence of the action complained of[13]. In **Stanbic Bank (U) Ltd v Constant Okou**[14] Madrama, JJA (*as he then was*) 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 quantum of damages in **Donna Kamuli v DFCU Bank Ltd** [15] the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. In the case

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[13] Stroms v Hutchinson[1950]A.C 515
[14] Civil Appeal No. 60 of 2020
[15] LDC No. 002 of 2015

now before us, our assessment, the Claimant was earning **US$ 500** per month and had worked for the Respondent for about twenty months. He resigned. Considering all the circumstances we determine that based on his monthly salary, the sum of **US$ 1000** as general damages will suffice.

Interest

[45] The Claimant argued that interest is at the discretion of the Court. This prayer is granted. The sums in paragraphs 36 and 44 above shall attract interest at 15% per annum[16] from the date of award until payment in full.

Costs

[46] There is to be no matter order as to costs because this Court takes the view 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[17] and in keeping with the dicta in **Joseph Kalule v GIZ**[18]. We do not find that the Respondent misconducted itself in any way.

Final orders

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

(i) We declare that the Claimant was entitled to a salary of US$ 500 per month.

(ii) The Respondent is ordered to pay the Claimant the following sums:

a) **US$ 8,500** in salary arrears and

b) **US$ 1,000** as general damages.

c) The sums above shall carry interest at 15% p.a. from the date of this award until payment in full.

(iii) There shall be no order as to costs.

[48] Before taking leave on this issue, we note that in the absence of a written contract indicating the salary of an employee, the **Employment Act 2006** makes ample provision for establishing wages. First, under **Section 50EA**, every employee is entitled to an itemized written pay statement from his or her employer in a language they can reasonably understand, together with deductions and their purposes, if any. Where such a pay statement is not provided, a Labour Officer has the

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[16] Nazziwa v National Social Security Fund (Labour Dispute Reference No. 1 of 2019) [2022] UGIC 36 (22 December 2022)
[17] Ibid
[18] LDR 109 of 2020

power to issue one or more written pay statements in place of the employer and amend any inaccuracies. Under **Section 50(5)EA**, any written pay statement issued by the labour officer in place of or in amendment to the employee's pay statement shall be regarded as the pay statement. This is, in our view, a most efficacious provision of the EA in streamlining pay statements. Read together with **Section 59EA**, where an employee is entitled to written particulars of employment, including the duration of employment, the wages and overtime payable, leave entitlements, length of notice, and other terms, go a long way in defining the terms and conditions of the employment relationship. The written particulars are to be issued within twelve weeks after the employment commences under **Section 50(3)EA**; a copy is to be retained by an employer under **Section 50(5)EA** and serves as admissible evidence of the terms and conditions of employment in the event of a dispute unless rebutted. The import of **Sections 50** and **59EA** are to clarify terms and conditions of employment in the event of a dispute such as the present one.

Signed in Chambers at Kampala this 19th day of April 2024.

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

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

19th April 2024

10:25 a.m.

Appearances

1. For the Claimant:	Claimant in Court.
2. For the Respondent:	None.
Court Clerk:	**Mr. Samuel Mukiza.**
Court:	Award delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court