



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT FORTPORTAL
LABOUR DISPUTE REFERENCE NO. 22 OF 2020
(Arising from Labour Dispute No. 069/05/2020)

MUHINDO JOCKUS:.....CLAIMANT

VERSUS

ESCO UGANDA LTD :.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirmana and Hon. Michael Matovu.

Representation:

1. *Mr. Luke Kanyonyi of M/s. Kanyonyi & Co. Advocates for the Claimant.*
2. *No one for the Respondent.*

AWARD

Introduction

- [1] On the 18th of October 2013, the Claimant was employed by the Respondent as a storekeeper at a monthly salary of UGX 500,000/=. The Respondent is an agricultural company selling and buying agricultural products in Uganda, including promoting cocoa and vanilla. It has offices at Bakwanye House, Plot 26, Wampewo Avenue, in Kampala. The Claimant was posted to Bundibugyo District and was charged with buying cocoa and vanilla seeds from various farmers. On the 24th of May 2018, he had an accident while ferrying a sack of Cocoa. He reported his injuries to his employers. On the 1st of October 2019, his salary was increased to UGX 1,209,600/=. On the 16th of March 2020, he applied for early retirement on medical grounds. He felt he should be entitled to terminal benefits by the Respondent's Human Resource Manager's Handbook.
- [2] In its letter accepting his resignation, the Respondent argued that it did not have any provision for terminal benefits for early retirement.

- [3] The Claimant lodged a complaint with the labour officer, Julian Biira, who invited the Respondent to attend a meeting to settle the matter amicably. A meeting was held at which the parties agreed to carry out some preliminary steps before the matter could be resolved. From the lower record, it appears the matter was not resolved amicably. On the 22nd day of July 2020, the Labour Officer delivered an 'award' which detailed a record of the meetings between the parties and the matters agreed to. By letter dated the 22nd of July 2020, the Labour Office forwarded the file to the Registrar of this Court for execution because the Respondent had not fulfilled the terms and conditions set out in the meetings.

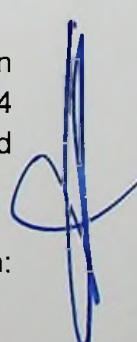
The Claim

- [4] In his memorandum of claim, the Claimant sought recovery of his terminal benefits, unpaid leave days, general damages and costs of the claim.

Memorandum in reply

- [5] In a sworn response to the notice of claim, Daniel Hernandez, the Respondent's Operations Manager, confirmed receipt of the Claimant's resignation letter. He said that the Claimant had not reported his motorcycle accident in accordance with policy and procedure. He also noted that the Claimant was not responsive to attending further medical assistance. He averred that the Respondent duly compensated the Respondent as per minutes of a meeting with the Labour Officer on the 8th of June 2020. He also said the claim for severance pay at two months per year worked was unreasonable. He asked that the claim be dismissed.

The proceedings and evidence.

- [6] When the matter was called before this Court on the 23rd of May 2024, Mr. Martin Masereka held Mr. Kanyonyi's brief. We directed Counsel to liaise with Counsel for the Respondent to generate the pretrial documentation. On the 4th of July 2024, Mr. Masereka informed the Court that the Respondent's lawyers, M/S Prudence Advocates, could not be found. We set the matter for the 12th of June 2024. On that date, Mr. Kanyonyi informed the Court that the Respondents had been served on the 7th of June 2024, and based on effective service, Counsel moved the Court to proceed under Order 9 Rule 11 CPR.
- [7] Satisfied that the Respondent had due notice of the day's fixture, and upon perusal of the affidavit of service sworn by Kato Benson on 11th June 2024 indicating service on the Respondent at its Bakwanye House offices, we granted the Claimant leave to proceed exparte.
- [8] Under Order 15 Rule 5 CPR, the following issues were framed for determination:
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- (i) *Whether the Claimant is entitled to any retirement benefits claimed? and*
- (ii) *Whether there are any other remedies available to the Parties?*

[9] The Claimant's witness statement, made on the 28th day of May 2024, was adopted as his evidence in chief. He testified that he was entitled to terminal and other benefits as per clause 12.7.3 of the Respondent's Handbook. He said that an agreement had been reached before the Labour Officer for him to receive all his benefits, including one month's salary for April 2020 amounting to UGX 1,209,600/=, unused leave days and a certificate of service. He attached copies of agreements between the Respondent and individual farmers on payments due from farmers. The evidence was not subject to cross-examination and on closing the Claimant's case, we directed the filing of written submissions.

Analysis and Decision of the Court

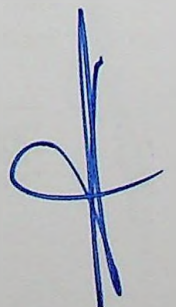
Issue 1: Whether the Claimant is entitled to the terminal benefits claimed?

[10] Counsel for the Claimant, citing *Lubega Moses v Holy Cross Orthodox Hospital*¹ submitted that terminal benefits mean the final entitlement of an employee upon termination of an employment contract and that they are paid as motivation to commit employees and attract good or better employees. Counsel argued that Section 12.7.3 of the Branch HR Managers Handbook ("**the BHR**"), which was admitted as CEX 9, provided for an employee's retirement on medical grounds on the recommendation of a medical doctor with full benefits. It was contended that a "casual" look at the correspondence between the parties showed that the parties mutually agreed to the Claimant's retirement, and he was, therefore, entitled to his full benefits. The benefits were particularised as UGX 550,000/= unpaid salary, UGX 725,760/= as payment in lieu of leave, UGX 16,934,400/= as severance pay, and general damages of UGX 20,000,000/= The Claimant also asked for a certificate of service.

[11] The Respondent did not appear in Court, so the Claimant's evidence remained unchallenged. Such evidence is deemed admitted as inherently credible and probably true. In *Geoffrey Brown v Ojjo Pascal*² the Honourable Mr. Justice Musa Ssekaana added that the Court must evaluate the evidence to give it quality and value. And that is what this Court shall set out to do below.

¹ [2019] UGIC 211

² [2023] UGHCCD 173



Determination

- [12] It was common by pleadings that the Claimant resigned from employment. Resignation terminates the employment relationship as this Court held in *Serumaga v Defence for Hire Security*³ where we cited *Francis Mudibo Ouma v Oakwood Investments Ltd*⁴ for the observation that:


Although under Section 65 of the Employment Act, resignation is not mentioned as one of the methods of terminating an employer-employee relationship, based on the freedom of contract and the legal principle that an employee is free to give his labour to an employer at agreed terms and that no employee can be forced to provide labour to a given employer, resignation is considered a method of the employee to end the relationship.

- [13] The matter, therefore, is a short question of what benefits are due to the Claimant.
- [14] The law relating to terminal benefits is fairly well-settled and consistently applied. In *Lubega*, the Industrial Court emphasised that terminal benefits are contractual, agreed between the employer and employee. In *Tumuranze Aggrey v Toro & Mityana Tea Co. Ltd*⁵ the Court held that terminal benefits are a subject of the employment contract between the employer and the employee. It is such a contract that ordinarily provides for the benefits that accrue to the employee after earlier termination, dismissal or retirement of the employee. The Court also observed that in the absence of terminal benefits, the Court would consider the provisions of Section 39EA, which relates to repatriation and Section 87EA, to which we shall return later in this award, which relates to payment of severance allowance.
- [15] Therefore, this Court is called to establish whether the employment contract provided for terminal benefits. The Claimant's letter of appointment admitted as CEX 1 did not provide for any terminal benefits but made reference to other terms and conditions set out in the staff manual. The employment contract CEX2 provided for terminal benefits to be paid for any staff leaving finally. The BHR was admitted as CEX9. This was the operative document providing instances where terminal benefits were payable and what the computation would be.
- [16] Section 12 BHR provides separation, resignation, termination, and retirement information. Under Section 12.2(a), a member of staff of management resigning was required to give the Respondent three months' notice; under Section

³ [2023] UGIC 73

⁴ [2020] UGIC 25

⁵ [2016] UGIC 16



12.2(b), other staff were required to provide one month's notice. Under Section 12.2(c), the resigning employee is entitled to salary earned plus entitlement to the end of the period and a cash payment for accrued leave, plus leave allowance or the granting of such leave to coincide with the date of expiry of the termination period. In its acceptance of the Claimant's resignation, the Respondent indicated that since there was no provision for early retirement, the Claimant's termination would be treated as a resignation, and it would pay the Claimant all his days worked and unused leave after deduction of all debts due to the Respondent. Therefore, following his resignation and after a careful review of BHR, no provision grants full terminal benefits for his resignation. The Claimant would not be entitled to any terminal benefits under his employment contract and the staff manual on this limb. His claim would fail, and we so find.

[17] Counsel suggested that the Claimant's early retirement was on medical grounds, which under Section 12.7.3(b) BHR would entitle the Claimant to full benefits. Our reading of the qualification for full benefits is under Section 12.7.3(a) BHR, which requires a recommendation from a qualified doctor before an employee retires on medical grounds. In his request for early retirement, the Claimant indicated that he had developed chest pain following an accident at work.⁶ The legible report from Afya Medical & Diagnostic Centre dated 1st June 2018 concluded with the "Normal chest X-ray" remarks, with all other remarks indicating normal radiological findings. The radiographer did not recommend early retirement. In these circumstances, we cannot agree with Counsel for the Claimant that this was a retirement on medical grounds. We do not think there was a medical opinion recommending early retirement under Section 12.7.3(a). As a result, this limb of the claim would fail.

[18] Overall and in answer to issue No. 1, we find that under the appointment letter, employment contract and staff manual, the Claimant, having resigned, would only be entitled to salary earned plus entitlement to the end of the period and a cash payment for accrued leave, plus leave allowance or the granting of such leave to coincide with the date of expiry of the termination period.

Issue II: What remedies are available to the parties?

Unpaid Wages

[19] The Claimant sought a balance of his wages of UGX 550,000/=. While the letter of acceptance of his resignation indicated certain deductions to be made, these deductions have not been proved to this Court. Under Section 46EA, permitted

⁶ Matters of worker's compensation are not within the jurisdiction of this Court under Section 1(a) of the Workers Compensation Act Cap. 225.

deductions are tax, rate, subscription or contribution imposed by law or upon written consent for deductions to any provident, pension fund, or scheme. The only other permissible deductions in respect are for rent or union dues. In the circumstances, we award the Claimant his unpaid salary of UGX 550,000/=.

Payment in lieu of leave

- [20] Counsel for the Claimant sought UGX 18 days leave at UGX 725,760/=. Under Clause 10 of CEX2, the Claimant was entitled to 21 days of annual leave. We were not told how many days of unused leave the Claimant was entitled to at the time of his resignation on the 16th of March 2020. At his monthly salary of UGX1,209,600/=, his statutory leave pay would be UGX 846,720/=, which we hereby award.

Severance Allowance.

- [21] In paragraph 17 of its response to the memorandum of claim, the Respondent contended that severance at two months for each year of service was unreasonable. We agree with this proposition. The entitlement to severance is statutory under Section 87EA. In the circumstances of the present case, Section 87(c) EA is applicable. It provides that an employee is entitled to severance allowance where he or she terminates his or her contract because of physical incapacity not occasioned by his or her own serious or wilful misconduct. In the present case, the Claimant suggested that he was incapacitated on account of an accident, and the Respondent accepted his resignation. He is, therefore, entitled to severance pay. The Industrial Court, in *Kamuli v DFCU Bank [2015] UGIC 10*⁷ held that the calculation of severance shall be at the rate of monthly pay for each year worked. In the circumstances that the Claimant was employed from the 1st of October 2013 until he resigned on the 16th of March 2020, he had worked for six years and five months. He would, therefore, be entitled to UGX 7,761,600/=, which we hereby award.

Certificate of Service

- [22] We agree with Counsel for the Claimant that a certificate of service should be given upon request as provided under Section 61EA. We, therefore, direct the Respondent to issue the Claimant with a certificate of service within 30 days of the date of this award.

⁷ [2015] UGIC 10

General Damages

[23] Counsel for the Claimant was contending for **UGX 20,000,000/=** in general damages. The law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of⁸. In **Stanbic Bank (U) Ltd v Constant Okou**⁹ Madrama, JJA (*as he then was*) held that general damages are based on the common law principle of *restitutio in integrum*. In the case before us, the Respondent accepted the Claimant's resignation but could not pay the Claimant his full benefits. The Claimant served for about six years and five months. Considering all circumstances, we would grant the Claimant the sum of UGX 2,628,800/= in general damages.

Costs

[24] Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.¹⁰ We think in the present case that the Respondent has misconducted itself by filing a response and declining to attend Court, and we award costs against it.

[25] Finally, based on our findings that the Claimant resigned, we conclude that he is entitled to contractual terminal benefits.

[26] We make the following orders:

- (i) We direct the Respondent to pay the Claimant the following sums:
 - (a) UGX 550,000/= as unpaid salary.
 - (b) UGX 846,720/= as untaken leave.
 - (c) UGX 7,761,600/= as severance pay and
 - (d) UGX 2,628,800/=general damages,
- (ii) The sums above shall carry interest at 15% p.a. from the date of this award until payment in full.
- (iii) Under Section 61 EA, we direct the Respondent to issue a certificate of service within 30 days from the date of this order.
- (iv) The Claimant shall have costs of the claim.

⁸ *Stroms v Hutchinson* [1950]A.C 515

⁹ Civil Appeal No. 60 of 2020

¹⁰ *Joseph Kalule Vs Giz* LDR. 109/2020(Unreported)

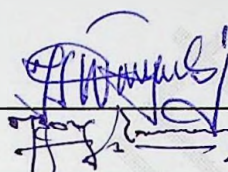
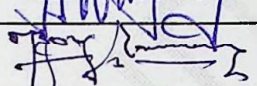
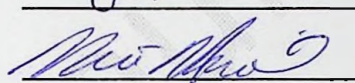
It is so ordered.

Signed in Chambers at the High Court of Uganda in Fort Portal this 25th day of June 2024.


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu.

25.06.2024
10:41 a.m.

Appearances:

1. **For the Claimant:** M/s. Julian Nyakecho holding brief for Mr. Luke Kanyonyi Claimant in Court.
2. **For the Respondent:** None for the Respondent.

Court Clerk: Mr. Samuel Mukiza

M/s. Nyakecho: Matter for award, and I am ready to receive it.

Court: Award delivered in open Court.


Anthony Wabwire Musana, 10:58 am
Judge, Industrial Court.