



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 255 OF 2019
(Arising from Labour Dispute Complaint No. KCCA/RUB/LC/229/2018)

KAMUHANDA PHILLIP :: **CLAIMANT**

VERSUS

RIGIL AGRO TECH :: **RESPONDENT**

BEFORE:

1. THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. MS. ADRINE NAMARA,
2. MS. SUSAN NABIRYE &
3. MR. MICHAEL MATOVU.

AWARD

Introduction

[1] Mr. Phillip Kamuhanda sought this Court's determination on a claim for recovery of unpaid wages, allowances, social security fund remittances, unpaid leave, general damages, and costs of the claim. In the memorandum of claim, he alleged that he was employed as Manager Commercial on 10th February 2017. Despite service of a notice of claim per Rule 5 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012, the Respondent did not file a memorandum in reply. On the 7th day of February 2023, we permitted the Claimant to proceed *ex parte* under Order 9 Rule 20(1)(a) of the Civil Procedure Rules S.I 71-1 (*from now CPR*).

[2] Two issues were framed for determination;

- (i) Whether the Respondent breached the employment contract by failing to pay the Claimant salary arrears?

- (ii) What remedies are available to the parties?

The Proceedings

- [3] The Claimant filed two witness statements. The witnesses took oath, and the statements were admitted as their evidence in chief. After the hearing, directions for written submissions were issued. The Claimant filed his written submissions on the 17th of February, 2023. The Respondent's written submissions are not in the registry of this Court.

Analysis and Decision of the Court

Issue One; Whether the Respondent breached the employment contract by failing to pay the Claimant's salary arrears?

- [4] The Claimant testified that on 9th January 2017, he was offered and accepted employment as Commercial Manager of the Respondent on a two-year contract effective 10th February 2017. He testified that he earned a monthly salary of UGX 5,000,000/= and a mobile money allowance of UGX100,000/=. He claims to have been paid a salary for 20 days in February 2017 amounting to UGX 3,300,000/=. Between March 2017 and April 2018, he was not paid any compensation. He was not terminated in April 2018. He testified that his ability to provide for his family was affected, and the Respondent has not remitted his social security fund contributions. He computed his unpaid salary at UGX 71,900,000/=
- [5] Abdul Kazibwe (CW2) testified that between 1st January 2009 and 1st June 2018, he served as Business Development Manager of City Oil (U) Ltd, providing fuel to the Respondent. He testified that he had been introduced to the Claimant by the Respondent. He also testified that between February 2017 and April 2018, his former employer had supplied fuel to the Respondent on credit terms at the instance of the Claimant in the capacity of Manager Commercial.

Submissions of the Claimant

- [6] Mr. Ronald Oine, appearing for the Claimant, submitted that the Claimant had adduced evidence proving that the Respondent employed him. He carried out several tasks on the Respondent's behalf. It was submitted that the Respondent did not pay the Claimant his salary, and this failure caused mental anguish and stress. Relying on the case of **Professor Oloka Onyango & Ors v Attorney General**¹, Counsel argued that if a party does not specifically deny a pleading, it shall be taken to be admitted. We were asked to find that

¹ Constitutional Petition No. 06 of 2014

the Respondent breached the employment contract with the Claimant when he failed or refused to pay his wages.

- [7] The evidence demonstrates that the Claimant received and accepted a two-year employment contract from the Respondent at a salary of UGX 5,000,000. The letter, dated 9th January 2017, was admitted as CEXH1. The Claimant accepted this offer of employment by email dated 11th February 2017. The email was admitted as CEXH2. The WhatsApp printouts adduced in evidence are communication between Rana Karan and the Claimant. They are dated 9th February 2017, 11th February 2017, 13th February 2017, 16th February 2017, 21st February 2017, 23rd February 2017, 7th March 2017, 9th March 2107, 10th March 2017, 11 March 2017, 13th March 2017, 14th March 2017, 22nd March 2017, 23rd March 2017, 29th March 2017, 4th April 2017, 7th April 2017, 13th April 2017, 17th April 2017, 18th April 2017, 25th April 2017, 25th May 2017 and 10th July 2017. A series of emails between Rana Karan at address Ranakaran@ranagroup.com and several other persons, including the Claimant at philip.kamuhanda@gmail.com, ran from 5th March 2017 to 21st March 2017. The emails and communication between the Claimant and CW2 are dated between 10th March 2017 and 22nd May 2017.
- [8] The emails relating to conversations between the Claimant and Rana Khan were limited between February 2017 and 10th July 2017. The emails regarding fuel were sent between March 2017 and 22nd May 2017. After July 2017, there appears to have been no communication between Rana Karan and the Claimant. The name Kumar Chandan is also featured in the email threads. According to CEXH1, the Claimant was reporting to Rana Karan Pratap Singh. These email threads do not support the Claimant's assertion that he worked until April 2018, when he was terminated. Additionally, the Claimant did not adduce a termination letter. While CW2's evidence partly corroborates the Claimant's account of events, the email thread between the Claimant and CW2 was limited to March 2017 until May 2017.
- [9] It was submitted that the Respondent breached the employment contract when it failed or refused to pay the Claimant his wages. Under Section 41(1) and (2) of the Employment Act, 2006 (*from now EA*), an employee is entitled to wages. The Claimant testified that he was paid a salary for 20 days in February 2017. Under Section 50 EA, every employee is entitled to an itemized pay statement in a language he or she may be reasonably expected to understand listing all deductions. The law provides that where no such pay statement is provided, an employee has a right to complain to the Labour Officer, who may issue a pay statement which the law regards as a pay statement. The Claimant did not produce a pay statement or make a complaint to the Labour Officer. CEXH1 provided that the term of employment was for a period of 2 years. However, no evidence was led to demonstrate that the Respondent did not provide work. As pointed out in paragraph 9 above, the email threads limit communication between the Claimant and the Respondent to March 2017 and

July 2017. Therefore, we cannot accept the Claimant's submission that he was employed from February 2017 until April 2018. We find it inexplicable from the Claimant's account that he remained unpaid and at work from March 2017 until April 2018.

- [10] Further, under Section 40EA, the employer must provide work in accordance with the contract during the period for which the contract is binding and on the number of days equal to the number of working days expressly or impliedly provided for in the contract. No evidence was presented to us to prove that work was not offered following the last of the emails in July 2017. We are not satisfied that the Claimant was at work for the entire duration of the contract or that the Respondent did not provide work for the duration of the contract.
- [11] Accordingly, and in all circumstances, the only reasonable inference is that the Claimant remained under the Respondent's employment until July 2017. The primary communication between the Claimant and his employers was via email and WhatsApp. The email thread is limited to March 2017 to July 2017. It follows that on the balance of probabilities, the Claimant was not paid for work until July 2017. We find that the Claimant would be entitled to salary for March 2017 until July 2017, the month at which the last correspondence between the Claimant and the Respondent was exchanged. In the result, Issue 1 would be answered in the affirmative for March to July 2017.

Issue II. What remedies are available to the parties?

- [12] The claimant sought various statutory and other remedies, which we shall dispose of individually.

Unpaid Wages

- [13] The Claimant sought unpaid wages under Section 41(1) and (2) EA. Having found, as we have in issue one, CEXH1 provides that the Claimant was employed at a monthly wage of UGX 5,000,000/=. We would award the Claimant the sum of UGX 25,000,000 in unpaid wages. We are not satisfied that there is sufficient evidence to support the monthly mobile phone allowance. CEXH1 did not include the amount payable for this allowance, and we decline to award the same.

National Social Security Fund Contribution

- [14] While Counsel for the Claimant correctly articulated the Social Security Fund contributions law, no evidence has been presented to this Court demonstrating that the Claimant was a registered member of the National Social Security Fund (NSSF). The Industrial Court² has held that NSSF remittances are

² See LDR No. 110 of 2017 Obonyo Bosco Makondo v Merryland High School and LDR No.029 of 2015 Busigu

personal property. However, the onus lies on the employee to prove that the remittances have yet to be made. In the absence of any evidence proving this claim, we decline to grant it.

Untaken Leave days

- [15] It was submitted that the Claimant had worked for 15 months and was entitled to leave under Section 54EA. Section 54(1) (a) of the Employment Act provides seven days of leave every four calendar months. This means the statutory minimum number of annual leave days is twenty-eight. The jurisprudence of the Industrial Court³ in matters of untaken leave is that the employee is required to prove that they applied for leave, which was denied. No such evidence has been laid before this Court. The prayer for leave days is rejected.

General Damages

- [16] The principles on the award of general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of⁴. In the case of **Dr. Omona Kizito v Marie Stopes Uganda**,⁵ this Court observed that damages are assessed depending on the circumstances of a given case and at the court's discretion. In assessing an appropriate quantum of damages in an employment dispute, the case of **Donna Kamuli v DFCU**⁶ is instructive. In that case, the Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. A more recent precedent from the Court of Appeal in the case of **Stanbic Bank v Constant Okou**⁷ held that general damages are based on the common law principle of *restituto in integrum*. The Court held that the appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability. Considering the circumstances of the present case, we think that the Respondent should pay general damages. Counsel asked this Court to award the sum of UGX 30,000,000/= in general damages. In the case before us, the Claimant was earning UGX 5,000,000 monthly. He did not indicate his age. He did not furnish this Court with any credible evidence of his termination. We are not able to consider the circumstances relating to his termination. We have found that he had worked for the Respondent for six months. While the Claimant was contending for a higher figure in damages, it is our

Robert v Young Women's Christian Association of Uganda.

³ See Edace Michael v Watoto Child Care Ministries L.D. A 21 of 2015 and Ochwo John v Appliance World Ltd

LDR 327 of 2015

⁴ Stoms v Hutchinson[1950]A.C 515

⁵ LDC No.33 of 2015

⁶ LDC No. 002 of 2015

⁷ Civil Appeal No. 60 of 2020

determination that based on his monthly salary, the sum of UGX 2,500,000/= as general damages will suffice.

Orders of the Court

[17] The orders of this Court are as follows:

- (i) It is declared that the Claimant is entitled to wages.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
 - a) UGX 25,000,000/= as unpaid wages and;
 - b) UGX 2,500,000/= in general damages.
- (iii) Regarding costs of the claim, we have ruled in the case of **Joseph Kalule v GIZ**⁸ that whereas costs follow the event, in labour disputes, the award of costs is the exception rather than the rule. The exceptions include some form of misconduct by the unsuccessful party. In the matter before us, we find no such misconduct on the part of the Respondent. As such, there shall be no order as to costs.

It is so ordered.

Delivered at Kampala this 5th day of April 2023

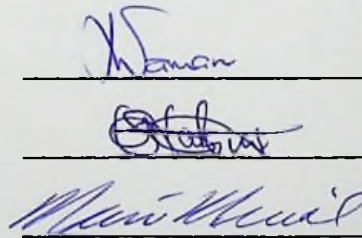
SIGNED BY:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA,



THE PANELISTS AGREE

1. Ms. ADRINE NAMARA,
2. Ms. SUSAN NABIRYE &
3. Mr. MICHAEL MATOVU.



Delivered in open Court in the presence of:

1. For the Claimant: **Mr. Ronald Oine**
Claimant in Court.
2. The Respondent is absent.
Court Clerk. **Mr. Samuel Mukiza.**

⁸ LDR No. 109/2020(Unreported)