THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT JINJA
LABOUR DISPUTE REFERENCE No. 334 OF 2019
(ARISING FROM LABOUR COMPLAINT JJA/LAB/MAY/2019)

BERNARD JOHN BAGUMA ..... CLAIMANT

V

MOTHERS TO MOTHERS .....RESPONDENT

Before:
The Hon. Ag Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:
1. Hon. Harriet Mugambwa,
2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel.

Representation:
1. Mr. Muhire Duncan of M/s. Ligomarc Advocates for the Claimant.
2. Mr. Byara Arthur of M/s. Mashariki Advocates for the Respondent.

AWARD

Background

[1] The Claimant's claim against the Respondent is for; A declaration that the termination of his contract was unlawful and payment in lieu of notice to the tune of

Ugx.3,343,333/=, Payment of untaken leave of Ugx.3,343,333/=, Payment for want of a fair hearing of Ugx.3,343,333/=, Repatriation allowance of Ugx.4,000,000/=, Compensatory Order of Ugx.13,373,333/=, General and aggravated Damages, interest at court rate, and costs.

Brief Facts

[2] In November 2018, the Claimant was employed by the Respondent as a Programs Officer of Cartier, Porticus, and J & J projects. According to him, the contract was to run for 1 year, renewable upon expiry of each year. He contends that he was required to sign an initial employment contract in which it was orally agreed that he should avail a certified copy of his Bachelor's Degree Transcript and given the exigencies of his job, the parties agreed that he signs a contract of 1 month, which would be automatically extended to 1 year and subsequently renewed. He was terminated after 1 month and he contends the termination was unlawful.

Issues

1. Whether it is lawful to have a one-month employment contract?
2. Whether the Claimant was lawfully terminated from his employment by the Respondent?
3. What are the remedies available to the parties?

Resolution of Issues

Issue 1: Whether it is lawful to have a one-month employment contract?

[3] It was submitted for the Claimant that, under Section 2 of the Employment Act, a contract of service can be oral or written, express or implied, and in this case, the Claimant's contract was an oral contract of employment. Furthermore, he contended that an oral contract of employment is permitted under Section 25 of the Employment Act. He insisted that the Claimant was assured that upon starting work, his contract would be extended to a one-year term if he signed a one-month contract and produced certified academic documents and references.

[3] He also contended that the Respondent didn't explain why two employees were considered for the same job where one of them had a one-year contract and the other a one-month contract. In his opinion, his 1-month contract was null and void.
He relied on (*Makula International v Cardinal Nsubuga*), for the legal proposition that the Court cannot sanction illegality, because of the following reasons:

> *"That a one-month employment contract would deprive the Claimant of his rights and benefits as provided for under the Employment contract and those rights are annual leave enshrined under Section 54 of the Employment Act. Sick Leave with pay enshrined under Section 55 of the Employment Act. Notice Before termination enshrined under Section 58 of the Act. Further to that, if this Contract is taken by face value, it would deprive those benefits and under Section 97 of the Employment contract, any of the provisions of the Act cannot be excluded in any agreement contract under that Section."*

[4] Therefore, a monthly contract of employment taken on face value is illegal and if any employer wishes to engage any person in short-term employment, the only option is to engage that person as a casual employee. In any case, the work he was expected to undertake was quite bulky and there was no way using a reasonable man's test could have done it in 1 month. He contested the evidence raised by the RW2, based on the test of a reasonable man, that it was unreasonable to expect him to execute the 15 roles he was given within 15 days.

[5] It was further his submission that contracts as implied terms, the reason why the Court implies terms and conditions to contracts is very clear to give it business or employment tests. He also made reference to the Respondent's evidence regarding the Claimant's roles and stated that there is no way basing on a reasonable man's test, that the Claimant would have executed all those roles in 15 days, therefore, the court should find that the Claimant had an oral contract which is which is valid under the Employment law.

[6] In Reply Counsel for the Respondent submitted that it's an agreed fact that there was a signed employment contract on the record, and it is a fixed-term contract. He argued that the law doesn't prescribe the duration of service which is a matter left for the parties to the contract. He cited Section 43 of the Employment Act which envisaged short-term contracts and provided for day wages and Section 86 which provides for

seasonal employees and argued that the Claimant did not demonstrate which specific legal provision had been violated by this fixed-term contract. He also cited Section 65 of the Employment Act, which provides for termination by lapse of time, and insisted that it was permissible for the Respondent to agree to a 1-month contract, therefore Court should find that it is lawful to have a one-month contract.

Decision of Court

1. Whether it is lawful to have a one-month employment contract.

[7] In (*Christopher Madrama Izama v Attorney General SCCA No.01/2016), Katureebe J* as he then was, cited Halisbury's laws of England Vol 16 at para 1... in which it was stated that *"... although much of modern employment law is contained in statutes and statutory instruments, the legal basis of employment remains the contract of employment between the employer and employee"* He went further to state that, *"it is trite, however, that as much as there is freedom of contract, one cannot contract out of the law let alone the constitution."*

[8] The contention of the Claimant in the instant case, as we understand it is that, whereas he orally agreed to enter into a contract for 1 year, the Respondent misrepresented the terms when he was made to sign a 1-month contract instead, therefore the 1-month contract was unlawful.

[9] A contract of service is defined under Section 2 of the Employment Act, to mean: any contract, whether oral or in writing whether express or implied, where a person agrees in return for renumeration, to work for an employer and includes a contract of apprenticeship. In (*Kenya Union of Commercial, Food and Allied Workers v Mwana Blacksmith Limited, Industrial cause No. 928, of 2010)*, it was stated that a claim for employment rights must be proved by establishing the existence of an employment relationship, even where there may be no document to prove its existence.

[10] Therefore, the burden of proof remains with the Claimant to prove the employment relationship. It is still very difficult to prove the existence of an employment relationship in the absence of a written contract. It is therefore a good practice for parties to the greatest extent possible to have a written contract of employment. Section 59 of the

Employment Act provides for the minimum terms and conditions that should be included in a contract of employment. However, the section does not prescribe the duration of the contract which as stated by Counsel should be agreed by the parties and it must be consensual.

[11] According to (*Jafta v Ezemvelo KZN wildlife [2009]30 131 (LC)*), which was cited by David Kharly Hodanu, Esq, in his book Labour Law in Ghana, An Essential Guide, it was held that for a contract of employment to come into being the common law requirement for an acceptance of an offer must be satisfied. In addition, there should be consideration, capacity, and legality. The formation of an employment contract starts with the making of an offer of employment. Hodanu also cited the Nigerian case, of (*Agoma v Guinness (Nig) Ltd [1995] 2 NWLR (PT 380)*), which defined an offer in labour law as:

"A proposition put by one party (the offeror) to another in dire need of means of survival in terms of gainful employment. When these two meet and there is consensus as to the terms and conditions of service to be rendered by the employee for a fee, salary, or wages mutually agreed by both parties, then it is said that a master/servant relationship exists between them. Therefore, the said employee becomes subservient to the dictates of the employer who is otherwise regarded as the master."

[12] An offer is usually in the form of a letter which must be accepted and once accepted it becomes binding. It is expected that, when an offer is made, a series of processes have taken place, including, advertisement of the job, submission of an application for the job in response to the advertisement, that the employer held an interview, when the applicant was successful an offer was made to him. In our considered opinion, the advertisement is an invitation to treat, therefore the applicant for the job should be the offeror, but it is the employer who makes the offer to the successful applicant, which is contrary to the general principles of contract law (Hodanu (supra).

[13] The Claimant in the instant case testified that, sometime in July 2018, he came across an advert in the new vision paper by the Respondent, he applied for the job and was the successful candidate and he was employed. The offer is ordinarily followed by an acceptance. The acceptance of the offer by the successful applicant must be unequivocal and unqualified. The holding in (*Fofie v Zanyo [1992] 2 GLR 475- 561)*, which we find persuasive, the Supreme Court of Ghana held that;

"... before it could be said that there had been an acceptance of an offer by an offeree, there had to be a) positive evidence by words in writing or by conduct from which the court might infer acceptance; and b) the acceptance had to have been communicated to the offeror...The plaintiff's acceptance of the defendant's offer was therefore a mere mental acceptance. But that was not enough to constitute acceptance."

[14] It is an accepted principle of the law of contract that, the acceptance of an offer is sufficient to turn the offer into a contract, if there is consideration for it, together with the intention to create legal relations. Therefore, where an offeree accepts the offer together with the terms embodied therein, the acceptance must be communicated to the offeror by the offeree or the offeree's authorized agent. The acceptance of the offer must conform unconditionally and unequivocally to all the terms of the offer. Therefore, where an employer has made an offer of employment to the job applicant and the offer has been accepted, if later a formal contract is to be signed by the parties and some of the terms embodied in the offer have been altered or varied in the formal contract those terms may be struck down as unlawful. In (*Francis v Imperial Bank [1994] 7CCEL (2nd)1 (Ont. CA)*), the employee accepted the offer of employment and thereafter was given a formal contract to sign which contract had altered some of the terms in the original offer. The Terms of the contract which had altered the terms of the offer made earlier to him were struck down as unlawful. (Hodanu, Esq(ibid)).

[15] The Claimant in the instant case, signed an offer of a fixed-term contract of employment which states in part as follows:

> *"it gives me great pleasure to offer you a contract for a fixed term period with mothers2mothers(m2m)/ the organization) Uganda. Your contract will be from 27the November 2018 to 31st December 2018 in the position of Program Officer, Cartier, Porticus, and J & J Projects.....".*
>
> *Please note that this offer is still subject to your fulfillment of the following terms and conditions*
>
> - *You are obtaining satisfactory references and clearance from all relevant authorities.*
> - *Obtaining a certified academic transcript for your Bachelor's degree by December 12, 2018*
>
> *The Organisation warrants that it has made no representations, undertakings, or warranties regarding the renewal of the contract and the employee specially warrants*

that they do not expect that the agreement will be renewed beyond the termination date ...". Emphasis ours

[16] The Claimant signed and accepted the offer of employment and stated that he fully understood them. *"...on the conditions outlined above, which I fully understand."* This acceptance was unequivocal and unqualified.
From the reading of the contract, it is clear that no provision could have created the expectation of renewal on the part of the Claimant. Therefore, any contrary evidence whether oral or written was not admissible in the circumstances because as a general rule where there is a written document, any other evidence orally/extrinsic to substitute, change, vary, or contradict the contents of the document is not admissible. *(See The Law of Evidence in Uganda, 2020 at 108, by Cornelius Henry Mukiibe)*. In *(Kilonzo S/0 Kanyany v Pushotam (1933) 16KLR 44)*, cited in The Law of Evidence in Uganda, 2020 at 108, (supra), it was held that, when terms of a contract are reduced into a document, like a bill of exchange, no evidence is receivable about the contract, except the document itself. The court will confine itself to the four corners of the document strictly. Even if t this court is not bound by the rules of evidence, in the instant case, it is important to consider Section 91 of the Evidence Act which is instructive on the admissibility of oral evidence where there is a written document. It provides that. *"...when the terms of a contract or grant or any other disposition of property have been reduced into the form of document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or disposition of property of such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible." also see(Future Stars Investment (U) Ltd v Nasuru Yusuf CS No.12/2017 UGHCCD 138), and (Abdula Binti & Faiza v Sharifa Mohammed (1959) E. 1035),* which is of the legal proposition that once the terms of a contract are reduced in writing, any extrinsic evidence meant to contradict vary, alter or add to the express terms of the agreement is generally inadmissible. The intention of the parties is communicated in the terms of the written contract. In the instant case, the contract which the claimant signed was clearly for 1 month. He did not adduce any evidence to indicate that he was coerced to sign it or that it would be extended beyond 1 month.

[17] The Court was therefore constrained to confine itself within the "4 corners" of the 1-month Contract. Nothing in the offer indicated that he would sign another offer or

contract of 1 year after fulfilling the conditions therein as he claimed. He had a choice not to sign this offer, but he did even with the knowledge that the tasks he was expected to perform could not be performed within 15 days, after the first week was designated for his orientation. The fact that he signed meant that he had accepted the terms and conditions set in the contract, including its duration, and that it would not be renewed after the expiry date. We had no basis to believe his reference to the terms he purported were discussed orally. It was his evidence in chief under paragraph 9 of his witness statement that, *...I worked for about 2 weeks and on 5th December 2018, I was summoned for a meeting ...I was told the Head office in South Africa had contracted a firm to liaise with my former University to have my transcript certified and had filed. I was asked to do it myself.*

[18] In paragraph 10, he stated that *"....I was further told that until the certification of my university transcripts is successfully done, I was to be given a short-term contract to the end of December 2018 which would be renewed and extended after all the requirements were fulfilled. I was given a deadline of Wednesday 12th December.*
According to the evidence on the record by the time he was given this deadline, he had already signed the offer of employment on 3/12/2018.
We found it peculiar that he signed an offer for 1 month yet it provided, unequivocally with terms such as *"The Organisation warrants that it has made no representations, undertakings or warranties regarding the renewal of the contract and the employee specially warrants that they do not expect that, the agreement will be renewed beyond the termination date ..."* yet he had the expectation to serve for 1 year.

[19] Unfortunately, the Claimant's assertion that the respondent orally promised to sign a one-year contract after he complied with the requirement to certify his academic documents was not proved and is extrinsic to the agreement that he accepted, by appending his signature on it. This evidence is therefore inadmissible. In our considered view having voluntarily signed this agreement he cannot approbate and reprobate. We also did not believe the argument that the Respondent retracted after he questioned them about the deposits being made on his account, because he signed the offer on 03/12/2018, before the deposits were made. Although it seems absurd that he served a 1 month contract there was nothing to indicate that it was contrary to the law. Section 59 provides that the employer must give an employee written particulars which include the duration of the employment. The Section however does

not stipulate a standard irreducible minimum. The duration of the contract is a matter between the parties and the employer is at liberty to determine the duration of the contract. As already discussed, the onus to prove the existence of an employment contract lies on the employee. The Claimant in the instant case has not proved that he was issued an oral contract to the effect that once he complied with the certification of his documents his contract would be extended to 1 year.
It is therefore our finding that the fact that the contract was a 1-month contract did not render it invalid or unlawful.

2. ***Whether the Claimant was lawfully terminated from his employment by the Respondent?***

[20] Having established that the Claimant's offer of employment was lawful, and it provided in part *as follows:*
"The Organisation warrants that it has made no representations, undertakings or warranties regarding the renewal of the contract and the employee specially warrants that they do not expect that, the agreement will be renewed beyond the termination date ..."
It was fixed and expired on expiry with no expectation of renewal. It is an agreed principle of the law that when a contract ends by effluxion of time, and it is not renewed within a period of 1 week from the date of expiry on the same terms or the terms not less favorable to the employee, the contract is terminated in accordance with Section 65(1)(b).

[21] In this case, there was no requirement for the employer to give notice, reasons for non-renewal, or a hearing of a fixed-term contract, because the said contract is terminable by effluxion of the agreed time defining the tenure of the contract *(see Joseph Tindyebwa and Another v Kabale University, LDR. No. 156 of 2018).*
In the circumstances, the Claimant's contract having expired by effluxion of time, it was not unlawful.

3. **What are the remedies available to the parties?**

[22] Having established that the Claimant was not unlawfully terminated, he is not entitled to any of the remedies sought.
No orders as to costs is made.

Signed in Chambers at Kampala this **3rd** day of **July** 2023.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge

The Panelists Agree:

1. Hon. Harriet Mugambwa,
2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel

3/07/2023
9:30 am

Appearances

1. None for the Claimant.
2. For the Respondent - Mr. Arthur Byara.
3. Court Clerk: - Mr. Christopher Lwebuga.

Delivered and signed by:

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court