THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 60 OF 2023

(Arising from Labour Dispute No KSE/LC/2023)

KASESE COMMUNITY HEALTH AND EDUCATION::::::::::::CLAIMANT/COUNTER RESPONDENT FOUNDATION

VERSUS

BWAMBALE GODFREY::RESPONDENT/COUNTER CLAIMANT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Michael Matovu.

Representation:

1. *Mr. Martin Masereka of Messrs Masereka, Mangeni & Co Advocates for the Claimant.*
2. *Mr. Geoffrey Mishele & Mr. Samson Mashipwe of Bageynda & Co Advocates for the Respondent.*

Case Summary

Employment law-bonding agreement-breach of bonding agreement-whether an employer is entitled to recover compensation for monies expended for training of an employee in breach of a bonding agreement. This case concerned an employee who undertook to serve his employer for three years after his studies in return for the employer providing his tuition and upkeep costs. Upon completing his studies but before registration and licensing as a dental practitioner, he refused to be reinstated at his previous position. The Court found him in breach of the bonding agreement and ordered the employee to refund the employer with interest.

AWARD

Introduction

[1] On the 30th of September 2016, the Claimant, a healthcare services provider located in Kasese District, employed the Claimant on probation as a Clinical Officer. On the 1st of January 2017, the Respondent was confirmed as Clinical Officer in Charge of the Outpatients Department(OPD) full-time. He was entitled to a gross salary of UGX 830,398/=. On the 10th of September 2018, the Claimant and Respondent executed an agreement by which the Claimant agreed to sponsor the Respondent for studies leading to a Diploma in Public Health Dentistry award by the Medicare Health Professionals College. The sponsorship was for an initial sum of US$7,490/UGX 28,397/=, covering the costs of tuition and upkeep for the period from 30th July 2018 to 30th June 2021. In return

for the sponsorship, the Respondent was bonded to the Claimant for three(3) years after completing his course. The Respondent also agreed to work for the Claimant during his school breaks, to present his academic performance results before the release of semester dues, and not to assign the benefit under the bonding agreement. It was also agreed that in the event of default, the Respondent would pay back the sponsorship sum with interest at 3% per month. Accordingly, a sum of UGX 28,387,100/= was disbursed to the Respondent. The Claimant obtained the funding from the Community Health and Education for Rural Africa(CHERA), a Non-Governmental Organisation based in the United States of America.

[2] On the 9th of April 2019, the Respondent sought extra funding of US$ 5224 from CHERA to cover accommodation, meals, transport and general monthly obligations. The same was approved and disbursed to the Respondent through the Claimant.

[3] By letter dated the 19th of September 2022, Ms. Veronica Ndagano, the Respondent's Executive Director informed the Claimant of the Board's directive to reinstate the Respondent as Medical Clinical Officer pending receipt of his academic and statutory documents validating him as a dental practitioner. He was appointed effective 1st October 2022 at the commencement of his three years' service under the bonding agreement.

[4] By email dated 28th September 2022, the Respondent asked for a basic dental unit, including a dental chair and suggested that if the Respondent delayed providing the same, he would treat this as a breach of the bonding agreement.

[5] In a letter dated 26th of October 2022, the Claimant demanded that the Respondent pay back UGX 55,342,297 by the 30th of November 2022 because he had refused to meet the terms of the bonding agreement.

[6] In a letter dated the 18th of November 2022, the Respondent's Advocates, Messrs Bagyenda & Co. Advocates, refuted liability and called the demand "jokes".

[7] Upon receipt of the Respondent's refusal, the Claimant lodged a complaint with the Kasese District Labour Officer. On the 11th of May 2023, after failing to resolve the dispute, the labour officer referred the matter to this Court. The novelty in this matter was that an employer originated an employment dispute aggrieved by the conduct of its employee.

Memorandum of claim

[8] In its claim for breach of a bonding agreement, the Claimant sought recovery of UGX 53,730,385/= being monies disbursed to the Respondent for his studies. The Claimant alleged that the Respondent had refused to honour the bonding agreement.

Memorandum in reply and counterclaim

[9] The Respondent admitted to employment, the bonding agreement, and the advancement of some monies to him but contended that the source of funds was CHERA, for which

the Claimant was simply a conduit. He pleaded that his bonding agreement was with CHERA, represented by Jim Ellison. It was contended that the Respondent was willing to honour the bonding agreement but was in breach by failing to provide a basic dental clinic and giving fair remuneration. By way of counterclaim, the Respondent sought UGX 60,000,000/= in general and exemplary damages for breach of the agreement by the Claimant failing to pay 30% on every procedure of UGX 100,000/= and above 40% on every procedure above UGX 600,000/=. When the Claimant failed to meet these conditions, the Respondent was pushed out of employment. He contended that he suffered loss of work, income, alternative employment opportunities, loss of study opportunities, embarrassment and mental anguish. He argued that the Claimant was highhanded. He also sought 24% interest and costs of the counterclaim.

Reply to the counterclaim

[10] The Claimant/Respondent to the Counterclaim denied the existence of any contract between CHERA and the Respondent/Counterclaimant, contending that after completion of his studies, the Respondent/Counterclaimant declined to take up employment in his previous posting pending his qualification and certification as a dental practitioner. It was contended that the commission arrangement subsisted during the school breaks.

The proceedings and evidence

[11] By a scheduling memorandum dated 4th of June 2023 and at the hearing held on the same day, under Order 15 Rule 5 of the Civil Procedure Rules S.I 71-1, the following issues were agreed upon and framed for determination *viz*;

(i) Whether there was a breach of the bonding agreement dated 10th September 2018?

(ii) Whether the counterclaim discloses a cause of action against the Counter - Respondent/Respondent to the Counterclaim?

(iii) What remedies are available to the parties?

[12] The documents in the Claimant's trial bundle dated 3rd May 2024 were admitted in evidence and marked "CEX1" to "CEX8", while the documents in the Respondent's trial bundle were admitted in evidence and "REX1" to "REX 4". Each party called one witness each.

The Claimant's evidence.

[13] The Claimant's Executive Director, Ms. Ndagano, testified that UGX 53,730,385 was disbursed to the Respondent under the bonding agreement. Upon completion of his studies, the Respondent refused to honour the agreement to work for three years and refused to refund the monies advanced to him.

[14] Under cross-examination, Ms. Ndagano told us that the bonding agreement(CEX2) sum was UGX 28,387,100/=. She also said there was an adjustment to this agreement in CEX3 and that the funds were from a support organisation, CHERA. She admitted that the

Respondent worked for the Claimant during school breaks. She told us that upon completing his studies, the Respondent raised three concerns regarding his employment: pay, work tools, and space. The Claimant's board did not agree to the Claimant's proposals and reinstated the respondent to his old position. She said this was not intended to compromise the Respondent's new qualification, and the offer for him to work as the clinical officer was commensurate with the scale. She said there was an attempt to harmonize with the Respondent before bringing the matter to Court. She also told us that an appeal for extra funding was made directly to CHERA. It was her evidence that the bonding agreement gave the Claimant the right to recover any additional funds, even if the agreement did not specifically say so. She said CHERA was aware of the claim.

[15] In re-examination, she told us that CHERA was the Claimant's funding partner, giving the Claimant the funds to sponsor the Respondent's education. She confirmed that all funds were disbursed through the Claimant and that the request for additional funding was made directly by the Respondent to CHERA. She also told us that at the time of reinstatement, the Respondent was holding the qualifications of a clinical officer. He had been working on a commission basis, and after completing his studies, the Claimant wanted to make him an employee.

Respondent's evidence

[16] The Respondent testified that the memorandum of understanding between himself and the Claimant was based on CHERA's commitment to sponsor his training. The Claimant was simply a conduit for the funds, and the arrangement gave the Claimant the benefit of a three-year bond. He said the CLaiamnt did not have a right to recover UGX 53,730,385/= because it did not belong to it. He said after completing his studies, the Claimant was using his services in very risky conditions as a dental student without a supervisor, failed to meet the basic work standard of a dental clinic, and offered pay below what was agreed upon in the memorandum. He denied refusing to work for the Claimant. He refused to sign CEX7 because it was contrary to the MOU, and Ms Ndagano ordered him to hand over the Claimant's equipment. He said because of this contradictory and unfair contract, the Claimant forced him to quit and should be penalized in damages as it breached his employment terms.

[17] Under cross-examination, he told us that before 2017, he had a connection with someone in CHERA but was unwilling to disclose that person's name. He admitted to signing CEX2 with the Claimant, but that agreement did not show that he got funding from CHERA. He admitted to receiving the initial sum of UGX 28,387,100/= and US$ 5224 later to cover his obligations after the wrong assumption that the Claimant would give him a stipend. He said his appeal for further funding was not based on the bonding agreement and that the Claimant only learned about it after CHERA had approved it. He admitted that he did not have any written agreement with CHERA. He told us that after completing his studies, he left school with a Diploma in Public Health Dentistry. He also admitted that he did not have his results in June 2022, when the Claimant first attempted to reinstate him. He also told us that he had obtained his diploma in April 2022 after finishing his exams and getting a testimonial. He said he was registered as a practitioner in June 2023 but was eligible to practice in 2022 and that in the health sector, one can practice with a testimonial. He said he was the first dental officer to work for the Claimant and did not

have a scale for dental practitioners. He also said his first contract had not expired when he left the Claimant. He admitted that he had not served the three-year bond or refunded the money under the bonding agreement.

[18] In re-examination, he told us he failed to work for the Claimant after his studies because the department was not equipped, and he continued working for the Claimant as a trainee. He said that a technical team consisting of a board member had agreed that the unit was not equipped and had promised to get back to him. He said the Claimant only returned with an agreement for a clinical officer. He also said that he asked for additional funding to meet his obligations.

[19] After the Respondent's case was closed, we asked the parties to file written submissions, summarised in our determination below.

Decision

Issue 1: Whether there was breach of the bonding agreement dated 10th October 2017?

Claimant's submissions

[20] Citing *Roko Construction (R) Ltd v Enson Global Ltd & Anor* [1] and Section 57 of the Evidence Act Cap. 8, it was argued that the existence of the bonding agreement was an admitted fact. Counsel referred to Blacks' Law Dictionary 2nd Edition for a definition of a bonding agreement and submitted that on the evidence, the Claimant took benefit of the bonding agreement and refused to honour its terms. According to Counsel, this refusal amounted to a breach. We were referred to the Indian case of *Nazir Maricar v M/S Marshalls Sons & Co(India) Limited* where failure to honour a bonding agreement by working for the agreed years was tantamount to breach of the bonding agreement. On the Respondent's excuses, Counsel submitted that under Sections 25, 30 and 31 of the Allied Health Professionals Act Cap.268, one has to be registered and licensed by the Allied Health Professional Council to practice as a private practitioner. It was argued that the Respondent had not been mistreated when reinstated as a clinical officer.

Respondent's submissions

[21] Citing *Ronald Kasibante v Shell Uganda Ltd*[2] where the Court held a breach of contract to be the breaking of an obligation that a contract imposes. Counsel for the Respondent argued that the two obligations were for the Respondent to go to school from 30th July 2018 to 30 June 2021, which he did and to honour the Claimant as 1st option of service during school breaks and for three years after completing his studies. It was submitted that the 1st limb of obligations were met.

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[1] [2020] UGCommC 145

[2] [2008] ULR 690

[22] It was the Respondent's case that he reported to the Claimant after completion of his studies. According to REX9, they negotiated conditions of service, which the Claimant unilaterally changed. When the Respondent insisted and was waiting to harmonise terms, he was served with a demand for a refund of UGX 55,342,297/=. Counsel contended that the terms of serving under the bond agreement were unclear and should have been harmonized. In his view, the claim for breach was premature.

Rejoinder

[23] In rejoinder, it was submitted that there was an admission of a partial breach. Citing *Benedikt & Another v Ssentumbwe James*[3] and other cases together with Section 9(2) of the Contracts Act Cap. 284,(CA), it was argued that partial performance is an admission of breach. It was suggested that because he did not possess the necessary qualifications, it was not viable for the Respondent to provide the Claimant with dental services per Sections 25,30 and 31 of AHPA. Based on Section 44CA, it was submitted that the contract ought to have been performed in the order in which the nature of the transaction required.

Determination

[24] It was common to both parties that a bonding agreement had been reached and executed between them. As the question is whether there was a breach of the contract, it would be helpful to reproduce the full text of the agreement:

"This Agreement

Is signed and commencing this day ***Monday 10th September 2018***

Between

Kasese Community Health and Education Foundation(KCHEF)

And

Godfrey Bwambale *herein called trainee*

Whereas KCHEF is sponsoring the trainee for a Diploma in Public Health Dentistry, KCHEF agrees

a) To provide the sum of $ 7,490/28,387,100UGX to the trainee for the purpose of covering costs of tuition and upkeep while pursuing his three-year diploma course at Medicare Health Professional College beginning 30th July 2018 to 30th June 2021

[3] [2024] UGCommC 125

b) *To take responsibility to cover his duties at the clinic during the three years of study*
c) *That this benefit bonds the trainee to swerve KCHEF for 3 years after completion of course*
d) *That this benefit will not compromise the remuneration scale befitting the level of upgrade on completion*
e) *To withdraw the scholarship if the trainee does not comply with the terms laid out in this agreement*

On the other hand Godfrey Bwambale (SIGNATURE) agrees

a) *To honor KCHEF as 1st option of service during the school break and thereafter for three years on completion of his studies*
b) *To present the performance report and academic results to KCHEF as a pre requsite to receiving the due installment payments for each semester.*
c) *That this fund will be paid back at an interest of 3% per month from the time of receipt if section a) does not apply.*
d) *That he cannot assign this benefit to another person nor use these funds for any other purpose apart from studying for which it has been granted.*

Both parties agree that the terms shall not be enforceable if without fault or negligence the circumstances are beyond control of either party

The parties have here agreed to the terms in the witness of Martin Masereka

_____
Legal Advisor (KCHEF)

_____ _____
Veronica Ndagano-Executive Director *Godfrey Bwambale-Trainee"*

[25] In our view, this was a relatively straightforward agreement. By it, the Claimant agreed to fund the Respondent's tuition and upkeep to the tune of $ 7,490/28,387,100UGX while he attended a Diploma course in Dentistry at the Medicare Health Professional College for three years. In return, the Respondent agreed to work for the Claimant during school breaks and for three years after completion of the course. If he did not fulfil his obligation, the Respondent agreed to pay back the funds with interest at 3% per month from receipt. We do not accept the Respondent's account of events in which he executed his bonding agreement with CHERA, represented by Jim Ellison. That is simply untrue. The agreement above shows that the Claimant executed this agreement with the Respondent. It does not even make mention of CHERA.

[26] What is the effect of the agreement in law? In the employment and labour law sphere, the agreement entered by the parties, in this case, is known as a bonding agreement or

a training bond. In *Labour Inspector v Tech 5 Recruitment Ltd*[4] the Employment Court of New Zealand at Christchurch, with Chief Judge GL Cogan presiding, observed that a bond will usually have mutual benefit as a feature. The employer would obtain a benefit from work in exchange for the support provided. A bond where the employer paid for the employee to complete a recognised training course, leading to a qualification for the employee and a better-qualified employee for the employer, would be a legitimate bond. In this regard, the training bond is anchored on the principles of mutual trust and confidence that underpin the employment relationship.

[27] A bond has also been defined as an agreement entered into by the company with the employee which, among the other terms contained in it, states that in consideration of the training given to the employee and the money spent by the company in providing such training, the employee shall remain in the services of the company for a particular period. If the employee breaches the agreement's provisions, the employee would be liable to pay a certain sum of money, the expense incurred by the company in training the employee.[5]

[28] From the above, the cardinal features of a validly enforceable training bond are the elements of mutuality and reasonableness, where reasonableness would be the duration in which the employee is required to work for the employer after the conclusion of training and the penalties imposed for breach.

[29] In the present case, the parties agreed to the Claimant funding the Respondent's training at the Medicare Health Professional College for three years. In return, the Respondent agreed to work for the Claimant during school breaks and for three years after completion of the course.

[30] To establish if there was a breach, we would be guided by the bonding agreement, "CEX2" itself. It provided that the Respondent was to work for three years after completion. The evidence is that he did not work beyond the 1st of October 2022 after returning from his studies in June 2022. He suggests that he made himself available but that the Claimant did not upgrade his workstation because the dental unit was substandard. On its part, the Claimant suggests that it was waiting for the Respondent's qualifications and that, pending such qualifications, it sought to reinstate the Respondent as a clinical officer.

[31] To answer this, the Respondent suggested that he was permitted to practice with his testimonial pending licensing and registration in the health industry. We find this to be a most strange agreement in light of explicit provisions of the law. Section 19 of the AHPA provides an elaborate registration process for allied health professionals—first, the training institution at which the professional trained must be recognised and gazetted. Secondly, the allied health professional is required to apply for registration. On approval, the person is registered in a register and issued with a certificate of registration, which under Section 25AHPA is not the right to practice medicine. It follows, therefore, that the

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[4] [2016] NZEmpC 167 found at https://www.employmentcourt.govt.nz/assets/2016-NZEmpC-167-

[5] https://www.lawteacher.net/free-law-essays/employment-law/employment-bond.php last accessed on 3rd October 2024 at 1:42pm

Respondent's assertion was not entirely accurate or within the ambit of the law. He does not make, in this respect, a believable case.

[32] The other difficulty that the Respondent would find himself in with this argument is that there is a licensing regime under PART VI of APHA. Private practice is also regulated under the APHA; private practice without a practising certificate is prohibited. The kindred professional and occupational regulatory regimes within Volume XII of the 7th Revised Edition of the Laws of Uganda where the AHPA resides, including the Accountants Act Cap. 294, the Advocates Act Cap 295, the Nurses and Midwives Act cap. 301 and the Traditional and Complementary Medicine Act Cap. 304. All these legislative enactments contain registration and licensing provisions for practitioners in those respective areas. It is not open to them to practice their respective trades upon a testimonial, as the Respondent would have this Court believe. Therefore, the Respondent's argument would have no legal basis, and we cannot accept it.

[33] In our estimation, on the clear evidence on the record, the respondent returned to the Claimant's employment in or about June 2022. He did not present his freshly earned credentials in dentistry to the Claimant. He also did not show them to the Court despite professing possession of a testimonial as early as April of 2022. He admitted to registration, ostensibly under the APHA, in June of 2023, nine months after he had parted ways with the Claimant. In our view, the Claimant did not serve out his three-year bond. It was not enough for the Claimant to allege that he did not have a working space and tools fit for his upskilled self and that it was impossible to remain a clinical officer until such time as he was a registered and licensed dental practitioner or that the Claimant had set up a fit for purpose dental unit. The essence of the benefit of a training or employment bond is for the employer to benefit from a trained employee's fresh knowledge. The normative value for the employee taking advantage of training at his or her employer's cost is to reciprocate by respecting the bond. In that way, both the organisation and the employee would benefit. Neil J. MacDonald, in "The Bond Experiment: Understanding the Role of Training Bonds in the Workplace",[6] suggests that it seems reasonable that since employees are the ones who will benefit in the long run, they should bear the cost of their own education. It's no different for many other professionals. For example, Doctors, lawyers, and accountants spend thousands of dollars to get the skills that allow them to work in their chosen fields. The cost of training is to take benefit at some future date, and in our view, by opting out of the bond, the Respondent deprived the Claimant of that benefit. That would amount to a breach of the employment bond, and we so find.

[34] Thus, we are fortified in adopting the view that the Respondent is in breach by comparative jurisprudence from Kenya where Onyango L.J of the Employment and Labour Relations Court, in *Africa Nazarene University v Dr. Henry Kinya*[7] found an employee who had benefited from a training bond and earned a doctorate but resigned on returning to employment due to illness to be in breach of the bond. Her Lordship found that the Claimant was justified in seeking fulfilment of the bonding terms. Similarly, in *Tharaka Nithi County Government v Winnie Warau Waweru*[8] Makau J found an

[6] Cited in *Overland*
[7] [2019] eKLR
[8] [2024] KEELRC 1096

employee who had resigned before concluding a four-year bond to be in breach and liable to the employer for the sum in the bond. The Court found that the Respondent and her two sureties were jointly and severally liable. These two decisions resonate with *Maricar,* cited by the Claimant.

[35] Some comments of the authorities cited by Counsel, including Bendikt, are necessary. These authorities speak to breach of contract under general contract law. Principles of commercial agreements apply to employment contracts, including principles of capacity to contract and illegality. There are some nuances, primarily because the parties to an employment contract do not have equal bargaining power, and that would affect the applicability of freedom of contract, for instance. Therefore, there will be instances where employment contracts or their reading by employment and labour courts may be at odds with traditional contract law principles.[9] In *Geys v Societe Generale*[10]Lord Sumption observes that the personal character of the employment relationship is lost in large corporate enterprises. It would be helpful for jurisprudence in employment and labour disputes to guide those disputes.

[36] Therefore, on the evidence available and having visited the law relating to training bonds, we must conclude that the Respondent is in breach of the bonding agreement of the 10th of September 2018, and we would answer Issue No. one in the affirmative.

Issue II. Whether the counterclaim disclosed any cause of action against the Counter Respondent/ Respondent to the Counterclaim.

[37] Counsel for the Claimant submitted that the Counter claimant was in breach of the contract, had not proved what commissions were due to him and therefore did not disclose a cause of action against the Counter Respondent. Counsel relied on *Autogarage & 3 Ors v Motokov(No. 3)*[11] and Sections 101 and 103 of the Evidence Act Cap.8.

[38] The Respondent argued that under the bonding agreement, he was entitled to an upgrade in the scale of his remuneration. It was also submitted that the commission agreement(REX9) was in force between 28th June 2021 and 30th September 2022 when the Respondent was terminated. There was no reason for termination, and the Claimant was forced to sign a reinstatement letter on terms he had not agreed to. It was suggested that the Respondent should have been kept on as a dental intern until an agreement was reached. It was also suggested that the Counter Respondent acted in bad faith because it wished the Respondent/Counterclaimant to head the dental until before he was licensed.

[39] In rejoinder and citing *Sun Air Ltd v Nanam Transpet Ltd*[12] in addition to, *Motokov,* Counsel for the Claimant/Respondent to the Counterclaim argued that the question of whether a plaint discloses a cause of action is determined upon perusal of the plaint and attachments thereto. It was contended that the Respondent had been sponsored by the

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[9] See Autoclenz Ltd v Belcher and Ors [2011] IRLR 820
[10] [2012] UKSC 63
[11] [1971] EA 519
[12] [2012] UGCommC 17

Claimant and attended his course. Therefore, no right was violated, but the Respondent had failed to perform his part of the bond.

Determination

[40] The long-standing principle in *Motokov* is very well established. To prove a cause of action, the plaintiff must show that he had a right, that the right was violated and that the defendant violated it. In the present case, the Counterclaimant suggested that he was entitled to a salary scale befitting the upgrade level after completing his studies. We have already found that the Respondent/Counterclaimant did not provide the Claimant/Counter respondent with any testimonial or diploma certificate indicating completion of his studies. However, he told this Court he had a testimonial by April 2022. Ms. Ndagano's evidence was that in September of 2002, the Claimant's reinstatement as Medical Clinical Officer was pending receipt of academic and statutory documents validating his credentials as a dental practitioner. These were not forthcoming and resulted in his being told to hand over and not to attend to patients. In our view, his right to a salary befitting the upgrade would have to accrue from proof of the upgrade of his qualifications, of which there was none at the material time or laid before this Court. We think that the Claimant/Counter Respondent was duty bound to formalize the employment relationship. This is the prescript in Section 58EA where an employee is entitled to written particulars of employment. The Counterclaimant's written particulars would either be as a dental practitioner, if he had provided accreditation documents or revert to clinical officer, which the Counter Respondent did by the letter dated the 19th o September 2022(CEX7).

[41] We are therefore unable to accept the view that the Claimant/Counter respondent violated any right, and consequently, we find that the Counterclaim does not disclose a cause of action. Overall, the Counterclaimant has not proved any of the reliefs in the counterclaim. The counterclaim accordingly fails and is hereby dismissed. Issue II is answered in the negative.

Issue III Other remedies.

Declaratory relief

[42] The Claimant submitted that it was entitled to a declaration that the Respondent was in breach of the bonding agreement. Having found as we have in Issue One, we agree with Counsel for the Claimant, and accordingly, it is hereby declared that the Respondent is in breach of the terms and conditions as stipulated under the bonding agreement dated the 10th day of September 2018.

Refund of UGX 53,730,853/=

[43] Counsel for the Respondent argued that the suspension of the Claimant created complex circumstances beyond the control of the Respondent and fell within the 2nd last paragraph of the bonding agreement. In Counsel's view, the suspension was beyond the Claiamnt's control. Alternatively, the bonding agreement only provided for a refund of UGX 28,387,200/= and nothing more. It was argued that since the claimant had completed the

first part of the agreement, his liability should be UGX 14,193,926/= and that the additional funding of UGX 26,955,197 was not part of the bonding agreement.

[44] Counsel for the Claimant submitted that under Sections 61 and 62CA, if a party breaches the terms of a contract, one of the remedies available is a refund of the monies with damages. Relying on CEX, Counsel contended that the agreement on breach was a refund with interest at 3% per month from the time of receipt until payment in full.

Determination

[45] First, we are unpersuaded by Mr. Mishele's argument that the suspension created complex circumstances that prevented the Respondent from meeting his obligations under the bonding agreement. The clause reads that b*oth parties agree that the terms shall not be enforceable if without fault or negligence the circumstances are beyond control of either party.* It is, in our view, essentially a force majeure clause. In *Partizanski and Anor v Sobetra (U) Ltd,*[13] Egonda Ntende J.*(as he then was)* cited Newbold P. in *Ryde v Bushell and Another*[14] where it was observed;

> *But before the plea can succeed, it must be established that it was an act of God which prevented performance or which destroyed the results of performance. Nothing can be said to be an act of God unless it is an occurrence due exclusively to natural causes of so extraordinary a nature that it could not reasonably have been foreseen and the results of which occurrence could not have been avoided by any action which should reasonably have been taken by the person who seeks to avoid liability by reason of the occurrence. It is for the person setting up the plea of act of God to prove the various facts which constitute an act of God.'*

[46] In the present case, we are not persuaded that the Claimant's act of asking the Respondent to halt providing any health services pending his registration and licensing as a dental practitioner would amount to an act of God. It simply was not.

[47] CEX2 was clear. We reproduced the same in paragraph[24] above, and it was to provide the sum of $ 7,490/28,387,100UGX to the trainee to cover costs of tuition and upkeep while pursuing his three-year diploma course at Medicare Health Professional College beginning 30th July 2018 to 30th June 2021. It did not make mention of additional funds. The Claimant's evidence through Ms. Ndagano was that CHERA was aware of this litigation and that there were emails from CHERA supporting the litigation. These were not produced in Court. It was also clear that the Respondent had negotiated additional funds from CHEAR through Jim Elison. The emails between Jim Ellison and the Claim were straightforward, and Jim Ellison accepted the request to render additional funding. While the extra funds may have been routed through the Claimant's accounts for onward transmission, the terms covering these additional funds were not recorded. For this reason, we would not be inclined to consider the sum of US$ 5,224 within the ambit of CEX 2 and that the Claimant has established a frim foundation to recover the same in

[13] [2007] UGCommC 73

[14] [1967] E.A.817

this litigation. Cex2 was neither amended nor an addendum prepared to accommodate the additional funds. In terms, the Claimant was advancing parol evidence of the additional funds to the original agreement. Section 92 of the Evidence Act Cap 8. prohibits this. In *Medical Equipment Consults Limited v Ecos Medical Foundation Limited*[15] it was said that it is firmly established as a rule of law that parol evidence cannot be admitted to add to, vary or contradict a deed or other written document. Therefore, we agree with Mr. Mishele that the additional funding of US$ 5224 is not contained in the original agreement and we do not think that the Claimant would be entitled to this sum.

[48] That, notwithstanding ii, does not absolve the respondent from his liability with respect to the funds in CEX2. Mr. Mishele argued that because the Claimant had met 50% of his obligation, he should pay only half the sum if we order a refund. In our view, that was not the contract the parties entered and as most aptly and succinctly put, by Ssekaana J. in *Watoto Limited v MarKmat Agro Processors Limited and Another* [16] it is not the function of the court to make contracts between the parties, but it is the court's duty to construe the surrounding circumstances, including written and oral statements, so as to effectuate the intention of the parties except as we shall demonstrate in paragraphs[49] and [50] below.

[49] What was agreed to was a disbursement of UGX 28,387,100=to be refunded with interest at 3% per month from the date of receipt until payment in full. Taking the disbursement date as 25th September 2018, the Respondent would be liable to pay UGX 89,703,336/= with interest. However, that goes against the principle of reasonableness discussed in *Overland Airways Limited v Captain Raymond Jam*[17]. In that case, the Honourable Justice Kanyip PhD, of the Lagos Division of the National Industrial Court of Nigeria(NICN), was considering the enforceability or otherwise of training bonds and found support in the writing of Krishnakanth Balasubramani, who, in an article titled, *"India: Enforceability of Employment Bond"*[18] stated the Indian position to be that the employment bond will not be enforceable if it is either one-sided, unconscionable or unreasonable. In general, the conditions stipulated in the contract should justify that it is necessary to safeguard the employer's interest and compensate the loss in the event of a breach of contract. Further, the penalty or compulsory employment period stipulated in the contract should not be exorbitant to be considered as valid and to be regarded as reasonable.

[50] Recovery of UGX 28,387,100/= with 36 per cent per annum over the last seven years would imply a penalty of over 216 per cent, which we find unreasonable. We think the award of over 216% in interest would be excessive. Precedent holds that a Court may interfere with contractual interest if it is harsh and excessive, as did Wabwire J. in *Miao Hua Xian v Dfcu Bank Ltd and Another* [19]. In that case, His Lordship referred to *Setrepham Uganda Limited V Noble Health Limited & 2 others,*[20] where Bamwine J. found a penal

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[15] [2022] UGCommC 140
[16] [2023] UGHCCD 99
[17] SUIT NO. NICN/LA/597/2012 https://nicn.gov.ng/view-judgment/839lasn accessed on October 3rd 2024 at 12:57 pm
[18] Ibid
[19] [2022] UGCommC 69
[20] H.C.C.S No. 595/2003

interest of 3% per month to be excessive. A similar reasoning was applied in *Alpha International Investments Ltd VNathan Kizito*[21] and *R.L Jain v Komugisha & 2 Ors*[22]

[51] In the present case, given the unequal bargaining power of the employee in an employment relationship, we are persuaded that it would be unconscionable to enforce the penal interest of 3% per month. Section 26(1) of the Civil Procedure Act Cap. 282, empowers the Court to give judgment for payment of interest at such rate as it may think just if it forms the opinion that the rate agreed upon is harsh and unconscionable. In that stead, it is now our order that Respondent shall refund the Claimant the sum of UGX 28,387,100 /= with interest at a court rate of 6% per annum from the date of receipt until payment in full. We are also persuaded in this view by Kanyip J's remarks in *Overland*, where in the event of a breach of employment bond, the employer might incur a loss and, therefore, may be entitled to compensation. However, the compensation awarded should be reasonable to compensate for the loss incurred and should not exceed the penalty, if any, stipulated in the contract. To hold otherwise would enforce an unfair labour practice in this jurisdiction.

Costs

[52] The dicta of this Court on costs in employment disputes are the exception on account of the employment relationship except where the losing party has been guilty of some misconduct.[23] In the present case, we are persuaded that the Respondent misconducted himself in a manner that should merit a grant of costs to the Claimant. The Respondent's pre-trial conduct could have avoided this litigation. We are persuaded to award the Claimant's costs of the claim.

Final Orders

[53] In conclusion, while the Counterclaimant's/Respondent's counterclaim fails and is accordingly dismissed, the Claimant's/Counter Respondent's case succeeds in terms of the following declarations and orders;

(i) It is hereby declared that the Respondent is in breach of the terms and conditions stipulated under the bonding agreement dated the 10th day of September 2018.

(ii) It is declared that the Respondent is liable to the claimant for UGX 28,387,100 /= being the monies disbursed for the cost of tuition and upkeep for the training of the Respondent by the Claimant as per the bonding agreement dated 10th September April 2018.

(iii) The sum above shall carry interest at a court rate of 6% p.a. from the date of this award until payment in full.

(iv) The Respondent/ Counterclaimant's counterclaim stands and is hereby dismissed.

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[21] H.C.C.S No. 131 of 2001
[22] [2015] UGCommC 77
[23] See Kalule v Deustche Gesellschaft Fuer Internationale Zuzammenarbeit (GIZ) GMBH [2023] UGIC 89

(v) The Respondent shall pay the Claimant's costs of the claim.

It is so ordered.

Dated, signed, and delivered at Kampala this 4th day of October 2024.

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi
2. Hon. Emmanuel Bigirmana
3. Hon. Michael Matovu

4th October 2024.

9:53 am

Appearances

1.	For the Claimant:	**Mr. Martin Masereka** **Parties absent.**
	Court Clerk:	**Mr. Samuel Mukiza.**
	Mr. Masereka	Matter for award, and we are ready to receive it.
	Court:	Award delivered in open Court.

10:29 am

Anthony Wabwire Musana,
Judge, Industrial Court.