



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE REFERENCE NO. 07/2021
(ARISING FROM 007/KDLG/2020)

TURINAYO AMOS :::CLAIMANT

VERSUS

BOARD OF GOVERNORS SESEME GIRLS SECONDARY SCHOOL :::::::::::::::::::::::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Alex Byaruhanga Asiimwe holding brief for Rev. Rogers Bikangiso of M/s. Bikangiso & Co Advocates for the Claimant.
2. Ms. Rebecca Ayesiga of M/s. Beitwenda & Co Advocates for the Respondent.

Case Summary:

Employment Law: Public service employees: termination and discipline: The Claimant, a clerical officer, was posted to a secondary school. He claimed unfair termination after being placed on forced leave following an audit. The school argued that it was not his employer and that he was a public servant whose salary was paid by the Ministry. The court determined that the claimant was not an employee of the school but of the local government and, therefore, dismissed the claim, finding that the school did not terminate his employment. The court also ruled that the forced leave did not constitute unfair dismissal, as he was removed from the payroll by his actual employer, the local government. Finally, the case was dismissed with no order as to costs.

Award: 24.01.2025: This award was handed down electronically by circulation to the parties' legal representatives by email. It will be published on the Industrial Court's website. The date for hand-down is deemed to be on 24th January 2025

AWARD

Introduction

- [1] On the 30th of May 1994, the Claimant started to work as a Clerical Officer with the Respondent, a government secondary school in the district of Kisoro. Later, the Claimant was assigned the duties of assistant Bursar. On the 12th of April 2012, the Respondent's Board of Governors resolved to send the Claimant on forced leave for one month to conduct investigations on financial matters in his docket. On the 15th of May 2012, the Respondent sought certain books from the Claimant for the purposes of the audit. Then, on the 12th of June 2012, the Chairperson of the Respondent's Board of Governors reminded the Claimant to hand over books for audit or be deemed to have lost interest in his job. The Claimant then lodged a complaint of unfair dismissal with the Labour Officer at Kisoro. In its reply to the complaint, the Respondent indicated that the Claimant failed to update his employment records and was deleted from the payroll by the Ministry of Education and not the Head Teacher of the Respondent School. The Labour Officer attempted a mediation. When it was unsuccessful, on the 18th day of February 2021, he referred the matter to this Court to determine the legality of the forced leave and the Claimant's other entitlements.
- [2] In his memorandum of claim, the Claimant sought a declaration that the Respondent's action of placing him on forced leave was illegal and unlawful. He also sought unpaid salary in the form of special damages of UGX 46,103,429/=, general damages for inconveniences, aggravated damages, interest on the monetary awards at 20% per annum from the date of judgment until payment in full and costs of the claim.
- [3] In its reply memorandum, the Respondent contends that the Claimant had sued the wrong party because it had never directly employed or paid him any salary or allowance. The Claimant was a public servant employed by the Ministry of Education and posted to the Respondent School. It was alleged that he had mismanaged school funds and was placed on forced leave. When he was unresponsive to an audit process, a criminal complaint was reported to the Uganda Police and the Claimant was unsuccessfully prosecuted. The criminal matter is now the subject to an appeal. It was contended that the Claimant had not produced any letter of appointment to prove his status as an employee of the Respondent. Further, the Claimant had been allowed to explain the audit queries but declined to do so. We were asked to dismiss the claim.
- [4] When the matter was called before us on 23rd November 2023, we were invited to consider whether the Claimant had a cause of action against the Respondent and whether the matter

was barred by limitation. In our ruling handed down on the 15th of December 2023, we found that the matter was not caught up by limitation because the interdiction process had not been concluded. We also found that the Claimant was a Local Government employee and directed the matter to trial.

The Trial

- [5] The joint scheduling memorandum made on the 23rd of November 2023 was adopted with three issues for determination, namely;
- (i) Whether the Claimant was an employee of the Respondent?
 - (ii) Whether the Claimant was unlawfully terminated?
 - (iii) What remedies are available to the parties?
- [6] The documents in the Claimant's trail bundles dated 17th November and 18th December 2023 were admitted in evidence and marked CEX1 to CEX10. The documents in the Respondents Trail Bundle dated the 23rd of November 2023 were admitted as REX 1 to REX6.

The Claimant's evidence

- [7] Through his witness statement made on the 16th of November 2023, the Claimant testified that he joined the Respondent in 1994 as Senior Clerical Officer. In 2012, UGX 15,144,550/= was reported unaccounted for. In a meeting on 12th April 2012, the Respondent resolved that the Claimant be sent on one month of forced leave. He said he was not summoned to answer the allegations before being sent on leave. He testified to his filing a labour complaint and to the criminal case opened against him. He asked us to find that he had been wrongfully dismissed and that the Respondents' officers acted maliciously, rudely, carelessly and in total breach of employment.
- [8] Under cross-examination, he told us that the Respondent was a government institution and the Government of Uganda (from now GOU) was responsible for appointing staff and paying salaries. He said the Schools Board of Governors was the appointing authority on behalf of the GOU. He said he did not have proof that GOU authorised the Board to appoint him as a Clerical Officer. He also conceded that he did not have an appointment letter as a Clerical Officer. He said CEX7 was his only employment evidence after his application was accepted. When he was shown CEX9, he told this Court that the Ministry of Public Service and GOU paid him salary was mandated to pay him. He said the Respondent's Head Mistress deleted

- [11] Under cross-examination, Mrs. Rusaza told us that she did not have the Claimant's posting letter and knew nothing about the promotions. She said the role of BOG is that it is a management body of the school, and the MOES refers to BOG as a supervisor. She told us that the BOG does not suspend employees and that the forced leave of the 12th of April 2012 was lifted when the Chairman BOG wrote on 12th June 2012 inviting the Claimant to return to work. She told us that the Claimant refused to return to work. She also told us that she was not the headteacher between 2009 and 2011, and the former headteacher had not given her an audit report. When shown REX7, she told us that the auditors had found the Claimant and Alice Dusabe liable for loss of UGX 37,000,000/= and that Ms Dusabe appeared as a witness in the criminal case. She said she did not know what happened to the Claimant's salary because he was paid from the centre, and the money would go directly to his account. In her view, the Education Service Committee could determine what to do if the Claimant could produce an appointment letter.
- [12] In re-examination, she told us that, to her knowledge, one was not required to have an affidavit of service to prove that an employee was served. She said William Nezehose served the Claimant, and the Claimant used to frequent the BOG Chairperson's office. When she was shown REX4, she said the first paragraph shows the expiry date of forced leave.
- [13] After Ms. Ayesiga closed the Respondent's case, we invited Counsel to file written submissions, which we have summarised, considered and are grateful for.

Decision of the Court

Issue 1. Whether the Claimant is an employee of the Respondent?

Claimant's Submissions

- [14] Citing Section 2 of the Employment Act Cap. 226(*from now EA*), it was submitted that the Claimant started working for Respondent in 1984. It was argued that the Respondent's witness corroborated this testimony when she testified that the Ministry of Education employed the Claimant and later posted to the Respondent's School like any other civil servant. Our attention was directed at REX7 and REX8, as well as the appointment letter and payment slips. He was assigned the duties of assistant Bursar. Counsel cited Sections 2, 3 and 28 of the Education Act for the proposition that a school Board of Governors or School Management Committee duly appointed by the Minister and gazette gives the BOG powers to deal with employees. Therefore, in sending the Claimant on forced leave, he was their employee.

Respondent's submissions

- [15] For the Respondent, it was submitted that it never employed the Claimant and that he was an employee of MOES, and he admitted to that. He did not have an appointment letter or payslips from the Respondent. As such, he was not its employee because the Respondent did not remunerate him. According to Counsel for the Respondent, PEX7 (or CEX7) was not proof of the formalization of his employment as a bursar of the Respondent school. As a public servant, the Respondent did not have authority over him. It was submitted that appointment/recruitment of staff is a reserve of the DSC and PSC. Regarding PEX9, it was argued that the Claimant was in salary scales U5C and U8Lower in compliance with Section 8(d) of the Education(Pre-Primary, Primary and Post Primary) Act 2008. Finally, it was submitted that the BOG is not an agency within the meaning of Section 3 of the Education Act and governs under Regulations 9 and 10 of the Education (Board of Governors) Regulations. We were asked to find that the Claimant was not an employee of the Respondent.

Determination

- [16] Counsels' restatement of the definition of an employer under Section 2EA was accurate. The interpretation section of the EA defines an employee as any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda People's Defence Forces.
- [17] From the evidence before us, it is common cause that the Government of Uganda met the Claimant's remuneration. His teaching service payslips were admitted as CEX9 under the Kisoro district Code. It was the evidence of RW1 that the Respondent's BOG did not pay the Claimant his salary. She also testified that the Respondent only supervised the Claimant but that he was not its employee.
- [18] Under Section 9 of the Education(Pre-Primary, Primary and Post-Primary) Act Cap. 247(*from now the Education Act*), the responsibilities of GOU to pay salaries and allowances of teachers, appoint heads of Government aided education institutions and paying salaries and wages of non-teaching staff. Therefore, from
- [19] Section 29 of the Education Act provides for the establishment, powers and duties of the Board of Governors and Management Committees. The functions of the board are set out in Regulation 10 of the Education (Board of Governors) Regulations in Schedule 3 to the Education Act (form now the Regulations) and include governing the school in accordance with directives for MOES or the District Secretary for Education, administering school

Respondent's submissions

- [15] For the Respondent, it was submitted that it never employed the Claimant and that he was an employee of MOES, and he admitted to that. He did not have an appointment letter or payslips from the Respondent. As such, he was not its employee because the Respondent did not remunerate him. According to Counsel for the Respondent, PEX7 (or CEX7) was not proof of the formalization of his employment as a bursar of the Respondent school. As a public servant, the Respondent did not have authority over him. It was submitted that appointment/recruitment of staff is a reserve of the DSC and PSC. Regarding PEX9, it was argued that the Claimant was in salary scales U5C and U8Lower in compliance with Section 8(d) of the Education(Pre-Primary, Primary and Post Primary) Act 2008. Finally, it was submitted that the BOG is not an agency within the meaning of Section 3 of the Education Act and governs under Regulations 9 and 10 of the Education (Board of Governors) Regulations. We were asked to find that the Claimant was not an employee of the Respondent.

Determination

- [16] Counsels' restatement of the definition of an employer under Section 2EA was accurate. The interpretation section of the EA defines an employee as any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda People's Defence Forces.
- [17] From the evidence before us, it is common cause that the Government of Uganda met the Claimant's remuneration. His teaching service payslips were admitted as CEX9 under the Kisoro district Code. It was the evidence of RW1 that the Respondent's BOG did not pay the Claimant his salary. She also testified that the Respondent only supervised the Claimant but that he was not its employee.
- [18] Under Section 9 of the Education(Pre-Primary, Primary and Post-Primary) Act Cap. 247(*from now the Education Act*), the responsibilities of GOU to pay salaries and allowances of teachers, appoint heads of Government aided education institutions and paying salaries and wages of non-teaching staff. Therefore, from
- [19] Section 29 of the Education Act provides for the establishment, powers and duties of the Board of Governors and Management Committees. The functions of the board are set out in Regulation 10 of the Education (Board of Governors) Regulations in Schedule 3 to the Education Act (form now the Regulations) and include governing the school in accordance with directives for MOES or the District Secretary for Education, administering school

property and funds, and providing for the welfare and discipline of the students and staff. In terms of discipline for staff, Regulation 21(i) requires the headteacher to report and recommend to the board any disciplinary measures to be taken against a member of staff who is a public officer, and the board shall recommend to the Permanent Secretary, Chief Administrative Officer or Town Clerk for appropriate action to be taken. Under Regulation 22 of the Regulations, the board reports and recommends any matter concerning the school staff to the Permanent Secretary, Chief Administrative Officer or Town Clerk.

- [20] From our reading of the Education Act, it is quite clear that there is a category of employees in government-aided schools who are public servants. The Government of Uganda pays their salaries, and the Regulations require first a headteacher to report and recommend disciplinary action to the board, which then recommends it to the Permanent Secretary, Chief Administrative Officer or Town Clerk. Therefore, public servants posted to Government schools have a multi-layered employment relationship. First, they are employed as public servants and served under posting instructions. They are paid from the centre or treasury, and the public service handles matters of their discipline. It is for this reason that in our ruling rendered on 15th of December 2023 on a preliminary point raised by Counsel for the Respondent, we opined that the management of the education function had been divested to the Local Governments and under Section 55(1) of the Local Governments Act Cap.243(*from now LGA*), the functions of a District Service Commission (**DSC**) include the power to appoint persons to hold or act in any office in the service of a District or Urban Council, including the ability to confirm appointments, to exercise disciplinary control over persons having or acting in such offices and to remove those persons from office, is vested in the DSC. We also observed that under Section 61(1) LGA, local government staff's service terms and conditions shall conform to those prescribed by the Public Service Commission (**PSC**) for the public service generally. Given that the management of the education function was divested to the Local Government, the Claimant would be rendered a Local Government employee.
- [21] The evidence before us did not show that the Claimant had a contract of service with the Respondent. He did not produce his letter of appointment. Under cross-examination, he told us that an investigation by MOES found him with an appointment letter from the Respondent. Still, he did not know that producing the report or attaching the letter was important. However, in our view, his remuneration was under the Kisoro District Vote, and his payslips are the most compelling evidence of who his employer was. His title was senior clerical officer, and he took on the role of assistant bursar with no extra allowances paid to him by the school. We do not think he has demonstrated an employment relationship with the Respondent. In our judgment, the Claimant was an employee of the Kisoro District Local Government, not the Respondent's Board. We are fortified in this position by this Court's decision in *Alepus v Gomba District Local Government and Another*¹. In that case, this Court

¹[2023] UGIC 103

was confronted with an application for judicial review where the Applicant, a public servant serving as head teacher at Kandegeya Primary School in Mpigi District. We found her to be an employee under statute.

- [22] Therefore, in our answer to issue one, we would find the Claimant is not an employee of the Respondent board. Issue one will be answered in the negative.

Issue two: Whether the Claimant was unlawfully terminated?

Claimant's submissions

- [23] For the Claimant, Counsel framed and addressed the question of whether the Claimant's continued forced leave from employment is illegal and unlawful. Counsel cited Section 63(1) and (2) EA in support of the proposition that the forced leave exceeded the statutory timeframe and REX6 recalling the Claimant from leave was contradictory. We were invited to find the ten-year forced leave illegal.

Respondent's submissions

- [24] It was submitted that the Respondent was justified in summoning the Claimant to answer queries in his department. Counsel for the Respondent cited Section 28 of the Education Act and Regulation 22(1) of the Regulations in support of the proposition that the Board is established to monitor the behaviour and performance of teaching and non-teaching staff. It was submitted that despite various reminders, the Claimant refused to appear before the Board. Thus, the Respondent recommended that the matter be handled by the Chief Administrative Officer(CAO) at Kisoro. It was submitted that the Claimant admitted receiving the CAO's summons but did not appear before the CAO. Thus, the Respondent had discharged its obligations under the Regulations. It was submitted that the Respondent did not unfairly terminate the Claimant, and we were asked to answer issue two in the negative.

Determination

- [25] The issue framed for determination in Court on the 19th of December 2023 was whether the Claimant was unlawfully terminated and not whether he was unlawfully placed on forced leave. The submissions of the Claimant do not, therefore, address the issue as framed.
- [26] That notwithstanding, what is unfair termination? Under Section 2EA, termination means the discharge of the employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of the contract, attainment of retirement age, etc. Section 64EA spells out when termination is deemed to take place, and that is where the employer ends the contract of service with notice, the fixed term or task ends and is not renewed within one week, where the contract is ended without notice as a

consequence of the employer's unreasonable conduct (*constructive dismissal*) or where the employee ends the contract having received notice. In all circumstances, termination of a contract of employment means that there is no misconduct or poor performance on the part of the employee. Misconduct and poor performance result in dismissal.

- [27] In the matter before us, on the 12th of April 2012, the Claimant was placed on forced leave. On the 15th of May 2012, Mrs. Ruzaza asked Messrs Kwiri & Associates to audit the school accounts for the years 2009 to 2012. On 13th June 2012, Ezra Ndagije-Seruhungo, the Respondent's Board Chairperson, invited the Claimant to a one-on-one discussion. By letter dated 13th June 2012, the Respondent's Chairperson advised the Claimant of the end of the one month's leave and invited the Claimant to hand over key documents. By letter dated 10th January 2013, the Claimant was invited to answer audit queries not later than 17th January 2013. On 17th May 2013, the Claimant was invited to meet the Respondent's Finance Committee. On the 10th of June 2013, the Ag. Chief Administrative Officer of Kisoro District advised that the matter should have been submitted to the Permanent Secretary of the Ministry of Education and Sports.
- [28] From the evidence before us, the Claimant was placed on forced leave. Then, on the 5th of June 2012, the Claimant was summoned by the CAO Kisoro to explain the diversion of UGX 69,890,555/=. Counsel for the Claimant suggested that the Claimant did not receive the letters REX 2, REX3, REX4, REX5, REX6 and REX7. In his testimony, the Claimant told us that he did not receive the letter but conceded under cross-examination that he approached the Head Mistress for facilitation to attend to the auditors and that he did not put a request in writing. This concession cements Mrs. Rusaza's testimony that the Claimant refused to acknowledge receipt of any of these letters. She said the school messenger delivered the letters, and the Board Chairperson would call the Claimant. She also said, in re-examination, that the Claimant would frequent the Chairperson's office. In our estimation, the claimant knew what was transpiring but refused to make himself available to attend to the queries.
- [29] But neither party has shown us the fact of termination or dismissal by the Respondent. In employment disputes, the employee has the burden to show that termination has occurred, while the employer has the burden to justify the lawfulness of the termination.²
- [30] It was submitted that a recommendation was made to the CAO by the Respondent. This recommendation was not produced before us. What was common to both parties was that the Claimant was deleted from the payroll. The questions would be: who deleted the Claimant from the payroll and why? The power to remove a Public Officer from that payroll vests in the appointing authority under paragraph 13 F-r of the Uganda Public Service Standing orders. Therefore, as we have on issue one, we have found that the Claimant's appointing authority would have the power to delete him from the payroll. We, therefore, agree with the Respondent's Counsel that the Respondent did not terminate the Claimant.

² See LDR 001 of 2022 *Tituryebwa Julius v Sino Minerals Investment Company Ltd* Industrial Court of Uganda 20th January 2025

And if the Respondent did not terminate the Claimant, then it is impossible to say that he was unlawfully terminated or remains on forced leave for 10 years. He is not on forced leave today. He was deleted from the payroll. In these circumstances, we would be unable to agree with Counsel for the Claimant on the proposition of forced leave.

- [31] While it is true that under Section 62EA and not Section 63 as cited by Counsel for the Claimant, a suspension must not exceed four weeks, the facts before us are that the Claimant was deleted from the payroll by his employer. The Respondent would be responsible and culpable for extending the suspension beyond the 12th of May 2012. Still, upon the matters being submitted to the CAO and the subsequent deletion from the payroll, it would be impossible to say that the forced leave subsists to date. We, therefore, find that the Respondent did not unfairly terminate the Claimant.

Issue three: What remedies are available to the parties?

- [32] Following our findings and answers to issues one and two above, the Claimant is not entitled to any remedies sought.
- [33] Counsel for the Respondent submitted that it had been subjected to unnecessary expenses in prosecuting its defence for which it sought costs under Section 27 of the Civil Procedure Act Cap. 282.
- [34] The dicta of this Court on costs in employment and labour disputes is that they are awarded as an exception because the employment relationship is not balanced. Subjecting an employee who has suffered job loss to costs doubles the difficulties associated with loss of income and livelihood. We have also held that if the losing party is only culpable of some misconduct, then costs will be awarded.³ We are not persuaded to award the Respondent's costs.
- [35] The matter stands dismissed with no order as to costs.

Signed, sealed and delivered via email at Mbarara this 24th day of January 2025


Anthony Wabwire Musana,
Judge of the Industrial Court

³ *Kalide v Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ) GmbH* (Labour Dispute Reference 109 of 2020) [2023] UGIC 89 (6 February 2023)

The Panelists Agree

1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



24th January 2025

Pursuant to the Constitution(Integration of ICT into the Adjudication Process for Courts of Judicature)(Practice Directions), 2019 and upon the agreement of Counsel, Rev Bikangiso and Mr. Charles Amanyabo of Ms. Bikangiso & Co. Advocates for the Claimant and Ms. Rebeeca Ayesiga of Ms Beitwenda & co Advocates, this award is handed down and circulated to the parties by email as follows:

- (i) bikangisoezera1@gmail.com and amanyabocharles@gmail.com for the Claimant and
- (ii) ayesigabecky@gmail.com and beckyayesiga@gmail.com for the Respondent.

The timestamp of the award is to be taken as the 24th of January 2024.



Anthony Wabwire Musana,
Judge of the Industrial Court of Uganda.