THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 018 OF 2015
(ARISING FROM HCT-CS. NO. 349 OF 2013)

KIWALABYE JOSEPH KAYONDO & OTHERS……..……..CLAIMANT

VERSUS

POSTA UGANDA…….……..RESPONDENT

BEFORE
1. Hon. Chief Judge RuhindaAsaphNtengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS
1. Mr. Ebyau Fidel
2. Ms. Harriet MugambwaNganzi
3. Mr. Michael Matovu

AWARD

By memorandum of claim filed in this court on 15/06/2015, the claimants alleged that on various dates each of them was employed by the respondent as a Bus driver save for the fifth claimant who was employed as a Bus conductor. It was alleged by the same memorandum of claim that the respondent on transferring the claimants to different stations subsequently, in contravention of the contract of service re-deployed them as assistant officers (mail delivery).

They contended that this amounted to constructive termination and prayed for various remedies which included, refund of deductions, money due on collective bargaining, general damages, interest and costs of the suit.

In a memorandum in reply, the respondent maintained that the transfer and redeployment of the claimants to various work stations was by contract authorized and that their formal duties and terms of service did not change except that the job titles changed.

EVIDENCE

Evidence in chief of all the claimants was to the effect that each of their designations were changed from what they had applied for and were engaged to do to some other designation unknown to them and for which they had no skills to operate. This was done upon transfer which was initially temporary but which later on was confirmed for each of the claimants.

They had applied for the jobs as Bus drivers following an advertisement that detailed the job title and description as shown at **page 6-7 of the claimants trial bundle.** According to them the respondent breached the contract of employment by changing the job title.

According to the evidence of the respondent, the claimants having been transferred to various stations abandoned duty and were summoned to explain but they refused to do so and they were later on summoned to attend a disciplinary hearing at which having failed to explain why they had abandoned duty they requested to be paid their benefits as they were nor willing to work. According to the respondent indeed the respondent computed the terminal benefits of the claimants which were rejected .

AGREED ISSUES

1) **Whether there was a breach of the claimant's contract of employment.**
2) **Whether the claimants were constructively dismissed by the respondent.**
3) **What remedies are available to the parties?**

The claimants were employed as Bus drivers and their job description according to the advert to which they reacted when they applied for the jobs was:

- Drive company cars

- Ensure that the vehicle was in good mechanical condition
- Check fuel, water and oil levels each day
- Ensure that vehicles defects are timely
- Carry out minor repairs on the motor vehicle
- Responsible for collections and accountability of bus revenue.

At being transferred to their various stations, they were transferred as **Post Officers (mail delivery)** and they were to report to post masters at the various stations who were to assign them duties. In the submission of counsel for the claimants the variation of contract was in contravention of **Section 27 (2) of the Employment Act, 2006** and therefore constituted breach of contract on the part of the respondent.

Although there were no final submissions from the respondent, the case for the respondent is that the claimants abandoned their duties and on facing the disciplinary committee they declined to continue with their work and demanded to be paid their benefits.

Interestingly the disciplinary committee of the respondent while deliberating on whether the claimants abandoned their duties noted.

> **"According to the old Human Resource Manual, abscondment would only occur when an employee is absent from work for 14 days consecutively without giving any reason. In the instant case, the case for abscondment would not stand because the employees had given notice within 7 days from the date of abscondment, through the letter written by their lawyer that they were not willing to take-up the new posts that had been given to them".**

To us this contradiction of the ruling of the committee with the managing Director's evidence asserting that the claimants abandoned duty exonerates the claimants from the disciplinary offence of abandoning duty and this court may not go a long way to reverse the disciplinary committee's finding for whatever reason. The committee was constituted by the respondent and was a constituent part of the respondent. The respondent having conceded that the claimants did

not abscond from duty, this court has no alternative but to hold that there was no such thing as absconding from duty. **Section 27(2) of the Employment Act,** relied upon by counsel for the claimant states:

> **"Nothing in this Section shall prevent the application by agreement between the parties, of terms and conditions, which are more favourable to the employees than those contained in this Act".**

Since the re-designation of the jobs of the claimants did not show any advantage or favour to them, this was the more reason they should have been consulted before such re-designation.

By re-designating the title of the claimant from **"Bus driver"** to "**Post officers" (mail delivery)** without consulting them, in our view, the respondent acted to their disadvantage. This is because by virtue of their new offices (according to their evidence) they were entitled to less allowances than they were while they were Bus drivers. Whereas their former job description was clear, nothing was attached to show their job description as they had no buses to drive at the new stations. whereas in their former job description they were answerable to bus assistants, their new appointments showed that they were answerable to Post Masters. While considering this aspect of the matter, the disciplinary committee of the respondent observed:

> "**As to whether the change of designation amounted into termination of the employment contract, the committee took note of the fact that the contract of employment signed by the five employees was to the effect that the employer reserved the right to transfer the employee to any duty station. It however does not look at change of designation.**
>
> **Since the confirmation of transfer also changed the designation of the employees from drivers to Assistant Post Officers, there was need to obtain consent from the employees. In this case however, there is no record to show that this change of designation was accepted by the employees. This meant therefore that there was a violation of their**

employment contract and it was constructively being brought to an end at the instance of the employer and therefore the rules that apply to ending a contract would apply."

The above having been a finding of the disciplinary committee of the respondent, this court need not go to any further length to discuss the issue whether the conduct of the respondent amounted to breach of contract or constructive dismissal of the claimants. Accordingly we find that :

1) There was a breach of the claimants' contract of employment and therefore the first issue is in the affirmative.
2) The claimants were constructively dismissed and the second issue is in the affirmative.

The last issue is whether the claimants were entitled to any remedies?

In the submission of counsel for the claimants, the claimants were entitled to special damages as pleaded in the memorandum of claim. The memorandum of claim in paragraph 8 provides for special damages for each of the claimants arising from October, November and December allowances; salary for 8 months from October 2012, subsistence, allowance, transport from Pallisa and gratuity from May 2013 to June 2013. Each of the claimants claims a different figure but the total claimed as special damages is Ugx. 106,516,700/=.

As correctly put by counsel in her submissions, special damages must be specifically proved. There is no indication of particulars of the special damages and how they arose. This court cannot for example establish how David Kintu incurred Ugx. 35,843,000/= as special damages. Lumping up subsisitance allowance and transport from Pallisa together as special damages for each of the claimants does not prove each of the claimants entitlements.

The test of specifically proving special damages for each of the claimants on the evidence available has not been met. Accordingly the claim of special damages is rejected.

Gratuity is ordinarily provided for in the contract of service between the employer and the employee. We have carefully perused all the contracts of the claimants and there is a provision that the claimants were entitled to 20% of gross salary for every 12 continuous months of service completed. The claimants' contracts were for a certain period (2years) but renewable. In our opinion each renewed contractual term will be calculated as a continuous period from the previous contractual term until the claimant left service.

They will therefore be paid gratuity for the period when they started working up to the time they were terminated from service.

GENERAL DAMAGES

Given that the claimants lost their jobs as a result of a breach of their contract of service by the respondent, and given the nature of their jobs as well as how much each of them earned, we form the opinion that 1,500,000 as general damages for each of them will be sufficient in general damages.

We have no reason to disagree with the recommendation of the disciplinary committee of the respondent that the claimants be paid severance pay and in lieu of notice.

The claimants were employed on contracts which were renewable. It follows that each contract period was an end in itself and therefore notice periods would not apply to each of the ended contract periods. As provided for in **section 58 of the Employment Act,** payment in lieu of notice of each of the claimants will be in accordance with the period of the running contract before the dismissal date.

As for severance, **Section 89 of the Employment Act** provides that if an employee has been in employment for 06 months or more and he/she is unlawfully terminated he/she is entitled to Severance allowance. Section 89 of the same law provides that calculation of Severance allowance will be negotiable between

employer and employee but this Court in **DONNA KAMULI vs D.F.C.U BANK labour Dispute 002/2014** decided that where there exists no such negotiation or arrangement the employee would be entitled to a month's salary for each year such employee worked. In the instant case each contractual period was distinct from the other and ended as agreed. No Severance allowance arises from contracts completed and eventually renewed. Calculation of severance will only take into account the period of the contract that was terminated unlawfully. No order as to costs is made.

Signed by:

1. Hon. Chief Judge RuhindaAsaphNtengye ……
2. Hon. Lady Justice Linda TumusiimeMugisha ……

Panelists

1. Mr. Ebyau Fidel ……
2. Ms. Harriet MugambwaNganzi ……
3. Mr. Michael Matovu ……

Dated:24/05/2019