THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 190 OF 2016

(ARISING FROM LD NO. 02-4-16)

1. NSUBUGA MARTIN

2. KADDU MOSES LUTALO……..……..APPLICANT

VERSUS

BULOBA HIGH SCHOOL LIMITED……..RESPONDENT

BEFORE

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE

2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA

PANELISTS

1. MR. ROMUSHANA REUBEN JACK
2. MS. ROSE GIDONGO
3. MR. ANTHONY WANYAMA

AWARD

Brief facts:

The claimants were employed by the respondent as teachers and were given offers of appointment on 23/06/2004 effective from 15/6/2004. Both contracts were for a period of 1 year but renewable subject to acceptable performance levels by the Board of Governors. Both claimants were terminated by letters dated 30/11/2015 stating that each of the claimants would get paid their

December salary and an extra month pay as per the schools terms and conditions of service.

At the joint scheduling, the respondent conceded to having unlawfully terminated the claimants from employment for having failed to afford them a hearing and having not given them notice before termination.

The respondent however disputed a prayer by the claimants for award of damages and other remedies sought by the claimant.

Issues:

As a consequence of the admission that the termination of employment was unlawful, the only issue to decide is whether the claimant was entitled to the remedies sought.

(a) General damages

The law on damages was correctly defined by counsel for the claimant when he relied on the authority of **Stanbic Bank Uganda Limited Vs Hajji Yahaya Sekalega, CS No. 2009** in which Lady Justice Flavia Anglin held

> **"…in assessment of the quantum of damages courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered … a plaintiff who suffers damage to the wrongful act of the defendant must be put in the position he/she would have been if she or he had not suffered the wrong".**

Refer also to **Uganda Commercial Bank Vs Myana Engola HCCS 143/1993 and Kibimba Rice Ltd. Vs Umar Salim, SCCA 17/1992.**

Relying on **Bank of Uganda Vs Betty Tinkamanyire Civil Appeal No. 12/2007,** the claimant prayed the court to allow Ugx. 70,000,0000/= for each of the claimants who according to counsel for the claimants had dedicated all their youthful years in the service of the respondent.

Counsel for the respondent on the other hand argued strongly that although the termination of the claimant's was unlawful for want of due process, it was well founded since the respondent being a private business entity had a responsibility to deliver value for the fees paid by parents. In his submission counsel contended that whereas the first claimant was a perpetual late comer and failed to produce schemes of work and missed lessons, the second claimant had very little time for the school and could not assess sufficiently the students' academic progress. In rejoinder counsel for the claimant argued that the respondent having not adduced evidence related to poor performance, it should not rely on mere allegations of poor performance to deny the claimant general damages for unlawful termination.

We entirely agree with the submission of counsel for the claimant that where no evidence whatsoever was adduced touching poor performance of the claimant, the respondent is not entitled to rely on allegations of poor performance in pursuit of any legal remedy or in opposition to any legal remedy.

Whereas the respondent may have terminated the claimants for failure to give lessons to the students, late reporting to duty, late marking and any other infractions as mentioned in the letters of termination, the fact that those infractions were not put to the claimants for them to respond to , makes it very difficult for this court to rely on them to deny the claimants general damages.

Unlike in the case of **Kabojja International School Vs Godfrey Oyesigyire Labour Dispute Appeal No. 003/2015**, the claimants in the instant case were not given any warning on the record. Neither did they admit to any wrong doing on the record. Therefore the basis of the holding in **the Kabojja case** that **"the appellant as a private business entity had a responsibility to delivering value for the fees that the parents had paid by delivering excellent academic services…"**is not applicable to the instant case.

The holding in the above case was based on the fact that the respondent had admitted to the infringements after a series of warnings which he himself admitted having received and the court therefore did not think it was necessary to subject the respondent to a hearing, having found that the admission constituted a fundamental breach under **section 69(3) of the Employment Act** which provides

> **"An employer is entitled to dismiss summarily and the dismissal shall be termed justified where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service."**

We therefore find that the dismissal having been not in accordance with the above **Section of the law**, the claimants will be entitled to general damages.

However we agree with the submission of counsel for the respondent that the decision in **Betty Tinkamanyire (supra**) did not award general damages although it is a fact that many other cases have been awarding general damages (in cases that involve unlawful termination).

The claimants were secondary school teachers who were earning 490,500/= per month as salary. They had been employed by the respondent for $1^1/_2$ years. Their contracts were for 1 year from 15/6/2004 therefore they ended by 15/06/2005 but because the claimants continued working and being paid, the presumption is that their contracts were renewed. Therefore by the time of termination they had worked for 11 years. Given the nature of the contract, the respondent was at liberty to renew or not to renew the contracts at the time of termination or even after 30/11/2015.

Considering the nature of the contract and the salary the claimants were earning, we find that general damages of Ugx. 2,000,000 each will be sufficient.

Special damages

(a) **Four weeks pay**

Section 66(4) provides for payment of a net pay of 4 weeks in the event that a summary dismissal is justified but no hearing has been given to the claimant and in the event that the dismissal appears to be fair whether summary or not but no hearing has been given to the claimant.

As already pointed out above, in the event that a claimant has been unlawfully or wrongfully terminated from his/her employment, such employee is entitled to general damages. We form the opinion that the application of the weeks' net pay only applies where the claimant has been

summarily dismissed under **Section 69 of the Employment Act** in the event of the employee's breach of a fundamental term in the contract of service. In other circumstances of unlawful dismissal the claimant is entitled to be paid general damages. The a ward of 4 weeks' pay in our view under **Section 66(4)** is meant to cover a situation where a labour officer is deciding entitlements of the claimant since the labour officer has no jurisdiction to award general damages. This is the reason why, in our view, under **Section 78 of the employment Act,** a Labour officer is given jurisdiction to order compensation of 4 weeks' to an unfairly terminated employee.

Accordingly the termination of the claimants having not been under summary dismissal as provided for by **Section 69 of the Employment Act,** and this court having awarded general damages, the prayer for 4 weeks' pay is denied.

(b) **Three months' notice**

This is not contested by the respondents and therefore the claimants shall be paid 1,650,000/= each as payment in lieu of notice.

(c) **Severance allowance**

In principal the respondent is not opposed to payment of severance allowance as seen from the submissions of counsel. The decision of **Donna Kamuli Vs DFCU, LDC 002/2015** is to the effect that the salary at the time of dismissal is the salary to be taken into account in calculation of severance pay. Accordingly the claimants shall be entitled to 550,000x11 years – 6,050,000/= each.

(d) **Aggravated damages**

We have not found any malicious intentions or any arrogance on the part of the respondent as submitted by the claimant. Accordingly the award of aggravated damages is denied.

(e) <u>Interest</u>

Given the inflationary nature of the currency, we hereby award 12% of interest per year on all the amounts in this award from this date till payment in full.

(f) **<u>Repatriation</u>**

Section 39 of the Employment Act provides

"(1) An employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases –

(a) On the expiry of the period of service stipulated in the contract:

(b) On the termination of the contract by reason of the employee's sickness or accident.

(c) On the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and

(d) On the termination of the contract by order of the labour office, the Industrial Court or any other court.

(2) Where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the

expense of the employer, in the event of the employee's repatriation or death.

(3) Where an employee has been in employment for at least ten years he or she shall be repatriated at the expense of the employer irrespective of his or her place of recruitment.

(4) A labour officer may, notwithstanding anything in this section, exempt an employer from the obligation to repatriate in circumstances where the labour officer is satisfied that it is just and equitable to do so, having regard to any agreement between the parties or in the case of the summary dismissal of an employee for serious misconduct."

It seems to us that the above section on repatriation restricts entitlement to repatriation to employees whose contracts of service end only in the manner prescribed under **(1) (a), (b), (c) and (d) above.** The law is very silent on what happens once a person is unlawfully terminated and therefore the contract does not expire and is not in any way terminated in the circumstances showed in **(1)(a) – (d).** We do not think that the intention of the legislature was to exclude employees declared by court to have been unlawfully terminated from benefiting under Section **39** once it is established that such employee was recruited either more than one hundred kilometers from his or her home **or** his/her family were brought to the place of employment by the employer as per **Section 39(2)** above **or** where such employee was in employment for at least ten years as provided for under **Section 39(3).**

Under **section 31 of the Employment Act** a Labour officer can terminate an employment contract. The section provides

"31 Inability to pay wages

(1) Where an employer is unable or refuses to pay wages a labour officer on the application of any employee of that employer shall declare the contract of service terminated

(2) The termination referred to in sub section (1) shall be without prejudice to all outstanding and accrued rights arising under this Act, the contract of service or any other law"

Although the above section expressly gives authority to a labour officer to terminate a contract of service, ordinarily termination is by either the employee or the employer and the labour officer is asked to determine whether the termination was fair or not and whether any of the parties is entitled to any remedy. In the same way courts of law determine whether the termination is lawful or not and a ward remedies in deserving cases. Consequently it is our strong opinion that where an employee is declared by a court of law to have been unlawfully terminated or dismissed and he falls under the bracket of section 39 as pointed out above he or she is entitled to repatriation.

In the instant case, according to the submission of counsel for the claimant, although the 1st claimant showed his address as Natete at the time he applied for the job, he eventually changed address to Buloba, Masaka. The contention that an employee can be repatriated to any place of his choice as his home is not

acceptable to us. **Section 39(1) of the Employment Act** above is very clear that an employee must be more than 100km from the place of his recruitment to his home at the time of recruitment. The section does not give room to employees who in the course of their employment change location. Accordingly the claim of repatriation is hereby denied.

The claim succeeds in the above terms with no orders as to costs.

DELIVERED & SIGNED BY:

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE ……..
2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA ……..

PANELISTS

1. MR. ROMUSHANA REUBEN JACK ……..
2. MS. ROSE GIDONGO ……..
3. MR. ANTHONY WANYAMA ……..

Dated: 21/08/2019