THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 103 OF 2015

[ARISING FROM MGLSD NO. 286/2015]

BETWEEN

JAMES KAMIZA …… ……..……..CLAIMANT

VERSUS

NORTH BUKEDI COTTON COMPANY LTD.……..RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha

PANELISTS

1. Ms. Adrine Namara
2. Mr. Micheal Matovu
3. Ms. Susan Nabirye

AWARD

Brief facts

The claimant, by memorandum of claim, stated that he was employed by the respondent for 18 years before he retired but on retirement he was denied retirement benefits. In reply, the respondent stated that the claimant was a seasonal employee who was employed as per the season and who took benefit of his seasonal contracts of employment.

Representation:

The claimant was represented by M/s. Sandra Masiko of M/s. Tropical Law Advocates while the respondent was represented by M/s. Gloria Erimu of Lex Uganda Advocates and Solicitors.

When the matter came up for hearing on 19/11/2019 both counsel agreed that the only contention was on the interpretation of the regulations of staff as to terminal benefits. Both counsel agreed to file submissions upon which this court would give an award.

Submissions:

Counsel for the claimant filed submissions on 13/12/2019. He submitted that in accordance with **Regulation 27 of the North Bukedi Cotton Company Limited**, the employer of the claimant, the claimant was entitled to 14,400,000/= having worked for 18 years from 1995-2013 as a mechanic.

By the time of writing this Award no submissions from the respondent have been filed.

Regulation 27 of Regulations of the respondent staff provided.

"**REGULATION 27**

RETIRMENT SCHEME AND TERMINAL BENEFITS all employees will be entitled to retirement benefits as follows:

1. **After five years of continuous service, employees will be entitled to one month's salary for every year of service to the company.**
2. **After 10 years of continuous service employees will be entitled to two months' salary for every year of service to the company for each year worked after 10 years.**
3. **The company and all employees shall contribute to any national retirements scheme legislated for in Uganda according to its rules and regulations.**

By an undated letter signed by one B.F. Janvis, managing Director of the respondent, the claimant was offered an appointment on probation commencing 18/12/1995 at a monthly salary of 120,000/=. The letter provided (inter alia).

"During the ginning season you will be required to work 12 hour shifts, with one hour off for a meal after five hours of work and one thirty minute tea break.

During the ginning season, this meal will be provided by the company. If you are confirmed after satisfactory performance during the probationary period, you will be appointed to our permanent staff under the terms and conditions agreed above. The hours of work during the off season will be reduced to an 8.a.m start, finishing at 4.00p.m. with an hour's break for lunch from 1 to 2 pm…."

By letter dated 6/11/1996 the claimant was confirmed with effect from 18/12/1995 and admitted to the permanent and established staff of the company.

The respondent company had ginning seasons which were peak periods where the claimant (and other workers) were particularly required to put in more hours than during the off season as shown in the above appointment letter. The employment letter does not in any way suggest that the claimant was employed seasonally and therefore paid per season as the respondent seems to suggest. The letter of appointment and the subsequent letter of confirmation both are clear that the claimant was an employee of the respondent entitled to payment of 120,000/= per month and not per season. Consequently as an employee of the respondent, the claimant was entitled to retirement benefits as provided under regulation 27 above cited.

The claimant claims that he worked for 18 years. Since he retired from the service of the respondent by letter dated 7/10/2013 this means he claims to have started work in Oct 1995.

The record shows that the claimant was confirmed effective 18/12/1995 and therefore his claim is based from the date of confirmation which is to the advantage of the respondent. The claimant was earning a salary of 120,000/= per month.

Regulation 27 (2) provides that after 10 years of continuous service an employee is entitled to 2 months' salary for every year of service.

Section 83 of the Employment Act provides

"83 Definition of continuous service

(i) Subject to the provisions of this section.
"Continuous service means an employee's period of uninterrupted services with the same employer.

(ii) There shall be a rebuttable presumption that the service of an employee with an employer shall be continuous, whether or not the employee remains in the same job.

The record does not reveal any interruption in the service of the claimant and therefore we find that he was in the continuous service of the respondent during the 18 years. Although in his submissions counsel for the claimant claimed 14,400,000/= there is nothing to suggest how he arrived at this figure. The memorandum of claim does not show any specific figure claimed.

Accordingly he is entitled to 120,000x 2 x18 which is 4,320,000/=. The claimant will be entitled to interest of 8% from the date of retirement till payment in full. No order as to costs is made.

Delivered & signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha .....

PANELISTS

1. Ms. Adrine Namara .....
2. Mr. Michael Matovu .....
3. Ms. Susan Nabirye .....

Dated: 12/02/2020