



unsuccessful. He contended that the employment contract did not provide for an extension of his probation. He had been appraised for promotion and the termination on grounds of the unsuccessful probation, was unfair and biased. He asked to be paid salary for the remainder of the contract term, deductions, provident funds, and general damages in the sum of **UGX 6,500,000/= (Six Million Five Hundred Thousand Uganda Shillings Only)**. He also asked for a certificate of service.

#### **The Appellant's evidence at the labour office**

- 4.0** The Appellant maintained that the Respondent underwent probationary appraisal and the results were sent by email. Management of the Appellant held a meeting on the 29<sup>th</sup> of July 2020 and the outcome of this meeting was shared with the Respondent. The Respondent acknowledged receipt of the outcome.

#### **The ruling of the labour officer**

- 5.0** The Labour officer found in favour of the Respondent. He determined that the probationary period/s were inconsistent and there was no evidence of extension of the probation period/s or consent of the Respondent to such extension. He found that the Appellant did not give the Respondent a fair hearing and unlawfully terminated him. He awarded uncontested benefits of **UGX 10,137,954/= (Ten Million One Hundred Thirty-Seven Thousand Nine Hundred Fifty-Four Shillings Only)** and found that payment of the same had been delayed. He also awarded the Respondent **UGX 54,400,000/= (Fifty Four Million Four Hundred thousand Uganda Shillings only)** being salary for the remaining term of the contract, general damages in the sum of **UGX 6,500,000/= (Six Million Five Hundred Thousand Uganda Shillings Only)** and ordered the Appellant to give the Respondent a certificate of service.

#### **The grounds of appeal**

- 6.0** Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on the grounds contained in the amended memorandum of appeal:
- i. The Labour Officer erred in law when he held that the Respondent was unlawfully terminated.

- ii. The Labour Officer erred in law when he held that the Appellant was in breach of the contract of employment and ordered the Appellant to pay the Respondent terminal benefits amounting to UGX 10,137,954/=
- iii. The Labour Officer erred in law in ordering the Appellant to pay the Respondent the remaining contract period of Sixteen months amounting to UGX 54,400,000/= and;
- iv. The Labour Officer erred in law when he exceeded his powers under the Employment Act and awarded the Respondent general damages.

### **The submissions of Counsel for the Appellant**

**7.0** At the hearing, the Appellant was represented by Mr. Elijah Tayebwa.

**8.0** On ground one of the appeal, Mr. Tayebwa submitted that the Appellant lawfully terminated the Respondent's probationary contract with 14 days' notice. He submitted that the labour officer erred when he held that the Appellant did not give the Respondent a fair hearing before termination because the requirement for a fair hearing did not apply to probationary contracts under **Section 67 of the Employment Act, 2006**. He relied on the decision in **Syamutsangira & 20 Ors VS Tibet Hima Mining Co. Ltd LDR058/2015** in support of this proposition.

On ground two he submitted that there was no breach of contract because the Respondent was subject to an exit process before his benefits could be paid and as soon as the Respondent cleared with the Appellant, all his benefits were paid.

On ground three, Mr. Tayebwa submitted that the labour officer exceeded his powers as set out in **Section 78(3) of the Employment Act** in awarding UGX 54,400,000/= for the remaining term of the contract and cited the case of **Action Aid Uganda Vs David Mbarekye Tibekinga LDA 028/2016** to buttress his argument. Finally, Mr. Tayebwa submitted that the Labour officer did not have the power to grant general damages and cited the case of **Engineer John Mugyenzi Vs UEGCL C.A.C.A No. 167 of 2018** in support. He invited this Court to allow the appeal and set aside the ruling of the labour officer.

### **The submissions of counsel for the Respondent**

**9.0** In reply, Messrs Tassk Advocates, for the Respondent, submitting on ground one, contended that the contract of employment was for an initial period of 3 months on probation and was extended once for a further 3 months. In their view, upon the expiry of the 2<sup>nd</sup> probationary period, the Respondent had a legitimate expectation that he had been confirmed. Counsel cited the Kenyan case of **Agnes Yahuma Digo Vs PJ Petroleum Equipment Ltd I.C No.249 of 2011[2011] LLR 182** as a basis for this proposition. The Respondent also submitted that the termination was unlawful because he was never given a fair hearing and a reason for termination in contravention of **Sections 66 and 68 of the Employment Act, 2006**. The Respondent cited the cases of **Akankunda Ann Vs Salam Vocational Education Center Ltd LD41/2016** and **Akeny Robert vs UCC LDC No.023/2015** in support of the proposition that appraisal discussions did not add up to a disciplinary hearing. On ground 2, the Respondent submitted that withholding his benefits amounted to a breach of the employment contract. He supported the labour officers finding to the effect. On grounds 3 and 4, the Respondent submitted that the Court of Appeal had in the Mugyenzi case(*op cit*) held that a labour officer was at liberty to entertain a claim for damages and refer the same to the Industrial Court. The Respondent invited this court to dismiss the appeal and grant him general damages for breach of contract and costs.

### **The duties of a first appellate court**

**10.0** In the exercise of its statutory mandate as a first appellate court, this court has a duty to re-evaluate or reappraise the evidence presented to the court of first instance in full and arrive at our own conclusions. There is ample jurisprudence on this point.<sup>1</sup> In considering the appeal, this court would also be concerned with the merits of the decision of the labour officer in the decision under appeal. Put another way, was the decision right or wrong?

### **Analysis of the grounds of appeal**

**11.0** We have carefully studied the Lower Court Record, considered the parties' submissions, the law and authorities cited therein, and all relevant materials to the determination of this appeal.

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<sup>1</sup> *Father Nanensio Begumisa and three Others v. Eric Tiberaga* [2004] KALR 236 and *Kifamunte Henry V Uganda*, S.C Criminal Appeal No. 10 of 1997

- 12.0** We note that the Lower Court Record does not appear to be very well constructed. While it is appreciated that labour offices are not courts of judicature it would be useful for labour officers to keep as accurate a record of proceedings as possible for purposes of aiding the process and consideration of an appeal. We will attempt to put together the record of proceedings based on the handwritten notes of the labour officer at Adjumani.
- 13.0** On the 6<sup>th</sup> of July 2020, the Respondent recorded a statement at the labour office in Adjumani. By this complaint, he reported that he had been employed as a Project Coordinator of the Appellant on 1<sup>st</sup> August 2019. He was put on a 3 months' probation on a monthly salary of **UGX 3,400,000/= (Three Million Four Hundred Thousand Shillings)**. He successfully served the probationary period and on the 8<sup>th</sup> month of service, he was terminated. He was not given any reason and remained dissatisfied.
- 14.0** On 29<sup>th</sup> July 2020, a statement from one Mr. Opio, Program Manager of the Appellant was recorded indicating that he represented the Appellant organization. He stated that he had sent the Respondent's complaint to human resources and asked why the Respondent's money (read benefits) had not been paid. He was informed that there were insurance cards in the Respondent's possession and upon handover, the Respondent would be paid his benefits. The Respondent's terminal benefits were computed at **UGX 10,137,954/= (Ten Million One Hundred Thirty Seven Thousand Nine Hundred Seventy Four Shillings Only)**. Mr. Opio stated that he had not been briefed on the unpaid salary arrears.
- 15.0** The Respondent appears to have been allowed to counter Mr. Opio's statement. He suggested that he had not been advised to hand in the insurance cards order to be paid his benefits. He also stated that he had successfully served his probation. He asked for a copy of the extension of the probation period bearing his express consent. He maintained that there had been no official communication with him. In rebuttal, Mr. Opio stated that he was not able to interpret legal provisions. It was Mr. Opio's view that management extended the probationary period. The Appellant was asked to produce evidence of the extension of the probationary contract together with the Respondent's consent. The labour officer undertook to certify any payments to the Respondent. The matter was then adjourned to the 12<sup>th</sup> of August 2020.

**16.0** On the 12<sup>th</sup> of August 2020, the Respondent reported that he had handed over 03 (three) insurance cards to Mr. Opio. He said he expected his benefits to be paid per the termination letter including his provident fund. Mr. Opio said that he had presented the outcome of the meeting on 29<sup>th</sup> July 2020 to the Appellant's top management. On withholding of benefits, he cited the Appellant's Human Resource Policy in Clause 1.8. Mr. Opio also insisted on email correspondence on the extension of the probation.

**17.0** The labour officer, Mr. Olema Swaib Abdulah then recorded that having heard from both sides, he noted that:

(i) The extension of the probation period beyond 6 months was not with the Respondent's consent.

(ii) There was no sufficient evidence to terminate the Respondent's contract of employment.

Based on the above, he awarded the Respondent's terminal benefits of **UGX 10,137,954/= (Ten Million One Hundred Thirty Seven Thousand Nine Hundred Fifty Four Uganda Shillings Only)**, general damages in the sum of **UGX 6,500,000(Six Million Five Hundred Thousand Uganda Shillings Only)**, compensation for 16 months left on the employment contract in the sum of **UGX 54,400,000/= (Fifty Four Million Four Hundred Thousand Uganda Shillings)** and ordered that the Respondent be given a certificate of service. The labour officer then proceeded to deliver a written ruling detailing his award.

**18.0** A careful review of the procedure adopted by the labour office is very important. Part II of the **Labour Disputes (Arbitration & Settlement) Act, 2006** provides for the manner of dispute resolution and settlement. Under **Section 4 of the LADASA**, the labour officer may meet with the parties and endeavor to conciliate and resolve the dispute, appoint a conciliator to assist resolve the dispute, refer the dispute back to the parties with settlement proposals or reject the report with reasons. The Courts have now established that conciliatory processes lead to a settlement while the adjudicatory proceedings lead to a decision and a labour officer may not apply these methods interchangeably. <sup>2</sup> More particularly, under **Section 13 of the Employment Act, 2006**, the labour office may opt to resolve the complaint by conciliation, arbitration, or

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<sup>2</sup> Sure Telecom Vs Brian Azemchap LDA 008/2015 and The AIDS Support Organisation (TASO) Vs Nandala Annet Betty LDA 029/2018

adjudication. Where the labour office opts to use conciliation or mediation, the labour officer cannot shift to arbitration or adjudication if conciliation has failed. And it is also expected that while conciliation and kindred procedure would lead to a negotiated resolution of the dispute, arbitration and adjudication would lead to a decision. In the case before us, there were no formalities leading up to the ruling by the labour officer. A complainant was received and the Appellant was summoned. It may well be that after gathering information from the parties and not by way of either conciliatory methods on the one hand or adjudicatory measures on the other, the labour officer made findings and an award. The basis of the ruling is therefore not out of ordinary adjudicatory proceedings which would have resulted in a reasoned ruling. This Court has held that *“it is now settled that, when a labour officer chooses to proceed with one of the 3 methods stated under **Section 13(1) (a)**, he or she must settle the matter with the method chosen and refer it to another arbiter, where he or she fails to resolve it”*<sup>3</sup>

**19.0** On the basis of this procedural anomaly alone, we would be inclined to allow all the grounds of the appeal. However, in keeping with the decision of the Court of Appeal on the jurisdiction of the Industrial Court in the Mugenzi case, there is to be some deliberation on the other grounds of appeal.

**20.0** On ground 1 of the appeal, the Respondent’s evidence is that he was terminated in the 8<sup>th</sup> month of his employment. The employment contract under Article VI demonstrates that the Respondent was employed as a Project Coordinator for a period of 2 years with effect from 1<sup>st</sup> August 2019 to 1<sup>st</sup> August 2021. He was placed under probation for a period of 3 months. The Appellant suggests that there was an extension of the probationary contract but does not provide any written proof in support thereof. The law regarding the variation of written contracts is well established. The courts have long held<sup>4</sup> that the Parole Evidence Rule is to the effect that evidence cannot be admitted (or even if admitted it cannot be used) to add, vary or contradict a written instrument. And even more specifically under **Section 67 of the Employment Act**, an extension of a probationary contract requires the consent of the employee. In the proceedings leading up to this appeal, no instrument of consent was

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<sup>3</sup> **Kasese Cobalt Company vs David Kabagambe and Sure Telecom vs Brain Azemchap, Labour Appeal No. 008/2015.**

<sup>4</sup> Per Bamwine J in **D.S.S Motors Limited V Afri Tours And Travels Limited And Amin Tejani Hct-00-Cc-0012-2003**

produced before the labour officer despite a directive so to do. In effect, it is difficult to fault the labour officer for finding that the probationary contract was not extended. And it would follow, that the Appellant's contention that it complied with the law in terminating the Respondent is not an acceptable proposition. It is not realistically arguable that a written contract with a 3 months' probation period, was extended without the Respondent's written consent. The post-probation termination notice was dated the 13<sup>th</sup> of March 2020 and appears to have been received by the Respondent on the 25<sup>th</sup> of March 2020. Given the circumstances, the labour officer would have been justified to find that the Respondent was unfairly terminated.

**21.0** On ground 2 of the appeal, the terminal benefits appear to have been an uncontested amount of **UGX 10,137,954/= (Ten Million One Hundred Thirty Seven Thousand Nine Hundred Fifty Four Uganda Shillings Only)**. The Appellant's explanation for holding onto the said benefits was that the Respondent had to complete exit procedures including handing back insurance cards held by him and two beneficiaries. The available evidence demonstrates that on 15<sup>th</sup> September 2020 after the Respondent had attended exit procedures, the Appellant paid him **UGX 7,829,255/= (Seven Million, Eight Hundred Twenty Nine Million Two Hundred Fifty Five Uganda Shillings Only)**. It would appear that this sum was the net terminal benefits after statutory deductions. Properly computed and taking into account the 6 months in employment this would be a fair computation of the Respondent's terminal benefits and we would be reluctant to revisit the sum so awarded.

**22.0** On grounds 3 and 4 of the appeal, the law on the jurisdiction of a labour officer is now fairly well settled. It is simply that a labour officer does not have jurisdiction to grant special, general and punitive damages.<sup>5</sup> Out rightly, the labour officer's award of **UGX 6,500,000/=** as general damages was without jurisdiction. Similarly, the award of **UGX 54,400,000/=** for the remaining term of the contract is no longer an available or tenable legal remedy. Not only is it not within the category of awards under the labour officer's jurisdiction as provided for in **Section 78 of the Employment Act**, but in the latter cases<sup>6</sup> this court revisited its decision in **Florence Mufumba Vs DFCU Bank case LDC 138/2014**. It is now this

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<sup>5</sup> Eng Eric Mugenzi vs UEGCL(Op cit)

<sup>6</sup> See Simon Kapiyo Vs Centenary Bank LDC 30/2015, Equity Bank Vs Musimenta Mugisha Rogers LDA 26/2007, Blanche Byarugaba Kaira Vs AFNET LDR 131/2018, Chandia Christopher Vs Abacus Pharma (Africa) Ltd. LDR 237/2016 and UTL(In Administration) vs ABUGHAZAM ALI SALIM HAMDI LDA No. 36/2019



Court's position that the Mufumba case was decided per in curiam having not taken into account **Section 41 of the Employment Act** which provides for salary to an employee only for the work done in the course of employment. The present jurisprudence is that the Court may only take into account the fact of loss of future income as it determines general damages. We agree with the Appellant that an award or judgment of a court absent of jurisdiction is a nullity and in the case of **Peter Mugoya Vs James Gidudu & Anor [1991] HCB 63** it was held that orders which follow such a judgment must be set aside ex debito justitiae (as of right). It follows therefore that grounds 3 and 4 of the appeal would be allowed.

### **Decision and orders of the court**

**23.0** In the result, the appeal partially succeeds to the extent stated in this award. Under **Section 24 of the LADASA**, this court may confirm, modify or reverse any decision from which an appeal is made. In the exercise of these powers, the ruling and orders of Mr. Olema Swaib Abdullah-the Senior Labour Officer at Adjumani District in Labour Dispute Case No. LC/ADLG/012/of 2020 dated 12<sup>th</sup> August 2020 are set aside and modified as follows:

- I. The uncontested award of benefits of **UGX 10,137,954/= (Ten Million One Hundred Thirty Seven Thousand Nine Hundred Fifty Four Shillings Only)** to the Respondent by the labour office is upheld.
- II. The Respondent is entitled to pursue his terminal benefits from the provident fund with UAP LIFE ASSURANCE.
- III. The award of the labour officer granting general damages in the sum of UGX **6,500,000/=** is set aside and would be substituted for an award of **UGX 10,000,000/= (Ten Million Uganda Shillings)** as general damages for unfair termination as ground one of the appeal did not succeed.
- IV. The award of **UGX 54,400,000/= (Fifty Four Million Four Hundred Thousand Uganda Shillings)** being payment for the remaining contract period is set aside.
- V. Each party shall bear its costs.

**24.0** Before taking leave of this matter, it is to be expected that labour officers shall in future proceedings adopt some basic rules in conducting either arbitration or adjudicatory proceedings. Upon receipt of a complaint and a response to the complainant, there would be a presentation of each respective party's cases, an opportunity given to each party to test the other party's cases, a question for determination, and then a conclusion leading up-to a decision or award. This would bolster the delivery of labour justice.

**Delivered at Kampala this 4<sup>th</sup> day of November 2022.**

SIGNED BY:

**ANTHONY WABWIRE MUSANA, Judge**

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PANELISTS

**1. Ms. ADRINE NAMARA**

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**2. Ms. SUZAN NABIRYE**

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**3. Mr. MICHAEL MATOVU**

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Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.