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THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 017 OF 2017
ARISING FROM HIGH COURT CIVIL SUIT NO 48 OF 2016
ALL ARISING FROM CIVIL SUIT NO 071 OF 2008

10 **JUSTINE KASOZI****CLAIMANT**

VERSUS

1.MPIGI DISTRICT LOCAL COUNCIL V

2.WAKISO DISTRICT LOCAL COUNCIL V**RESPONDENT**

15 **BEFORE:**

1. **THE HON. AG. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**
PANELISTS

1. MR. FX MUBUKE

2. MS. HARRIET MUGAMBWA NGANZI

20 **3. MR. EBYAU FIDEL**

AWARD

BRIF FACTS

25 The Claimant filed this suit against the 1st and 2nd Respondents for unlawful termination from her employment. According to her, in 1994, she was recruited by Mpigi District Local Government as a cashier and posted to Nangabo Subcounty and later to Nsangi Sub-county.

Following an Audit in 2000, some queries arose regarding Ugx.12, 319,297/=which was unaccounted for under Nsangi Sub-county. As a result, she was interdicted on allegations

of causing financial loss while working at Nsangi Subcounty. After several follow up audits,
30 the amount in issue reduced to Ugx. 2,658,297/= and by this time, she had been transferred
to Wakiso District which had been created out of Mpigi District. She was placed her on
half pay until September 2004, when her name was removed from the Wakiso District pay
roll, under unclear circumstances.

Although she denied any liability, for the outstanding loss, she undertook to make good
35 the same through a pay schedule in which deductions would be made from her salary. This
was accepted by the District Authorities and as a result, the Internal Auditor recommended
the lifting of her interdiction. Her contention is that, to date, the interdiction still remains
and since her removal from the pay roll she continues to suffer loss, hence this suit.

ISSUES:

- 40
- 1. Whether the Claimant's employment contract was lawfully terminated and if not who of the defendants is liable?**
 - 2. What remedies are available to the parties?**

REPRESENTATION

The Claimant was represented by Mr. Kasozi Joseph of M/s Mubiru Kasozi & Co.
45 Advocates, Kampala. The 2nd Respondent was represented by Mr. James Katono of M/s
Nambale, Nerima & Co. Advocates & Legal Consultants, Kampala and the 1st Respondnet
by Mr.Madete Geoffrey Senior State Attorney of M/s Attorney Generals Chambers
Kampala.

SUBMISSIONS

50. **1. Whether the Claimant's employment contract was lawfully terminated and if not who of the defendants is liable?**

1st Respondent's Liability

According to Counsel the 1st Respondent's culpability lay in its initiating the interdiction contrary to the Constitution of Uganda and the Local Government Act Cap 243. Its failure to lift the interdiction and failure to grant the Claimant a fair hearing, resulted in her being paid only half of her monthly emoluments by the both Respondents. He contended that, it is more probable than not that as a result of these illegal acts by the 1st Respondent, the new employer believed that the indictment was done correctly and most likely deleted the Claimant from the payroll with this knowledge in the background. Therefore, the 1st Respondent should be faulted for the Claimant's loss of her job. For this he sought damages for loss of public trust and confidence.

2nd Respondent's Liability

With regard to the 2nd Respondent, Counsel contended that its culpability lay in its failure to evaluate the facts pertaining to the Claimants circumstances as her new employer. Thus, continuously giving her half of her salary and later completely removing her from the pay roll without following proper procedures, such as giving her notice or an explanation for that matter. Ultimately, she terminated her employment. He also faulted the 2nd Respondent for not lifting the interdiction which under the law was already unlawful. This resulted in her stagnation in career growth and failure to get her pension which she was entitled to. According to him had she still been in employment earning the current amount of 400,000/- per month she would have had an income

equivalent to 120,000,000/- which she was unable to get with possible promotions not taken into account. Therefore, the 2nd Respondent was equally liable for her predicament. He blamed both Respondents for their failure to resolve the matter out of court, even after the Claimant conceded to setting aside of an award that had been issued to her in 2011. Therefore, for the pain and suffering, mental and physical inconvenience occasioned to her, he prayed for aggravated damages from this court. He also prayed for the remedies for a terminated employee by the Council contrary to the terms and conditions of service, or contrary to the rules of the Public Service Commission as provided for in section 59(3) as follows:

(a) one year's gross pay in lieu of notice;

(b) pensions in accordance with the Pensions Act; (c) basic salary in lieu of all earned and officially carried forward leave;

d) severance package equivalent to six months' basic pay for every completed year of service;

(e) transport expenses at the rate equivalent to one currency point for every five kilometers from duty station to the employee's home district headquarters; (transport expenses at the rate equivalent to Sixteen currency points from the home district headquarters to the employee's home village.

He prayed that, judgment is to be entered in favor of the claimant and for her to be awarded compensation for unfair termination as well as entire costs of the suit/ claim for the period of litigation since 2005.

In reply, Counsel for the first Respondent submitted that, she did not unlawfully terminate the Claimant's employment contract and as such she has no liability whatsoever. According to Counsel, her witness, Mr. Francis Wamala, the Assistant Chief Administrative Officer of Mpigi District Local Government, in his evidence in chief testified that, on 27/04/1994, the Claimant was appointed on probation as a sub-County Cashier in Mpigi District Local Government. This position was later referred to as the Accounts Assistant. On 13/06/1997, she was confirmed in appointment as an Accounts Assistant Grade 1 for Nsangi Sub County. However, upon the creation of Wakiso District Local Government, the 2nd Respondent, in the year 2001, she was assimilated, deployed and assigned responsibility by the 2nd Respondent because Nsangi Sub County became part of Wakiso District. It was also his testimony that, on 2/01/2002, the Ministry of Local Government provided Mpigi Local Government with guidelines which provided that:

"Any person being an officer or employee of the original Local Government immediately before the coming into effect of the new Local Government and deployed or assigned responsibility in the new Local Government shall be retained in the new Local Government until removed under the Local Governments Act 1997."

Therefore, having been deployed, retained and assigned responsibilities in Wakiso District Local Government, the Claimant's personnel file was transferred from Mpigi District Local Government to her new employer, Wakiso District, the 2nd Respondent, and this is where she continued being employed and paid, until her name was deleted from the payroll in 2004.

Counsel for the 1st Respondent, cited the definition of "termination of employment" as defined under the Employment Act, Act No. 6 of 2006, Section 68 which provides for the

requirement to prove the reasons for termination, otherwise the termination shall be deemed to have been unfair within the meaning of section 71 and on **Benon H. Kanyangoga & Others VS Bank of Uganda Labour Dispute Claim No. 080 of 2014**, in which **Barclays Bank vs. Godfrey Mubiru SCCA No. 1 of 1998**, in which the Supreme Court held that:

120 *"Where the service contract is governed by a written agreement between the employer and employee, termination of the employment or services would depend on the terms of the contract and the law applicable"* and **Okello vs. Rift Valley Railways (U) Ltd HCCS No. 195 of 2009**, in which it was held that: *"... he right of the employer to terminate the contract of service whether by giving notice for the duration stipulated or implied by the contract*
125 *cannot be fettered by court*, and argued that, these provisions and authorities, did not mean that an employer can unreasonably terminate an employee's contract because there is a provision of payment in lieu of notice, as was the case under common law because the employer is required to provide a reason or reasons for the termination as provided under section 68 of the Employment Act 2006.

130 It was further the submission of the 1st Respondent that, in circumstances of this case, it was not relevant to consider whether the disciplinary process was made according to the law, because it had nothing to do with the Claimant's termination. He also argued that, the question whether the Chief Administrative Officer had powers to Interdict the Claimant in the year 2000 and the duration of the Interdiction were no longer justiciable, because they
135 were time barred under Section 3(1) of the Civil Procedure and Limitations (Miscellaneous Provisions) Act, Cap. 72. Therefore, their resolution by this Court was barred by the law of limitation applicable in the circumstances as they ought to have been brought within (2) years from the date of the action complained of.

Counsel for the 1st Respondent further submitted that, the Claimant's submissions in respect of the actions of the Chief Administrative Officer of Mpigi District in relation to the interdiction of the Claimant were misconceived and a departure from the pleadings and they were contrary to Order 6 Rule 7 of the Civil Procedure Rules, S.I. 71-1 which prohibits parties from departing from pleadings by the parties without leave of Court. He also cited **Jani Properties Ltd. vs. Dar es Salaam City Council [1 966] EA 281; and Struggle Ltd vs. Pan African Insurance Co. Ltd. (1990) ALR 46 - 47**, for the same legal proposition.

He contended that the Claimant's case is in respect of unlawful termination of employment and not challenging the interdiction. He prayed that, the Court finds that the Claimant's services were transferred from the 1st Respondent, therefore she is not liable for the termination of her employment contract.

150 DECISION OF COURT

Before we resolve the issues, it is important that we resolve the contention by Counsel for the 1st Respondent that, the matter is time barred. A perusal of the record shows that, the Claimant initially filed her case before the High Court in May 2005 under Civil suit No. 141 of 2005. When the pecuniary jurisdiction of the Chief Magistrates Court was increased, the High Court referred the case to the Chief Magistrates Court in Mpigi under Civil Suit No. 071/2008. The Chief Magistrates struck out the Claim, on the grounds that the Court was not seized with jurisdiction to handle it following the enactment of the Employment Act 2006, which placed all labour disputes in the Labour office and the Industrial Court. The Chief Magistrate was later moved to review her ruling under Misc. Application No. 0009/2015 and in her ruling on review she reinstated the matter in the Chief magistrates Court on the grounds that the Court was still possessed with jurisdiction to hear the matter

uto its logical conclusion because it was before her prior to the enactment of the Employment Act 2006. She also stated that she had jurisdiction to handle the matter under section 93 of the Employment Act. The Claimant sought the intervention of the Chief Registrar, who directed that, the matter is heard by a High Court Judge. When the Industrial Court was re-established, this case was one of the cases which transferred to it from the High Court. Following the chronology of events, the argument that the case is time barred before this Court, cannot stand. The matter has had a long trajectory and it has been ongoing, it is therefore properly before this Industrial Court, which is dressed with jurisdiction to handle it.

We shall now delve into the resolution of the issues.

1. Whether the Claimant's employment contract was lawfully terminated and if not who of the defendants is liable?

We carefully considered the evidence adduced in court and on the record and established that, indeed in 1994, Mpigi District Local Government, employed the Claimant on probation as a cashier. She was confirmed in service in 1997, in 1999, she was deployed at Nsangi sub county as Accounts Assistant Grade 1 where she served until 2000, when she was interdicted and placed on half pay, for causing loss of Ugx. 12,319,297/- following an internal audit. However, after a number of follow up re- audits, the loss reduced to Ugx. 2,658,297/-. Without accepting liability the Claimant expressed willingness to refund the outstanding loss by providing a pay schedule in which deductions for the payment of the same would be made from her monthly salary. Subsequently, a one Dan Nkwata, the Principal Internal Auditor at the time advised the CAO to lift her interdiction, but to date it still stands. It is also not in dispute that, in the same year, 2000, Wakiso District was curved

185 out of Mpigi District and Nsangi Sub County where the Claimant was deployed became
part of the New Wakiso District. Although her interdiction was imposed by the CAO Mpigi
District Local Government, on the grounds that, by then Wakiso District Local Government
had not yet become operational and it was not clear to this court when Wakiso District
assumed responsibility over her as an employer, there is no doubt that by 2004, she was
190 on the Wakiso District pay roll under which she was receiving her half pay. It is further
not in dispute that she was removed from the Wakiso payroll by the Wakiso District Local
Government Administration.

There was nothing peculiar about the disciplinary measures against her commencing in
Mpigi District Local Government and being transferred to Wakiso District after it became
195 operational. This Court has taken Judicial Notice of the fact that, many new Districts which
were carved out of old Districts were initially administered by their parent districts until the
they became self-sustainable.(see **Musho Muluga vs Tororo District Local Government**
LDC No.044 of 2015).This further provided for under section 185 of the Local Government
Act, which states that:

200 *"Any person being an officer or employee of the original Local Government*
immediately before the coming into effect of the new Local Government and deployed
or assigned responsibility in the new Local Government shall be deemed to have
been appointed under this Act and shall hold office in the new local Government until
removed from office under this ."

205 Therefore, the fact that, Nsangi sub county where the Claimant was deployed, became part
of the new Wakiso District Local Government and she was maintained on the Wakiso
District Council pay roll , under which she continued to receive her half pay until 2004

when she was removed, leaves no doubt in our minds that, even if she was still on interdiction, and she was not rendering any services to Wakiso District Local Government, given the provision of section 185 of the Local Government Act(supra), for all intents and purposes she was retained and deployed by Wakiso District Local Government, as staff inherited from Mpigi District out of which the Wakiso District was created. Therefore, she was an employee of Wakiso District Council.

In the circumstances, the onus was on Wakiso District Council to conclude the disciplinary proceedings which had been initiated against her by Mpigi District, in accordance with the law. The Wakiso District Council was expected to have ascertained the status of the disciplinary procedures against her or whether she had been subjected to the required disciplinary procedures before removing her from its pay roll, which action amounted to termination of her employment.

It is trite that before terminating an employee, the employer must notify the employee in a language the employee understands, about the reason or reasons why the employer wishes to dismiss or terminate him or her, and an opportunity for the employee to respond to the reason or reasons, in writing and or before an impartial disciplinary committee or tribunal, accompanied by a person of her own choice.(see section 66 and section 68 of the the Employment Act). Section 68 provides that, the employer must prove reason or reasons for the termination or dismissal person which must be reasons the employer genuinely believes existed at the time of the dismissal or termination. As it was stated in **A.M Jabi Vs Mbale Municipal Council Civil Suit No. 16 of 1973**, it is a fundamental requirement of natural justice that, a person properly employed is entitled to a fair hearing before being dismissed on charges involving a breach of disciplinary regulations or of misconduct. Also

• see **Ebiju James vs UMEME Ltd CS No. 0133 of 2012**, in which the key elements of a fair hearing were elucidated.

We did not find any evidence on the record, save for the letter interdicting her, the Inter Auditors letter to the CAO Mpigi recommending the lifting her interdiction and her own
235 letter indicting her willingness to refund the outstanding loss, to show that, the Claimant was subjected to any form of disciplinary mechanism or that the Wakiso District Local Government Service Commission was involved in any disciplinary process that, led to her removal from the Wakiso District Council pay roll. There is no evidence to indicate that, the District Administration made any effort to notify the Claimant about her removal from
240 the pay roll or about the reasons for her removal, especially given that she had undertaken to refund the outstanding loss way before the operationalization of Wakiso District Local Government or to show that, she was given an opportunity to defend herself before her removal from the payroll. There was also nothing on the record to indicate that, her interdiction had been lifted, after the expiry of the statutory 6months duration. Section
245 59(3) of the Local Government Act provides that; “*A district officer or employee shall not be ...*

Dismissed or removed from office or reduced in rank or otherwise punished without just cause...”

It is or finding therefore, that, having inherited the Claimant from Mpigi District which
25 initiated the disciplinary process against her, and having assumed responsibility over her as her employer, Waksio District Local Government /Council as her employer assumed the responsibility of concluding the disciplinary process which had commenced against her in Mpigi, to its logical conclusion. It was further the responsibility of the Wakiso District

255 Council to invoke its Service Commission to accord the Claimant an opportunity to defend herself before removing her from its pay roll. But this was not the case. Given the checkered history of this claim, we found nothing to preclude her from pursuing her claim under the Employment Act.

260 In the circumstances, her removal from the Wakiso District Council pay roll without according her a hearing moreover when she was still under interdiction, rendered her termination unlawful. Having become an employee of Wakiso District Local Government/Council, it is therefore liable for her unlawful termination.

1. What remedies are available to the parties?

265 Having established that by the time of her unlawful termination the Claimant was an employee of Wakiso District Council and it was liable, she is entitled to some remedies as provided under the Local Government Act.

Section 61(2) of the local government Act provides that....

(2) Notwithstanding subsection (1), an employee whose services are terminated by the Council contrary to the terms and or contrary to the ruling of the public service commission as provided in section 59(3) shall be entitled to the following benefits-

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- a) one year's gross pay in lieu of notice;*
 - b) pensions in accordance with the pension Act;*
 - c) basic salary in lieu of all earned and officially carried forward leave*
 - d) severance package equivalent to six month's basic pay for every completed year of service*

275. e) *transport expenses at the rate equivalent to one currency point for every 5 kilometres from duty station to the employees home district head quarters*
f) *transport expenses at the rate equivalent to 15 currency points from the home district district headquarters to the employee's home village*

According to her memorandum of claim, she prayed for the following remedies; a
280 declaration that, her interdiction is lifted, payment of half salary from September 2000 to September 2004 of Ugx. 65,000/ per month amounting to Ugx. 3,120,000/-, General damages for hard ships and inconvenience, general damages for breach of contract of employment, general damages for loss of public trust, interest, and cost of the suit.

a) Declaration that interdiction is lifted

285 It is an established principle that once a termination occurs whether lawfully or otherwise, an aggrieved person would be entitled to an award of damages and any other remedy prescribed by law. Although the interdiction was not lifted after the internal Auditor, Mpigi, recommended that it is lifted, We have already established that Wakiso District having inherited her after its formation had included her on its payroll and it was
290 responsible for her removal from it as well. Her removal amounted to terminating her from employment which we have already found was unlawful.

Given the long period she has not been in employment in Government it would impractical for this court to order for the lifting of her interdiction and reinstatement
moreover even when the complaint against her has never been resolved.

295 In the circumstances the only remedy available to her is an award of general damages in addition to other remedies prayed for in under the Local Government Act.

b) Payment of half salary from September 2000 to September 2004 of Ugx. 65,000/ per month amounting to Ugx. 3,120,000/-

Having established that, the claimant was unlawfully terminated and half her salary was retained. She is entitled to its payment. The claimant is therefore awarded her half pay amounting Ugx. 3,120,000/-, at an interest rate of 12% per annum from the 2004 when she was interdicted, until payment in full.

(c) Loss of full salary payment from September 2004 of Ugx. 130,000/- per month for 1 year amounting to Ugx. 1,560,000/-.

An award of the full salary would amount to double payment therefore we shall not grant it. It is denied.

d) Loss of pension contribution of 15% equivalent to Ugx.19500 per month x12x4 years totaling to Ugx 936,000/=

The claimant is entitled to pension as calculated under the pension Act. She is awarded pension in accordance with the pension Act as provided under section 62(2)(b) of the Local Government Act.

e) General damages

It is trite law that, general damages are intended to return the aggrieved party to as near as possible in monetary terms to the position as if the wrong complained of had not been occasioned. They are compensatory in nature. Having already established that the Claimant was unlawfully terminated, she is entitled to an award of General Damages. We have already established that she served the Local Government from 1994 to 2004 when she was unlawfully terminated. and by the time of her termination, she was earning Ugx. 130,000/-

per month. We take cognisance of the fact that a loss of employment causes suffering and inconvenience occasioned to her and for the loss of earning from 2004 to date. We believe an award of General damages of Ugx. 30,000,000/- at an interest rate of 12% per annum from the date of termination until payment in full.

Counsel in submission prayed that the Claimant is awarded remedies under section 62(2)(b). However, these were not pleaded therefore they are denied.

In conclusion, this claim succeeds with no order as to costs.

Delivered and signed by:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIME MUGISHA

PANELISTS

1. MR. FX MUBUKE

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. EBYAU FIDEL

DATE: 4/04/2022

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