



THE REPUBLIC OF UGANDA

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO.170 OF 2019**

(Arising from Complaint No. MGLSD/LC/076/2019)

BALA JIMMY ::::::::::::::::::::::::::::::::::::::CLAIMANT

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

- 1. MS. ADRINE NAMARA,**
- 2. MS. SUZAN NABIRYE &**
- 3. MR. MICHAEL MATOVU.**

AWARD

Introduction

- [1] In January 2008, Jimmy Bala (*the Claimant*) joined the Uganda Prisons Service (UPS) as a recruit warder. In 2014, while on transfer to Namalu Prison Farm, Karamoja, he was engaged in a project under the Office of the Prime Minister (OPM). He claims his allowances were not paid and he raised complaints with OPM officials and at UPS Headquarters. Following these complaints, he unsuccessfully appealed against transfer to Ibuga Prison Farm, Kasese District. His application for discharge from UPS was rejected for outstanding loans. Thereafter, his unresolved complaint to the labour office was referred to this Court. He now seeks a declaration that UPS is holding him in service wrongfully, unjustly and unlawfully; he wishes to be discharged and be paid various terminal benefits and damages, amongst other remedies.

- [2] The Respondent opposed the claim making the case that the Claimant was subject to the Prisons Act, 2006, Regulations and orders in regard to resignation, retirement, and transfer and that he did not meet the conditions for discharge from the UPS. The Respondent contended that retirement was only available after the age of 60 or at age 45 after ten years of continuous service, in public interest or on medical grounds. The Respondent concluded that a prison officer could only resign subject to Section 21 of the Prisons Act or terminate his or her service with written permission of the appointing authority.
- [3] At the scheduling conference, two issues were framed for determination viz:
- (i) Whether the Uganda Prisons is holding the complainant in the service wrongly, unjustly, unlawfully and contrary to the law?
 - (ii) What remedies are available to the parties?

The Proceedings and evidence of the parties

- [4] The parties filed one witness statement each. The witnesses testified, and were cross-examined on the 19th of September, 2022. Counsel were invited to address Court by way written submissions and the Court is grateful for the succinct arguments.
- [5] The Claimant testified that he joined the UPS on 1st December 2007 and was confirmed on 17th January 2008. He served as an Instructor, Prisons Mechanical Section, Warder General Duties and in 2014 was transferred to Prison Farm Namalu. While at Namalu, he participated in providing security for inmates on OPM project plantations. He testified that he was entitled to allowances but did not receive any allowances for three years. He raised complaints with the Under Secretary OPM, who advised that he follows up with UPS Headquarters. When he did so, he was transferred to Ibuga Prison Farm in Kasese District. He appealed against this transfer and was instead advised to apply for a discharge from UPS. His discharge was halted on account of outstanding loans due to the UPS SACCO. He cleared the said loans and returned to Namalu Prison Farm. Shortly thereafter, he was transferred back to Ibuga Prison Farm. Before receiving his matching orders, he was suspended for ten months without reason. He lodged a complaint with the labour officer. On 24th December 2018, he reported at Ibuga Prison Farm. After some initial hesitation, the Officer In charge of Ibuga Prison accepted

the matching orders and charged him with the offence of absenteeism. He testified that to date UPS has refused to discharge him.

- [6] In cross-examination, he confirmed that he was 38 years at the time he applied for discharge on the advice of the Assistant Commissioner in Charge of Staff Administration and Counselling. He applied on owner's request. The letter did not show that he was forced to retire. He confirmed that allowances at Namalu were to be paid by OPM. He testified that he is currently at Soroti main prison which he joined on 14th January 2022. He testified that his Equity Bank Loan was to be settled using his gratuity and that he did not present clearance receipts for the bank loans. He admitted that he had outstanding loans with FIN Credit and UDA Investments and that he had obtained these loans after his application for discharge. He testified that he had received and understood DEX1, which was a reply to his application for discharge. He did not reply to the letter because he was not asked to do so.
- [7] In re-examination, he testified that he was forced to apply for discharge because of the matters relating to the allowances. The Under Secretary of OPM discovered that allowances were not being paid and that these allowances have not been paid to date. He clarified that he had been ordered to apply for discharge at the risk of being charged with disobedience. He confirmed clearing the loans with the UPS SACCO.
- [8] Superintendent of Prisons (SP) Thomas Aldo Ochero testified on behalf of the Respondent. He confirmed that the Claimant had sought discharge from UPS on 10th September 2017. It was found that he had uncleared loans with the UPS SACCO, Equity bank Uganda Ltd, Fincredit Uganda Ltd and Hudar Investments. On 25th September 2017, the Commissioner General Of Prisons (*from now CG*) advised that the Claimant could not be discharged until he had cleared the outstanding loans. Having hinged the loans on his salary, he was required to clear the loans before discharge. It was SP Ochero's testimony that no evidence of clearance of the loans was presented to the CG. As a serving officer of the UPS, the Claimant was subject to the Prison Act 2006, Regulations and orders thereto in regard to resignation, retirement and transfer. That a prisons officer cannot terminate his services with UPS except with written permission of the appointing authority, the Prisons Council, chaired by the CG. Further, UPS was not liable to any payment of allowances by OPM to Prison Warders.

- [9] In cross-examination, SP Ocherro confirmed that he had joined UPS in 2001. He testified that he was well acquainted with the Prisons Act 2006 and the Prison Regulations 2012. He stated the conditions for discharge to be if one wished to leave the service of the UPS of his or her own free will, if one has ceased to be efficient or is unlikely to become efficient or he or she is on probation and appears not to be able to become efficient. He testified that the UPS SAACO Annual General Meeting had resolved not to approve a discharge if the officer had a loan. He was categorical that this was not provided in any of the Prisons Regulations. He stated that the Claimant was asked to present clearance receipts before his discharge could be approved. On CEX6, SP Ocherro stated that the Claimant had cleared the SACCO loan but had other loans. He also testified that a dischargée who had served 10 years was entitled to gratuity. He ascertained the reason for the Claimant's request for a discharge to being the transfer to Ibuga Prison Farm. That the claimant had refused to leave his home area and he appealed against the transfer. He confirmed that the Claimant was now at Soroti Prison. He noted that the duties of a warder included escorting prisoners to work on government farms and ensuring that they did not escape. He stated that prisoners and warders on private farms would have to be paid. If OPM had contracted Prison Warders then they deserved to be paid. He confirmed that the Claimant had not brought any complaint to his attention and that if such a complaint had been brought to his attention, he would have investigated the same. He also testified that transfers within UPS were made every 3 years if the warder had discipline issues. He concluded that he was not sure where money was paid when UPS was contracted.
- [10] In re-examination, he confirmed that the minimum period before a transfer was 3 years and that this was provided in the Prisons Act.

Analysis and Decision of the Court.

Issue 1. Whether the Uganda Prisons is holding the complainant in the service wrongly, unjustly, unlawfully, and contrary to the law?

Submissions of the Claimant

- [11] It was submitted for the Claimant that there was no law that bars the Claimant from being discharged from the UPS on account of uncleared loans. The Respondent did not produce any loan agreements preventing the Claimant from being discharged on account of a loan balance. On the strength of Sections 101(1) and 103 of the Evidence Act Cap. 6, the Respondent had a

burden and duty to prove the existence of the facts. Counsel for the Claimant cited the cases of **DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2015** and **Lillian Ndagire & 2 Ors v Cavendish University in Uganda LDR No. 98 of 2019** in support of the proposition that in the absence of the loan agreements, the Court could not conclusively determine the rights and obligations of the parties. We were invited to find that there was no legal basis for UPS to reject the Claimant's request for discharge on the basis of uncleared loans.

- [12] It was also submitted for the Claimant that Sections 21 and 22 of the Prisons Act did not apply to the facts in the Claimant's case and violated Article 25(2) of the 1995 Constitution which forbids forced labour. We were invited to find that the Respondent was holding him in service wrongly, unjustly and unlawfully.

Submissions for the Respondent

- [13] It was submitted for the Respondent that the Claimant was recruited into its service subject to the Prisons Act 2006. The appointment letter provided that the appointment was subject to the Act, Regulations, orders and administrative instructions made from time to time. It was submitted that an officer of the UPS can only be discharged from service under Sections 21(1), 21(2) or 22 of the Prisons Act. It was also submitted that the Claimant does not qualify for retirement or discharge as provided under these provisions of the Prisons Act because he had not attained 60 years of age by the time he applied for retirement/discharge. He had served for only nine years and at age 38 was short twenty years. Further, he had not attained 45 years after ten years of continuous service. It was submitted that the appointing authority had not required the claimant to retire. That the Claimant's application to be discharged from UPS was reviewed and it was discovered that the Claimant had outstanding loans due to the UPS SACCO, Equity Bank Ltd and two more loans of UGX 12,924,544/= due to Fincredit Uganda Ltd and Hudar Investments Ltd. These loans were hinged on the Claimant's salary as collateral. The Claimant was requested to clear his loans before discharge and he only cleared the UPS SACCO loan but has not cleared the bank loans to date. Mr. Ojambo Bichachi, appearing for the Respondent, submitted that it would set a bad precedent for public servants and private employees to obtain salary loans and apply for retirement or discharge before clearing the loans. In his view, this would destabilize the salary loan market. Finally, it was submitted that had the Claimant presented clearance of the said loans, these proceedings would have been avoided.

Resolution of Issue No. 1

[14] It is common to the parties that the Claimant was employed by the Respondent as a recruit warder. The appointment letter was admitted in evidence and marked CEX1. It is important to employ paragraph 3 of the letter which states that the appointment was subject to:

- (a) *The Constitution of the Republic of Uganda,*
- (b) *The Public Service Act (1969) and Regulations made thereunder,*
- (c) *The Public Service Standing Orders and Administrative Instructions made from time to time,*
- (d) *The Prisons Act and the Uganda Prisons Standing Orders and;*
- (e) *The Pension Act (Cap. 281).*

[15] The thrust of the Claimant's case as we understand it, is that the UPS is forcibly keeping him in service in violation of the Constitution of the Republic of Uganda, 1995. The Claimant contends that his application to be discharged from the service of the UPS was rejected on the grounds that he had outstanding loans. It was submitted that the Claimant's continued retention in service was wrongful and amounted to forced labour. For this reason, the Claimant submitted that the Respondent's actions were unconstitutional.

[16] Article 25(2) of the Constitution prohibits forced labour. It reads as follows;

"No person shall be required to perform forced labour"

According to the ILO Forced Labour Convention, 1930 (No. 29), forced or compulsory labour is:

"All work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily".

The provisions and spirit of the convention on forced labour is enacted into the Employment Act 2006 in the same definitive terms.¹ Further, under **Section 5(1) of the Employment Act**, no person shall use or assist any other person, in using forced or compulsory labour. What is discernible from these definitive terms of forced labour is that an employer who procures the services

¹ Under Section 2 of the Employment Act, *"forced and compulsory labour" means all work or service which is extracted from any person under the threat of a penalty, including the threat of any loss of rights or privileges and for which that person has not offered himself or herself voluntarily,*

of an employee without consent or freewill is using forced or compulsory labour. Forced labour subsists where an employee does not give his or her consent to work or has withdrawn their consent to engage in the work. The Claimant suggests that he has been subjected to perform forced labour as he applied to be discharged from the UPS and the UPS management has declined to release him.

- [17] In any other case, withdraw of consent would amount to forced labour. There are, however, a number of exceptions to which the definition of forced labour does not apply. The exceptions are spelt out in Article 25(3)(c) of the Constitution. It is enacted that:

“(3) For the purposes of this Article “forced labour” does not include-

(c) any labour required of a member of a disciplined force as part of the member’s duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour which that person is required by law to perform in place of that service.”

Section 5(2) of the Employment Act excludes from the definition of forced labour, any work or service extracted by virtue of compulsory military service laws for work of a purely military character; In this regard, the Uganda People Defence Forces is excluded from the application of forced labour.

- [18] The narrow question is whether the UPS is a disciplined force within the meaning of Article 25 of the Constitution. The article lists services as a member of a naval, military and airforce. The UPS is established under Chapter 12 of the Constitution in pursuance of the Defence and National Security of the Republic of Uganda. It is established under Article 215 of the Constitution. Article 215(2) of the Constitution specifically provides that the Uganda Prisons Service shall be nationalistic, patriotic, professional, disciplined, competent and productive; and its members shall be citizens of Uganda of good character recruited from every district of Uganda. The Prisons Act 2006, was enacted pursuant to Article 217 of the Constitution, to regulate the organization, administration, functions recruitment and general regulation of the UPS.

- [19] The expression disciplined force generally refers to the uniformed services that require a high level of discipline. Members are arranged by rank. Disciplined forces have a characteristically hierarchical structure of rank, file

and command. In our view, the establishment of the UPS under Chapter 12 of the Constitution, its structure under the Prison Act renders the UPS a disciplined force, in our view. Additionally, the terms and conditions of service of officers in the UPS, are governed by law. The appointments, promotions, recruitment, retirement and termination of services in the UPS are governed under Part III of the Prisons Act. Mr. Oboobo Bichachi, appearing for the Respondent submitted that an officer can only be discharged from the UPS under Sections 21(1),(2) of 22 of the Prisons Act. The law provides as follows:

"Section 21. Retirement (1) Unless otherwise expressly provided in this Act, a prison officer—

(a) shall retire from his or her office on attaining the age of sixty years;
(b) may retire after twenty years of continuous service or after attaining the age of forty-five years and having served continuously for ten years.

(2) An appointing authority responsible for appointment of a prison officer may require the officer to retire—

(a) in the public interest;

(b) due to continued ill health;

(c) due to inefficiency; or

(d) for any other sufficient reason.

(3) An appointing authority responsible for appointing prison officers shall require the officer to retire on medical grounds if the officer is declared by a Prisons Medical Board or Prisons Medical officer to be unfit for further service in the Service due to medical, mental or physical incapacity.

(4) An officer affected by subsection (2) and subsection (3) shall have a right to be heard.

22. Resignation by prisons officers Subject to section 21, a prison officer shall not terminate his or her service with the Service except with written permission of the appointing authority."

[20] From the evidence presented to this Court and the submissions of the parties, we would be unable to find that the Claimant was eligible for retirement in the UPS. We agree with Counsel for the Respondent that the Claimant did not qualify for retirement within the ambit of Section 21(1) of the Prisons Act.

- Retirement is specifically on attainment of 60 years of age or after continuously serving the UPS for twenty five years or on attainment of 45 years of age having served the UPS for ten years. The Claimant joined the UPS on the 17th of January 2008 and had served for 9 years at the time he applied for a discharge in 2017. He would therefore not qualify for retirement.
- [21] Under Section 21(2) of the Prisons Act, an officer may be required to retire in public interest, due to continued ill-health, due to inefficiency or for any other sufficient reason. The evidence on record does not place the Claimant within the ambit of this provision. Section 22 of the Prison Act restricts a prison officer's right to terminate his or her service with the UPS except with the written permission of the appointing authority.
- [22] The evidence on record is that by CEX3 dated 10th September 2017, the Claimant sought a discharge on the ground that the transfer to Ibuga Prison Farm was moving him very far from his family. In response, the Commissioner General of Prisons by CEX4 dated 25th September 2017, advised the Claimant to clear his loans with the UPS SACCO. By CEX 6, dated 21st February 2018, the Manager UPS SACCO advised that the Claimant had cleared the loans. Between this date and 24th October 2018 when the Claimant reported to Ibuga Prison Farm, there appears to have been no correspondence. The Claimant testified and this was confirmed, that he is now stationed at Soroti Prison and this was confirmed by RW1.
- [23] In proving whether he is being held in service of UPS unconstitutionally, wrongfully or unlawfully, the Claimant would be required to demonstrate with a degree of clarity and precision, the incidences of violation of his constitutional rights. We have established that forced labour is not applicable to disciplined forces. It follows therefore that the Claimant is precluded from making the case that he is being held in service against his will. The Claimant entered into the service of the UPS subject to the Constitution of the Republic of Uganda, the Prisons Act and other laws in force. Under the Prisons Act, retirement and termination are statutorily regulated. As at the date of application for discharge, the Claimant did not qualify for retirement. Further, in the event of termination, an officer can only terminate his services with the UPS under the written permission of the appointing authority. It follows that entry into and exit from the UPS is carefully regulated for reason of the nature of work of the disciplined forces.
- [24] Accordingly and in all circumstances, we would find that the Respondent is not holding the Claimant in service wrongly, unjustly, unlawfully and contrary to the law. The provisions of the Prisons Act place a justifiable

restriction on termination from the service of the UPS. These restrictions on disciplined forces are lawful, in our view, given the high level of discipline required of the disciplined forces. A prisons officer wishing to terminate his services must as a starting point meet the criteria for retirement or termination or seek the written permission of the appointing authority. It has not been shown in the evidence presented to us, that there was a violation of the Claimant's constitutional rights. He was asked by DEX 1 to clear his loans before his request could be granted. He did not reply to this letter because, in his view, he had not been asked to do so. The Respondent submitted that had he complied with the UPS conditions for discharge, these proceedings would not have arisen. We agree with this proposition. We hold that the Respondent is not holding the Claimant in service unlawfully.

- [25] We are fortified in this view by the decision of the Supreme Court of Uganda in the case of **Attorney General vs Major general David-Tinyefuza**² where it was observed that the Uganda People's Defence Force are regarded as a disciplined force to which the provisions relating to forced labour were not applicable. In that case, the Respondent had sought a determination that he had been resigned from service with the Uganda Peoples Defence Forces and the advice by the Minister of State for Defence to the Petitioner to follow the procedure under the National Resistance Army S.I No. 6 of 1993 was compelling him to forced labour. Citing Section 24 of the Interpretation Decree, it was held that the power to appoint conferred on any authority by law includes the power to remove, suspend or reinstate.³ We agree with the dictum expressed in the above case. More particularly, in concluding her ruling on whether members of the Armed forces can resign as they please, Her Lordship, the Late Lady Justice L.E.M Mukasa-Kikonyogo (JSC) was perfectly pointed. Her Lordship observed;

" In my opinion they would be at liberty to resign if and when they chose to, provided they complied with the laid down procedure "

- [26] In a similar vein, the UPS, established under an Act of Parliament which confers on the Prisons Council, the power to appoint all officers below the rank of Assistant Superintendent of Prisons. The same appointing authority must approve a termination of service with the UPS. Accordingly and in all circumstances, from the evidence and submissions in the matter before us, it

² Supreme Court Constitutional Appeal No. 1 of 1997

³ Per Wambuzi C.J. His Lordship emphasized that under Article 210 of the Constitution, Parliament had made a law governing recruitment, appointment, promotion and terms and conditions of members of the UPDF.

is this Court's determination that the Claimant's is not held in the UPS service wrongfully, unjustly or unlawfully. Issue no. I is answered in the negative.

Issue II. What remedies are available to the parties?

- [27] Having found as we have in Issue No. 1, we are unable to grant the claimant any of the remedies he sought.
- [28] In the final analysis, Labour Dispute Reference No. 170 of 2019 is dismissed with no order as to costs. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.⁴ Following therefrom, we decline to award the Respondent costs.

It is so ordered.

Delivered at Kampala this 17 day of March 2022.

SIGNED BY:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

THE PANELISTS AGREE:

1. Ms. ADRINE NAMARA,
2. Ms. SUSAN NABIRYE &
3. Mr. MICHAEL MATOVU.

Delivered in open Court in the presence of:

1. Mr. Ojambo Bichachi S.A for the Respondent.

Court Clerk. Mr. Samuel Mukiza.

⁴ JOSEPH KALULE VS GIZ LDR 109/2020(Unreported)