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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT JINJA

LABOUR DISPUTE REFERENCE No. 15 OF 2022

ARISING FROM LABOUR COMPLAINT MGLSD/LC/554/2021

10 **1. MWAGALE ALI**

2. MUGONA PAUL

3. NABIRYE EDITH

4. SOOMA ANDREW

5. NAKASOLO MOREEN

15 **6. KANTONO BETTY**

7. KATAMBALA COLLINE

8. KYAKULAGA ROBERT

9. NYIIRO BENARD CLAIMANTS

VERSUS

20 **BUGWERI DISTRICT LOCAL GOVERNMENT RESPONDENT**

BEFORE:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MR. EBYAU FIDEL

25 **2. MS. HARRIET MUGAMBWA NGANZI**

3. MR. FX MUBUKE

AWARD

BACKGROUND

30 The Claimants brought this claim, seeking orders for: General damages amounting to Ugx.5,000,000,000/=, Salary arrears amounting to Ugx. 1,000,000,000/=, Aggravated damages, Severance Allowance, Payment in lieu of notice, Punitive damages, Interest at 30%, costs of the suit and any other reliefs as this Court deems fit.

BRIEF FACTS

35 According to the Claimants from 2017, they were engaged in gainful employment with Minani Health Centre III in different capacities, located in Namalembe Sub County Iganga District before it became Bugweri District. On 12/12/2017, Namalembe Sub County Council, passed a resolution to hand over the Health Centre-III, to the Ministry of Health. On 1/07/2018, Government formally took it
40 over. The Claimants, contend that the Respondent promised that after the takeover by Government, their respective contracts would be automatically transferred into Government Service, but the District Health Officer and the Chief Administrative Officer (CAO) attempted to transfer the said contracts in vain. They alleged that, in as they waited, the CAO undertook to pay their rent and other bills as employee's

45 and not as volunteers, as the Respondent alleged and this was done until they were terminated on 2/11/2021.

REPRESENTATION

The Claimants was represented by Lyagoba James of M/s Bamwite & Kakuba Advocates, Kampala While the Respondent was represented by Olocho Isaac of M/s
50 Attorney General's Office Mbale Regional Office.

ISSUES

1. Whether or not the claimants were employees of Minani Health Centre III.
2. Whether or not Minani Health Centre III was taken over by Government
- 55 3. Whether or not the Claimants contracts of service were transferred to Bugweri District Local Government upon the take over?
4. Whether or not the Claimants Contract of service were terminated unfairly.
5. What are the remedies available to the parties?

60 RESOLUTION OF ISSUES

Issues 1:

Whether or not the claimants were employees of Minani Health Centre III?

It is a settled principle of Labour relations, that an employee-employer relationship is based on a contract of service. A contract of service is defined under section 2 of
65 the Employment Act, 2006, to mean, "... any contract, whether oral or in writing, whether express or implied , where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship...."

The same Law defines employer to mean *“any person or group of persons including a company or corporation, a public , regional or local authority, a governing body*
70 *of an unincorporated association, a partnership, parastatal organisation or other institution or organisation whatsoever, for whom an employee works or has worked , or normally worked or sought to work, under a contract of service , and includes the heirs, successors , assignees, and transferors of any person or group pf persons for whom an employee works, has worked or normally works.”*

75 Although there is no universally accepted formula for determining the existence of a contract of service, especially where it is an oral contract, Article 13 of Recommendation 198 part II of the ILO Recommendations , renders guidance on what to consider when deciding whether or not a contract of service exists as follows:

- 80 a) *The fact that the work is carried out according to the instructions and under the control of another party; involves integration of the worker in the organization of the enterprise, is performed solely or mainly for the benefit of another person, must be carried out within specific working hours or at a workplace specified or agreed by the party requesting the work of a particular*
85 *duration and has certain continuity; requires worker’s availability or involves provision of tools, materials and machinery by the party requesting the work.*
- b) *Periodic payment of remuneration to the worker, the fact that such remuneration constitutes the works sole or principal source of income, provision of payment in kind, such as food, rest, and annual holidays;*
90 *payment by the party requesting for travel undertaken by the worker in order to carry out the work, or absence of financial risk for the worker...”*

In **Kymukama Godffrey vs Makerere Business School LDR No. 147 of 2019**, this court when determining whether an employment relationship existed between parties, relied on the holding in **Ready Mixed Concrete Vs Minister of Pensions and National Insurance (1968)** cited with approval, where Mackenna J observed that; “..that there are three conditions for a contract of service: first that the employee undertakes to provide his or her own work or skill to the employer in return for a wage or other payment, secondly the employee agrees to be subject to the employer’s control to a sufficient degree “to make that other master” and thirdly that the other provisions of the contract are consistent with its being a contract of service in the end, ...”

In **Mugolo Nehemiah vs Vambeco Enterprises LDR No. 37/2022**, which was cited on the Kenyan case of **Stanley Mugai Muchai vs National Oil corporation of Kenya (Industrial Cause No. 44(N) of 2009;[2002]LLR 250(ICK)** the court set out the tests which should be applied when determining the existence of an employment relationship as follows:

“ ...

- a) **The control test**, whereby a servant is a person who is subject to the command of the master as to the manner in which he or she shall do the work. However, the formal or personal subordination of the worker as attest for existence of a contract of service may not apply for highly specialized workers such as doctors, lawyers and other professionals.
- b) **The integration test** in which the worker is subject to the rules and procedures of the employer rather than personal command. The employee is part of the business and his or her

work is primarily part of the business. However staff of independent contractor may as well perform entries integral or primarily part of the business when in fact, they are not employees.

c) **The test of economic or business reality** which considers whether the worker is in business on his or her own account as an entrepreneur or works for another person who takes the ultimate risk of loss or chance for profit.

d) **Mutuality of obligations test**, in which parties make commitments to maintain the employment relationship over a period of time. The contract of service entails service in return for wages and secondly, mutual promises for future performance.

e) Since none of the foregoing tests can resolve the issue decisively on their own, in many cases the issue will be resolved by examining the whole of the various elements in the employment relationship between the parties, this has been called the multiple test...”

These tests suggest that, a contract **of** service invariably relates to “dependent” or subordinate employment (a master servant relationship), while employment or contract **for** service relates to “independent” or autonomous employment(self employment).

It is not in dispute that, Minani Health Centre where the Claimants were formerly employed was a private entity which was formally taken over by the Government on 1/07/ 2018. It was the evidence of all the Claimants that, at the time, they all held

contracts with the Health Centre III. After a very careful analysis of the evidence on the record, we established that each of the Claimants held an appointment letter in respect of specific roles and issued at different dates. The said letter was signed by
145 a one Kakhaire Daniel, who was the Health Centre's Administrator. There was no doubt in our minds that each of them was an employee of the Health Centre. It was clear from the various appointment letters that before 1/07/2018, they held various positions in the Health Centre Administration. Issue 1 is therefore decided in the affirmative.

150 **ISSUE 2**

Whether or not Minani Health Centre III was taken over by Government

This was an admitted fact, which needs no further discussion.

ISSUE 3

Whether or not the Claimant's contracts of service automatically transferred 155 to Bugweri District Local Government upon the take over?

The Claimants in the instant case contend that, having held valid employment Contracts of service with Minani Health Centre III before it was taken over by Government, these contracts should have been automatically transferred to Government service after it took over the Health Centre. They contended that,
160 whereas there was an attempt by the Respondent to absorb them in Bugweri District Local Government Service, this was not done. According to Counsel for the Claimants, Section 28 of the Employment Act, 2006 applied to the Claimants. The Section provides that,

“(1) Except as provided for by this section (2), a contract of service shall not be
165 transferred from one employer to another without the consent of the employee.

(2) Where a trade or business is transferred in whole or in part, the contracts of
service of all employees employed at the date of transfer shall automatically be
transferred to the transferee, and all rights and obligations between each employee
and the transferee shall continue to apply as if they had been rights and obligations
170 concluded between the employee and the transferee.

(3) A transfer referred to in subsection (2) shall not interrupt the employee’s
continuity of service and the service shall continue with the transferee as if he 145
or she were the transferor.”

He also relied on this Court’s holding in **Joseph Tindyebwa & Anor Versus**
175 **Kabale University LD No 156 of 2018**, that, “...the interpretation of subsection 2
of section 28 (supra) is that, the all subsisting contracts of service of all employees
on the date of transfer or acquisition of the business or trade, automatically transfer
to the new employer or transferee under the same terms and conditions and:
continue in force as if they had been negotiated between the said employees and the
180 new employer/transferee... and argued that, upon transfer of an organisation, the
section 28 provides that, duration, terms and conditions of the contracts held under
the old employer are carried in whole, to the new employer and they continue as if
they had been negotiated between the employee and new employer. He further
argued that, continuity of service is guaranteed under subsection 3 of Section 28 but
185 all the Claimants in this case, testified that, their contracts were not transferred when
the Health Center was transferred to Government, yet they continued to render
services without pay. It was his submission that, this fact was not disputed by the
Respondent. He refuted Mr. Kirenda’s assertion that, “...there is no obligation

(moral or legal) on the part of the Respondent to absorb the Claimants into the
190 service of the Respondent." Because, all the Claimants continued to render their
services based on the promises made by the Respondent and CW1, Ali Mwagale,
who was assigned to caretake the Health Centre, as signatory to its Accounts and
with rights to receive drugs from National Medical Stores and according to his
testimony, for which he received accolades, but no pay. Counsel insisted that in
195 light of section 28 of the Employment Act, the Claimants' contracts had to
automatically transfer to Government upon the takeover, but this was not done.

In reply Counsel for the Respondent submitted that, the Claimants contracts of
service could not be automatically transferred to Bugweri District Local Government
because each of them had to be duly appointed by the Bugweri District Service
200 Commission as provided under the Public Service Standing Orders of 2021. It was
his submission that, each of the Claimants was supposed to apply to the District
Service Commission in accordance with Section A-b of the Uganda Public Service
Standing Orders of 2021, which provides as follows:

APPOINTMENT TO THE PUBLIC SERVICE (A —b)

205 1. Appointment to the Public Service is in accordance with written law and shall
follow the laid down procedures. 2. Types of appointments to the Public Service are
as follows:

(a) Pensionable appointments

(i) on confirmation following a period of probation, where the public officer had no
210 previous non pensionable service; or

(ii) on confirmation, the period of probation having been waived; or

- (iii) on transfer from the Central Government to a Local Government and vice versa or from a Local Government to another Local Government; or
- (iv) on transfer from "Other Public Service" in which the public officer was confirmed in his or her appointment; or
- 215 (v) on appointment on promotion from one office to another (See A-g); or (vi) on appointment on transfer from one office to another (See A-m)
- (b) Non Pensionable Appointments:
- (i) on probation to a pensionable office; or
- 220 (ii) on contract agreement in which both the period of employment and terminal gratuity are specifically expressed; or
- (iii) on acting basis applicable only to statutory offices in accordance with the Constitution; or
- (iv) on contract in which both the period of employment and terminal gratuity are specifically expressed; or on non gratuitable contract terms with the period of employment expressed; or
- 225 (v) on trial basis in exceptional circumstances where recruitment of qualified staff is difficult and the services are essential, with the express permission of the Appointing Authority, for a period of not more than two (2) years; or
- 230 (vi) on part time basis in exceptional circumstances where recruitment of substantive staff is difficult and the services are essential, with the express permission of the Responsible Officer.

He contended that, unless one was duly appointed in accordance with these provisions, he or she could not be appointed into the Public Service. He also cited
235 Section A-c of the same Public Service Standing Orders which provides that, appointment into Public Service should be done by an appointing authority and in case of a District, the appointing Authority is the District Service Commission. He insisted that a transfer from private sector institution to the Public Service could not be done without following the recruitment/ appointment process under the Public
240 Service.

It was further his submission that, Section 28 (2) of the Employment Act of 2006 does not preclude an employer from varying or changing the terms and conditions of the contract of service as was confirmed in **Joseph Tindyebwa and Another versus Kabale University, LDR No.156 of 2018**, which they Claimants relied on.
245 He insisted that in cases where services were transferred to government, the terms and conditions of service of the employees had to be varied to fit the requirements of the Uganda Public Service Standing Orders. Therefore, Minani Health Centre III having been a private entity, after its takeover by Government, it was a requirement that for the employees to be engaged in accordance with the provisions/terms under
250 the Uganda Public Service Standing Orders and this was the reason why on 20/04/2022, the Respondent wrote to each of the Claimants asking them to apply to the District Service Commission (the appointing authority), as evidenced in exhibit "RX1" on the Respondent's Trial Bundle. He stated that during cross examination all the Claimants admitted that, they saw the Advert marked "RX4" on the
255 Respondent's Trial Bundle) but they did not bother to apply yet this was the only process through which the terms and conditions of their contracts of service could be varied to fit within the requirements of the Public Service Standing Orders.

He made reference to the minutes of the mediation meeting, which all the Claimants confirmed they attended and stated that, in that meeting the Claimants were informed about the requirement for them to apply to the District Service Commission so that, their contracts of service could be varied to fit within the requirements of the Public Service Standing Orders and according to him, this was not in violation of Section 28 (2) of the Employment Act 2006, which he insisted did not preclude or stop the Respondent from varying the terms and conditions of the Claimant's contracts of service so that, to bring them in conformity with provisions of the Uganda Public Service Standing Orders. Having not applied, to the District Service Commission as advised, the contracts could not be transferred to the Respondent.

DECISION OF COURT

Indeed section 28 of the Employment Act (supra) provides for the protection of the rights of employees where, it is established that, the whole or a substantial part of an undertaking or organisation in which they are employed, is transferred to a third party with the latter becoming their new employer. It is also the correct position that, in **Joseph Tindyebwa and Another versus Kabale University, LDR No.156 of 2018,(ibid)** this court interpreted Section 28(2) to mean that, *"...all-subsisting contracts of service of all employees on the date of transfer or acquisition of the business or trade, automatically transfer to the new employer or transferee under the same terms and conditions and continue in force as if they had been negotiated between the said employees and the new employer/transferee. In other words, the duration of the contract and the terms and conditions held under the old employment are carried in whole, to the new employer and they continue as if they had been negotiated between the transferring employee and the new employer. Continuity of*

service is guaranteed under subsection 3 of Section 28, however the transfer is conditional upon the consent of the employee as provided under subsection (1).

Section 1.4 of "The Public Service Commission, Guidelines from the Public Service
285 Commission to the District Service Commission (Revised) "... *refers to employment by the Government of public officers who have been outside the public service into the service by the government after the winding up of the organization e.g the employees of Government projects or International Projects/Organizations. However serious consideration should be taken of the terms and conditions of the*
290 *service of the previous service of the officers in question(officers to conform to the new conditions of service).***(emphasis ours).** It clear from this provision that any before transferring the services of any officer/person working outside the Public Service into the Service, it is a requirement that the terms and conditions of service of such officers/persons in the previous employment must be brought into
295 conformity with the terms and conditions of the Public Service once employed into the Public Service. It is therefore our considered opinion that the protection envisaged under section 28 of the Employment Act did not preclude the new Respondent from varying the terms and conditions of the Claimants to bring them in conformity with the Public Service. In any case the transfer could only be effected
300 with their consent which in our view would be expressed by subjecting themselves to the process which would bring them in conformity with and within ambit of the terms and conditions of the Public Service, as envisaged under section 28(1) of the Employment Act(supra).

It is the position of this Court that the transfer of contracts envisaged under section
305 28, primarily relates to the transfer of the rights and obligations under the contract, including and not limited to the employers duty to provide work, remuneration to

the employee, the duty to exercise reasonable care for health and safety, duty of trust and confidence, to provide rest days, and other benefits, among other things and the obligations of the employee to provide personal service, duty of fidelity/good faith
310 and to protect the employers interests, duty to exercise reasonable care, skill and diligence, duty to be obey lawful instructions, among others as provided under section 59 of the Employment Act. Under Section 59 the employer has the managerial prerogative, to determine the terms and conditions of service, including their variation as long as they are not varied to the detriment of the employee. In the
315 circumstances, is nothing that **precludes a new employer/transferee from varying the terms and conditions, including the duration of transferred contracts to the advantage of the transferred employee.**

We established that in the instant case, the Claimant's contracts under Minani Health Centre III, only entitled them to a salary and nothing else, yet employment under the
320 Public service entitles a Public Officer to rights such as rest days, health care in Government owned medical facilities, Gratuity and pension on retirement among others, which if granted to them would be to their advantage. It was also our finding that, although Section 28(1) provides for the employees to give their consent before transferring his or her services to the transferee/ employer, it is silent on how the
325 consent should be given. According to Selwyn's law of employment 9th edition at page 229-230, each of the employees should be invited to independently make the decision to transfer. The consent should be communicated in writing to the employer within a reasonable period following the announcement of the transfer or takeover. It is our considered opinion that the law assumes that, before the transfer of the
330 undertaking, the outgoing employer will have appraised the new employer of the details of all the employees, their terms and conditions of service under the old

employment(rights and liabilities). These include among others, details of the identity, age particulars, particulars, of employment, disciplinary and grievances records, employee claims and liabilities and collective bargain agreements if
335 any(see **Elizabeth Washeke and 62 others vs Airtel Networks (K) Limited industrial casus No. 172 of 2012**). In essence there ought to be consultations between the outgoing employer, the incoming employer and the affected employees must be notified of the processes involving their impending transfer, to the transferee/new employer, since the expectation is that the incoming employer would
340 be required to take the transitioning staff on their existing terms and conditions of employment, which should not be varied merely on grounds of the transfer. However, as already discussed we found nothing in section 28 to preclude the variation of such terms if the variation is to enable the new employer to establish their suitability and the variation is to the advantage of the employee in transition.
345 [**Tindyebwa**(supra)].

An analysis of the process in the instant case revealed that, Minani Health Centre III was taken over by government on 1/07/2018, based on a communication from the PAS and Speaker of Namalembe Sub county to the Chief Administrative officer(CAO), Iganga, dated 12/12/2017, this was followed by a Council meeting
350 which was held on 11/12/2017. The Council resolved that having been constructed jointly with The Rt, Hon. Deputy Prime Kirunda Kivejinja(RIP) and Iganga Local Government on Parish land belonging to Namalebe Subcounty Council, the Health Centre should be taken over by Government to provide for a Hsealth Center III. In a letter dated 21/02/2018, a one Kakaire Daniel, the then Chairperson Management
355 Committee formally handed over Minani Health Centre to Government through the CAO Iganga District Local Government(as it was then). On 22/02/2018, the

CAO, made a submission to the Permanent Secretary Ministry of Health for the absorption of Minani Health Centre as a Health Centre III for Namalembe Sub-County. On 30/04/2020, Dr. Muwereza Peter made a submission of a list of 22 staff
360 of Minani Health Centre(including the Claimants) who were eligible for appointment into the Service of Bugweri District Local Government, to the CAO Bugweri District Administrator. On 14/04/2020, Mr. Musoke Jonathan Hosea , made a submission of the same list of staff to the District Service Commission Namutumba.(The evidence on the record seemed to indicate that at the time,
365 Bugweri District did not have a Service Commission in place, so Namutumba District was carrying out recruitment of staff on its behalf). On 13/07/2020, Dr. John Geoffrey Mbabazi, Secretary to the Public Service Commission, informed the Permanent Secretary Ministry of Local Government, that the Public Service Commission resolved to stop Namutuba from handling any work for Bugweri
370 District, with immediate effect, including all appointments. Bugweri District was directed to find another District Service Commission to handle that docket.

We also had an opportunity to scrutinize the minutes of the mediation meeting which was held on 29/ 04/2022, between the Management of with Bugweri District Local Government and the Claimants and we established that the Claimants were referred
375 to a Minani Volunteers who were referred to as Minani Volunteers, marked "REX1", on the Respondent's trial bundle. Under minute 3/29/04/2022, the chairperson of the meeting a one Kahusuma Doreen the Deputy CAO, informed the meeting that, Bugweri District Local Government only got a functional District Service Commission(DSC), when it was fully constituted in September 2021 and
380 thereafter the Claimants were told to apply to the DSC, but they had not done so. Under minute 5/29/04/2022, the Minani staff acknowledged that they did not

respond to the advert, which was run by the Bugweri DSC, because they had already submitted their applications to Numutumba DSC. They also stated that they were informed about the termination of Namutumba's role in recruiting for Bugweri District therefore no recruitment took place. During this meeting, they were also
385 made aware of the fact that they would not be considered as employees of the District unless they complied with the Government procedures notwithstanding the provisions of Section 28 of the Employment Act.

As already discussed this was emphasized under section 1.4 of the Public Service
390 commission guidelines (supra). From the evidence on the record the Claimants **were given another opportunity to file their applications through the CAO to the DSC, even if the deadline in the advert had expired. A new deadline of 6/05/2022 was extended to them.** (A copy of the advert which was attached to the minutes, stated that the deadline for submissions of applications was 22/02/2022).
395 They were further informed that only qualified staff would be considered for appointment.

The chronology of events demonstrates that Dr. Muwerza Peter, the Health Officer Bugweri was cognizant of the procedure for the appointment of eligible staff into the District Service, hence his submission of the list of **eligible** staff to the CAO for
400 onward transmission to the District Service Commission, which is the Appointing Authority. Therefore, the eligibility did not amount to qualification. As already discussed even if section 28 does not explicitly set out how the transition from the old employer to new employer should happen, we do not think that the use of the word **automatically** meant that the transfer would be done without any preparation
405 or without considering of compatibility of the affected employee's previous terms and conditions with the new terms and conditions under the impending new

employment and in this case, under the Public Service. We believe that this is the reason the Public Service Commission paid particular attention to this requirement under section 1.4 the Guidelines to the DSCs (ibid).

410 As already discussed, the Claimants were working under a private entity whose terms and conditions were different from those of the Public Service and they were only entitled to payment of salary and nothing else. The Public Service on the other hand to the greatest extent granted more rights to its employees, therefore if their contracts were to be automatically transferred as provided under section 28(1) of the
415 Employment Act it would be to their disadvantage. We believe that this the reason why section 28(1) (ibid) makes it mandatory for the affected employee to give his or her consent to transfer his or her contract to the new entity. Similarly, the new employer has a right to inherit employees who were qualified and suitable for his business or undertaking, therefore, he or she has a right to scrutinize them for
420 suitability before they are absorbed. We strongly believe that, had it been an automatic process there would be no need to seek the consent of the employees.

We reiterate that, an employer being the holder of capital, with managerial prerogative, he or she exercises control over the employee, therefore, he or she has the role to determine the particulars of employment and in so doing the employer
425 determines who to employ and not vice versa.

The incoming Employer in the instant case, was Bugweri District Local Government, which is a Government entity, and its appointing Authority is the District Service Commission. Therefore it was bound to comply with section 1.4 of the Public service guidelines by following the procedures for recruiting persons
430 into its service as laid down in the Public Service Standing Orders under section A-c. The said section provides in summary that; there must be a vacancy, which should

be declared to the appointing authority which in this case is the DSC, which will place an Advert (communication to the Public), receipt of applications by the DSC from eligible candidates/public, selection of eligible/suitable candidates, interviews
435 and consideration of candidates and selection of successful candidates, and subsequently appointment, among others. Therefore, to be considered for appointment, a person must avail themselves to this process.

The Respondent's DSC in compliance with these requirements, advertised the various positions in the Health Department under external Advert No.02/2021, and
440 all the Claimants admitted that they saw the advert but they did not apply because they expected to be absorbed into the Respondent's Service "automatically". On 14/04/2022, they were given preferential treatment when they were given another opportunity to tender their applications after the deadline of 22/02/2022 had expired, up to 6/05/2022, but they still declined to apply.

445 We reiterate and emphasis that, the employee is subject to the employer and even if the law provides for protection of the rights of the employee, he or she must demonstrate that they complied with the lawful requirements set by the employer before they can claim any of their rights was violated. This was not the position, in the instant case. Even if the process of regularizing their employment was delayed
450 as a result of the internal problems the District was experiencing especially with had regard to the absence of a functional DSC for which they cannot be faulted, when they were given another chance to apply, for the positions which were advertised by the Bugweri DSC, so that they could be evaluated /considered for appointment in accordance with the PSC, Standing Orders, the Claimants should have availed
455 themselves to the procedure by submitting their respective applications which they declined to do, moreover even after they were informed that the applications they

had made to Namutumba DSC, could not be considered because it had ceased to have Authority to recruit on behalf of Bugweri District.

We do not subscribe to the assertion that, the letter requesting them to apply was not served on them, yet they did not deny that they participated in the mediation meeting in which they were given another opportunity to apply and a new deadline of 6/05/2022 was extended to them but they chose not to do so. It was the evidence of the Respondent which we are inclined to believe that, out of the initial list of the 22, those who availed themselves to this procedure and qualified got absorbed in to the Service.

We reiterate that, in light of the procedural requirements for absorption under section 1.4(supra) and appointment into the service under section(A-c)(supra), and section 28(1) which required their consent, the Claimants could not be automatically transferred to the Respondent and based on a submission of their names for consideration by the Namutumba DSC. The submissions of their names by the Medical Officer and the CAO as persons eligible to be appointed did not mean they were qualified for the positions but rather they qualified to be considered for appointment. The Dictionary of Law by Bloombury defines "**Eligible**" as "*qualified or able to be chosen*". We believe that had they tendered their applications as directed, the application would have served as both as their consent to transfer their services to Government as provided under section 28(1) and also as a clear indication that they were ready to conform to the procedures of the new employer.

Therefore, by declining to tender their application, the Claimants unfortunately locked themselves out of the process and cannot turn around now to claim that they were terminated from employment which they never assumed in the first place. Even if they were given assignments under the Health Centre III, after it was taken over

by Government, having not subjected themselves to the process that would have enabled them to be absorbed in the Public Service, they could not be automatically considered to be Public Servants.

485 In conclusion, having not availed themselves to the process of appointment to the District, the Claimant contracts of service were not transferred to Bugweri District Local Government. This issue is resolved in the negative.

ISSUE 4

Whether or not the Claimants Contract of service were terminated unfairly.

490 Having established that the Claimants were never employed by the Respondent. They were not terminated from employment.

It is not in dispute however that they continued to serve at the Health Center albeit without regularization. According to the Respondent they were treated and referred to as Volunteers. It was the evidence of the RW1 Mr. Nelson Kirenda that, when he
495 assumed office his predecessor told him that *".. at the time Government took over there were a number of volunteers who were working in the NGO facility which Government took over..."* when asked about their status he said they also introduced themselves before the Minister of Local Government as volunteers. No evidence
500 was adduced to indicate that they were stopped from working, after the takeover, although it was clear that they were not paid any salaries, but they rendered their services to the Health Centre. Their contracts under the private entity were not disputed by the Responent.

In the circumstances, even if they did not enter the Public Service, they are entitled to payment for the services they rendered to the Minani Health Centre III from
505 1/07/2018 until 6/05/2022, the deadline for the submission of applications in

response to the advert by Bugweri DSC which they all stated they had seen and at the salaries under the contracts they held under the Health Center before its take over by Government, as follows:

1. Mwagale Ali- at Ugx. 550,000 per month
- 510 2. Mugona Paul- at Ugx.550,000 per month
3. Nabirye Edith at Ugx. 420,000/- per month
4. Andre Sooma at Ugx. 550,000/- pm
5. Nakasolo Morren at Ugx.420,000/- per month
6. Katono Betty at Ugx.420,000 per month
- 515 7. Colline Katambala at Ugx. 420,000 per month
8. Kyakulago Robert at Ugx. 420,000 per month
9. Nyiiro Bernard at Ugx. 420,000 per month

In conclusion this claim partially succeeds in the following terms:

a) Declaratory orders

520 Having not complied with the required procedure as provided under the Public Service Standing Orders, the Claimants contracts were not transferred to the Respondent.

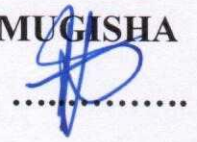
b) The Claimants should be paid their salaries for the period 1/07/2018 to 6/05/2022 at the salaries held under Manini Health Centre before it was taken
525 over by Government at the rates detailed above.

c) Having established that they were never employed by Government and therefore they were not terminated from employment, they are not entitled to any other remedies claimed. No orders as to costs are made.

530 In conclusion this claim fails, save that the Claimants must be paid outstanding salary as sated in (b) above.

Delivered and signed by:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA



PANELISTS

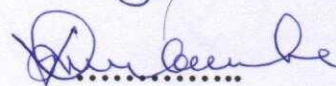
535 **1 MR. EBYAU FIDEL**



2. MS. HARRIET MUGAMBWA NGANZI



3. MR. FX MUBUKE



DATE: 3/07/2023

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