

UGANDA / JUDGMENT

Boaz Okumu Okello v Amuru District Local Government (Labour Dispute Claim 7 of 2018) [2020] UGIC 49 (1 April 2020) [2020] UGIC 49

COURT

Industrial Court of Uganda

BEFORE

Ruhinda-Ntengye, J

CASE / FILE NUMBER

Labour Dispute Claim 7 of 2018

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 007 OF 2018 [ARISING FROM HCCS. No. 055/2012]

BETWEEN

BOAZ OKUMU OKELLO CLAIMANT

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10 VERSUS

AMURU DISTRICT LOCAL GOVERNMENT. RESPONDENT

BEFORE

15 1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

- 1. Mr. Bwire John Abraham
- 2. Ms. Julian Nyachwo
- 3. Mr. Katende Patrick

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AWARD

Brief facts

25 The Claimant was appointed into the service of Pader District Local Government as an accountant in 2004. Later he worked with Kitgum District Local Government, at Kitgum Town Council. On 31/3/2010 he was interdicted from duty by the Town Clerk of Kitgum Town Council. On 8/04/2010 he applied to the respondent District Local Government for the job of District Internal Auditor. On 28/6/2010 the claimant was appointed by the respondent as

30 Principal Internal Auditor/District internal auditor on transfer from Kitgum District Local Government. On 18/7/2011, he was interdicted from the service of the Respondent on the allegation that he was getting double salary and also on a complaint of the Respondent District chairperson that his appointment was irregular having been appointed while he was on interdiction by the

35 Kitgum Town Council. The District service commission of Gulu held ^a disciplinary meeting on 1/12/2011 and rescinded the appointment of the claimant from 26/06/2010.

Issues:

- 1) Whether the claimant was unlawfully terminated.
- 40 2) Whether the claimant was entitled to the special damages claimed.
- 3) Whether the claimant was entitled to pension.
- 4) Other remedies available to either party.

Representation

45 The Claimant was represented by Proff. Jean Barya of Barya, Byamugisha & Co. Advocates while the respondent was represented by Mr. Walter Okidi Ladwar from Ladwar Oneka & Co. Advocates.

Evidence adduced

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The claimant adduced evidence from himself alone while the respondent adduced evidence from one Onen James, the Acting Secretary of the Respondent's District Service Commission.

In his evidence in chief, the claimant testified that he received a certificate of service from Kitgum town council dated 23/8/2010 as well as a release letter from the same council in order to pursue his career with the respondent and that he was terminated unlawfully.

- 55 The evidence of the respondent was that after a complaint was lodged by the District chairperson, the claimant was interdicted and later on requested to offer his defense which he did. According to the witness the claimant in his defense admitted claiming salary from the respondent while he was being paid by Kitgum Town Council and the fact that he was on interdiction by Kitgum
- 60 Town Council and he did not produce any letter lifting the interdiction. After hearing the claimant, the commission found him dishonest and rescinded his appointment. The witness insisted that when the matter was reported to the IGG both the allegations and the decision of the District Service commission were confirmed.

65 SUBMISSIONS

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Counsel for the claimant submitted on the first issue that there was no basis for the respondent to rescind the appointment of the Claimant given that Kitgum Town Council which had interdicted him was the same authority that issued ^a release letter to the respondent. According to counsel the claimant could not have been irregularly recruited when there was no complaint from Kitgum Town Council.

According to counsel the double payment allegations were wrong because the claimant was kept on the pay roll of Kitgum Town Council until March 2011 as a result of his name having not been transferred to Amuru and the 1,834,560/= he received from Kitgum was part of his salary arrears by April and June 2011.

In response to the above submission, counsel for the respondent contended that the claimant applied for the job in Amuru only 8 days into interdiction and did not reveal this fact to the Amuru District officials. By the time he applied, he had not received and he never received any letter lifting the interdiction and that ^a civil servant could not transfer service to another government institution without fully being cleared. According to counsel it was illegal for the claimant to apply for another job while he was on interdiction.

Counsel argued that it was wrong for the claimant to ask a top up from the Respondent while his name was still on the pay roll of Kitgum Local Council and that he used his position as internal auditor to approve payment to himself irregularly. According to counsel it was irregular for the Town Clerk of Kitgum to release the claimant without following the proper procedure of lifting interdiction.

On the question of Pension, Counsel for the claimant argued that the claimant was entitled to pension under the Pensions Act. He relied particularly on **Section 61(2) of the Local Government Act**. According to counsel the Claimant having entered local government service on 1/2/2004, and his appointment having been illegally rescinded on 6/12/2011, he worked for more than 8 years since he continued to be paid until February 2012 and he was ^a permanent and 90 95 pensionable officer.

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On the question of special damages counsel for the claimant asserted that the claimant was entitled to salary arrears from April 2011 to February 2012 because although unlawfully terminated in December 2011, he continued to

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be paid till February 2012 meaning that his termination was effective February 2012. 100

On the other hand, counsel for the respondent reasoned that the Town Clerk should have made a submission to the appointing authority the basis of which the claimant's interdiction would have been lifted. Counsel relied on Public Service Commission Regulations of April 1999, regulation 5.16.1 that

- according to him provide for the responsible officer to submit a full statement 105 explaining why the Interdiction must be lifted and recommendation to that effect. Counsel argued that when the claimant accessed the pay roll of Amuru in April 2011 and was paid his full salary and arrears arising from increases in his salary on promotion, Amuru did not owe him any salary. According to him a
- further payment of 4,133,394 as arrears for earlier underpayment was \$110\$ irregular and constituted double payment, having earlier received 1,834,560/= as salary arrears. Counsel submitted that the act of the claimant dishonestly verifying his own claim could not be ignored. On the question of pension, counsel for the respondent argued that the claimant having been dismissed lawfully he was not entitled to pension or to any of the rest of the reliefs he 115 sought.

Decision of court

The claimant was interdicted on 18/7/2011 for receiving double payment, particularly for claiming salary arrears for the period that he had been paid from Kitgum Town council. The other reason was for him having been irregularly recruited while he was on interdiction.

In his defence to the District Service Commission, the claimant contended that by the time he applied for his job in Amuru, his interdiction had been resolved because the town clerk had realized that the interdiction was irregular since it was not council that interdicts but the Town clerk or the District service 125 commission, the reason the Town clerk recommended him for the Job. On double payment, the claimant explained that having entered the Amuru payroll- April 2011 and having received last pay for march 2011 from Kitgum, he rightly claimed for arrears up to march 2011 of 4,133,394/=.

130 The District Service Commission after studying all correspondences on the subject observed "That the officer was not honest and did not disclose to the

*appointing Authority Amuru District Service Commission that he was under interdiction from Kitgum District. Hence he should have not attended the interview. That he continued to withdraw two salaries from the consolidated fund which is not in line with the Uganda Public standing orders"

For the above reasons it was resolved to rescind the appointment effective 28/06/2010.

There is no doubt that the Claimant was interdicted by Kitgum Town Council through its Town Clerk for indiscipline and negligence on 31/3/2010. He applied for the job in Amuru on 8/4/2010, eight days into the interdiction.

An interdiction or a suspension from duty is ^a process through which an employer is allowed by law to keep an employee from performing his duties pending investigations into allegations that such employee misbehaved on the job. The main reason of keeping such employee from work is to avoid the employee using the office to interfere with any investigations that may be on going.

An interdiction in our view does not and is not intended to stop an employee from seeking employment anywhere else. The decision by the respondent to rescind the appointment was made on 6/12/2011. The letter that released the Claimant was dated 23/07/2010 by the same town clerk who had interdicted him and it provided;

***"RE: RELEASE LETTER"**

155 *This relates to your letter dated 1st July 2010 requesting for your release to pursue the new employment career you have attained. Indeed, the post of District Internal Audit is a higher one and more challenging. The purpose of this letter is therefore to inform you that I tabled the matter before the council who permitted that you be released to take up your new appointment.*

160 *I therefore take this opportunity to congratulate and release you to serve in that career and have the very best in your undertaking"*

We have carefully studied the application form which was the basis for the offer of the job to the claimant. We have not seen ^a requirement on the form

for the applicant to disclose whether he was on interdiction or not. The only disclosure required of the applicant is whether he/she had ever been convicted

165 on a criminal charge. Consequently, we do not accept the contention of the respondent, through counsel, that the claimant was obliged before he applied to disclose the fact of his interdiction, especially so when the officer who had interdicted him recommended him for the job on the same application form.

170 175 Counsel for the respondent argued that the Claimant was still on interdiction because the process of withdrawing the interdiction was not complied with. Counsel did not guide the court with provisions of the Public Service Commission guidelines of April 1999. Since we have not had occasion to look at them, we cannot rely on his submission that the interdiction could only be lifted after "a full statement explaining why the interdiction must be lifted and recommendation to that effect".

In the absence of the said guidelines, we are of the strong opinion that the officer who authoritatively interdicted an officer has authority to lift the interdiction. Although the Town clerk did not expressly write that she had lifted the interdiction, we form the considered opinion that by signing on the application and recommending the claimant, without ^a separate confidential cover revealing adverse reports about the claimant, she lifted the interdiction.

185 We do not accept the submission of the respondent that by releasing the claimant before the Council sat to deliberate on the issue, the action of the Town Clerk had no legal consequences. This is because, the claimant was released on 23/7/2010 and according to the respondent under minute No. 3/ 2/2010/2011 of the minutes of the Council meeting held on 6/10/2010 *the chairperson advised the town Clerk not to waitfor a probe report, rather she should release Mr. Okella Okumu Boaz to report to his new duty station."*

190 The Town Clerk having already released the claimant on 23/7/2010 this minute of council, in our view, suggests that the interdiction of the claimant was no longer in effect. The minute effectively in our view, ratified the action of the Town clerk releasing the claimant. Since failure to disclose the fact of interdiction was not fatal to the application of the claimant for the job in Amuru, the decision to release the claimant having been taken by the officer who had authority to do so before the rescission decision of the Amuru District

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Commission was made, the former decision to release the claimant amounted to lifting the interdiction and therefore the rescission was wrong. The principal of first in time, first in right applied in the circumstances.

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The next reason for rescission of appointment was that the claimant received double payment. The claimant was appointed into Amuru Service on 28/6/2010 at ^a salary of 1,007,102 per month. He was previously earning 394,317/= per month while in Kitgum Town Council. In cross examination, he informed court that he last got paid from Kitgum Town Council in March 2011 and so he expected arrears of the difference in salary from Amuru for the period July 2010 when he was employed by Amuru and March 2011 when he was last paid by Kitgum Town Council and according to him this was 9 months equivalent of 5,967,559. According to the claimant his name entered the pay roll of Amuru in April 2011 in which month he was paid 1,834,560 as part of the arrears and the rest of the arrears were paid in June 2011 totaling to 4,133,394/=.

From this explanation the allegation that the claimant claimed salary from both Kitgum and Amuru was not sustainable, all he claimed from Amuru was the top up of his salary as per his appointment which was not paid by Kitgum and therefore could not have been a double payment.

215 Accordingly the termination of the claimant on both grounds was not lawful.

The next issue is about special damages. It is trite and we agree with the respondent that special damages must be pleaded and must be specifically proved.

The memorandum of claim under paragraph 5 pleaded for ^a number of categories of special damages.

a) Unpaid arrears (April 2011- June 2011) (Half pay from July 2011- February 2012

In his evidence in chief, a part from listing this item as a claim, the claimant did not specifically state how the salary arrears arose in April 2011- June

225 2011. In cross examination he stated that he was paid the rest of the arrears to a tune of 4,133,394/= and that this was in June. Therefore the arrears of April 2011-June 2011 are not proved and not payable.

However the claimant was interdicted on */z* pay from July 2011 and he was finally terminated on 6/12/2011 which termination has been declared

230 unlawful. He will therefore be entitled to /z pay from July (inclusive) 2011 to November (inclusive) 2011 since he was assumed to be still an employee of the respondent by end of November 2011.

b) Leave pay

No evidence was adduced to show that in accordance with Section 54 of

235 **the Employment Act** both the respondent and the claimant agreed on the rest days of the Claimant only for the respondent to reject the leave days of the claimant. Accordingly, this prayer is denied.

Pension

240 There is no doubt that the claimant was appointed as shown in paragraph 3 of his appointment letter "**subject to the Constitution of the Republic of Uganda, the Public Service Commission Act, the Regulations made there under, the local Government Act (Amended) CAP 243, the Pensions Act Cap 286, the Government Standing Orders and Administrative Instructions issued from time to time**".

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Under **Section 61(2) of the Local Government Act** an employee terminated by the Council contrary to the terms and conditions of service or contrary to the ruling of the Public Service Commission... is entitled to the various benefits named thereunder.

250 Under section 55, Local Government Act the power to appoint, or remove employees of the District from office is by the District Service Commission which is independent of the Council.

It seems to us that **Section 61(2)** above mentioned was intended to protect the District Service Commission from being bullied by the Council. It was intended

- 255 to stop the Council from taking over the mandate of the District Service Commission in respect to termination of Employees. Accordingly, in our considered opinion where ^a decision to terminate an employee of the District is solely taken by the District Service Commission, provisions of the Employment Act will apply and not the above section of the Local Government Act.
- 260 This court having declared that the claimant was unlawfully terminated, the provisions of the **Pension Act** shall apply only to the extent that he qualified

under the Act by answering the question whether if he were to retire at the time he was illegally terminated he would have been entitled to Pension. This court is of the view that the provision of early retirement will apply to the applicant, such that his retirement benefits shall be calculated as if he had voluntarily retired at the time he was illegally terminated. **Section 10(2) of the Pension Act** provides

"Notwithstanding sub section I, a pension, gratuity or other allowance shall be paid to an officer who retires on attainment of the age of forty five years if he or she has served for a continuous period of 10 years or more."

The claimant started his work with Pader District in 2004. He was on transfer of service to Kitgum and later to Amuru where he was unlawfully terminated on 9/12/2011. He had served for only 7 years as opposed to the 10 years provided for under the above section of the law. Consequently he was not entitled to pension.

Severance allowances

280 Having been illegally terminated, the claimant under **Section 87** was entitled to severance allowances especially so when the Pension Act did not apply to him. He shall be paid 1 month's salary per year served as decided in the case of Donna Kamuli Vs DFCU LDC 2/2015 which was upheld by Bank of Uganda Vs Kibuuka & 4 others CACA 281/2016. His last salary was 1,057,457/=. He shall therefore be paid 7,402,199/=.

Transport to Lamwo District

The claimant did not elaborate on this items, the court is in the dark as to how it arises and for what reason, especially when **Section 61(2) of the Local Government Act** does not apply. 285 o

Compensation order for unlawful interdiction

290 This court being mandated to award general damages for unlawful termination, awarding compensation under **Section 78 of the Employment Act** is in our view, reserved for ^alabour officer. This prayer is denied.

Payment in lieu of notice

Since the claimant is not entitled to benefits under **Section 61(2) of the local Government Act** or under the **Pension Act**, we form the opinion that all benefits

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under the **Employment Act** are due to him. Consequently the claimant having 295 worked for 7 years will be entitled to payment in lieu of notice of 2 months gross pay.

General Damages

The claimant having been unlawfully terminated, his public service record was destroyed and he was inconvenienced as a result. He lost the ability to cater for 300 his family and taking into account the fact that he would probably have worked and gained gratuity and pension if he had not been unlawfully terminated, we award him \$80,000,000/\$ = as general damages.

Certificate of service

In accordance with **Section 61 of the Employment Act**, the respondent shall 305 provide a certificate of service to the claimant.

Interest

Due to the inflationary nature of our currency, all the monetary awards shall carry interest of 15% per year from the date of this Award till payment in full.

Costs 310

No order as to costs is made.

In conclusion the claim succeeds in the above terms.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye 315

PANELISTS

- 1. Mr. Bwire John Abraham
- 2. Ms. Julian Nyachwo
- 3. Mr. Katende Patrick 320

Dated: 01/04/2020

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