

UGANDA / JUDGMENT

Katusiime v Kampala International University (Labour Dispute Reference 108 of 2016) [2024] UGIC 80 (17 May 2024)

[2024] UGIC 80

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Wacha, Panel Member, Aciro
Panel Member, Gidongo, Panel Member

CASE / FILE NUMBER

Labour Dispute Reference 108 of 2016

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 108 OF 2016 *(Arising from KCCA/LC/37/2016)*

KATUSIIME MADINA CLAIMANT

v

KAMPALA INTERNATIONAL UNIVERSITY RESPONDENT

Before:

The Hon. Ag. Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

- 1. Hon. Charles Wacha Angulo,
- 2. Hon. Beatrice Aciro Okeny &
- 3. Hon. Rose Gidongo.

Representation:

- 1. Mr. Atwijukire Dennis of M/s. MACB Advocates for the Claimant.
- 2. Ms. Tumuhairwe Evelyn of M/s. Magna Advocates for the Respondent.

AWARD

Brief Facts

- [1] The Claimant Katusiime Madina seeks an order compelling the Respondent to pay her salary arrears amounting to Ugx. 10,800,000/=. She was employed by the Respondent University as a Secretary, from 2001 and worked under various departments of the University. She served under various contracts of service, initially under a 2-year contract which was subject to renewal on expiry and

subsequently in 2011 under a e year contract effective 03/05/2011, renewable by mutual consent of both parties on satisfactory performance. She was earning a gross salary of Ugx.600,000/- per month but according to her, she was not paid salary from February 2015 to the time she filed this claim in 2016. However she has not issued with a termination letter or subjected to a disciplinary hearing.

- [2] The Respondent, on the other hand, contends that the Claimant was appointed as its secretary for a fixed term of employment for 3 years from 2011 to 2014. Her contract expired in 2014 and by mutual agreement, and on satisfactory performance the claimant would continue working on a monthly basis but either party had the right to terminate the contract at will. According to the Respondent, the Claimant was involved in several acts of financial impropriety for which she was suspended pending an investigation into her conduct. She was invited to participate in the Respondent's remedial mechanisms, which she refused to attend and reported the matter to the Labour officer instead.

Issues

- 1. Whether there is any valid and subsisting contract of employment between the Claimant and Respondent?
- 2. Whether the Claimant's contract was ever renewed by Respondent and if so what terms?
- 3. Whether the Respondent is in breach of the contract of employment with the Claimant if any?
- 4. What remedies are available to the Claimant if any?

Issues for Resolution

- *Issue 1: Whether there is any valid and subsisting contract of employment between the Claimant and Respondent?*

- [3] The Claimant testified that she was initially employed in 2001 initially for ¹ year. Her contract was subsequently renewed and in 2011, was issued with a fresh contract for 3 years, effective 3/5/2011. This contract expired in 2014, but she continued working and was paid on a monthly basis. According to her, she was paid Ugx. 600,000/- as salary and Ugx. 35,000/- as allowance. However, the Respondent stopped paying her from 15/02/2015 to May 2016, when she left on

her own volition. It was her testimony that she did not complain about the nonpayment of her salary in writing because of the reassurances she received from the Human Resources Manager, who encouraged her to continue working. Her claim is for the period February 2015 to May 2016.

Rw1 Aisha Namatovu the Respondent's Acting Director of Human Resources testified for the Respondent that; she was aware that the Claimant was recruited by Human Resources, and although she was not in office at the time she was informed by Mr. Basjja Balaba the chairman of the Board of trustees, that in 2011, the Claimant was employed, under a 3 year contract because he her for to HR for recruitment. She confirmed that the Claimant's contract expired in 2014, but she continued working in the same position, under the same terms but she absconded from duty in 2016.

- [4] It is therefore not in dispute that the Claimant was issued with a 3-year contract in 2011 and the contract expired in 2014, but she continued working and was paid on a monthly basis. Her terms remained the terms and conditions of service remained the same until she left. It was the submission of Mr. Atwijukye, Counsel for the Claimant that this amounted to the casualization of her work which is prohibited by Regulation 39(1) of the Employment Regulations 2011, which prohibits employers from employing persons on a casual basis for more than 4 months. He argued that having continued to work for more than 4 months after the expiry of her contract without any renewal she was entitled to all rights and benefits enjoyed by any other employee. According to him, the Respondent's conduct amounted to constructive renewal of the Claimant's contract. In any case, under paragraph 5(b) of her memorandum of reply, the Respondent admitted that the Claimant was still their employee because it suspended her pending investigation into her conduct, being mindful of her employment and Labour rights. Therefore, the Respondent, cannot turn around now to deny that she had a valid contract. He relied on *Martin Nsubuga & Another v Buloba High School Ltd* LD No. 190/2016, to support this argument.
- [5] In reply Counsel for the Respondent contested the Claimant's departure from her Pleadings and asserted that save by way of amendment of the Claim, it is inconceivable and legally not permissible for her to depart from her pleadings. He contended that the Claimant violated Order 6 Rule 7 of the Civil Procedure Rules when she completely abandoned her pleadings and argued a different case.
- [6] According to Counsel the gist of the claimant's case as stated in her memorandum of claim which she filed on 11/07/2016, was a claim for declarations that *"she is entitled to her monthly remuneration in arrears amounting to Ugx. 10,800,000/- (Uganda Shillings Ten

Million Eight Hundred thousand only), terminal benefits, general damages of 25,000,000/- and exemplary damages of 10,000,000 interest on all pecuniary remedies at a commercial rate of 28% per annum and cost of the suit." She* did not plead that there was a subsisting employment contract between her and the Respondent or that her contract was renewed by conduct. Counsel argued that it was also not the claimant's case that she was unlawfully terminated or that she was wrongly dismissed by the Respondent, therefore the submissions by the Mr. Atwijukye that she was unlawfully terminated or wrongly dismissed are not supported by her pleadings.

He argued that the position of the law is very clear that reliefs not specifically pleaded cannot be granted by Court and reliefs cannot arise out of Counsel's submissions. She relied on DFCU Bank Limited v Dona Kamuli CA No. 121 of 2016.

Decision of the Court

[8] Before we resolve issue, we shall consider the objections raised by the Respondent as follows:

The gist of the Claimant's case as we understood it is that, although she was allowed to continue working for the Respondent after the expiry of her contract in May 2014, she was not paid salary from February 2015 until May 2016 when she decided to leave. The Respondent contends that she departed from her pleadings by requiring this court to determine the issue whether she had a subsisting contract at the time. In its reply however, the Respondent admitted that when her contract expired the Claimant continued working and was its employee until 2016, albeit serving monthly.

In our considered opinion her Claim for unpaid remuneration cannot be determined without determining whether she was engaged as an employee, because the payment of salary is based on a contract of enable employment. As rightly submitted by Counsel for the Respondent, this Court holding in **Mugisha Simeo v the Director Rwantama Sweaters & ShoeMakers,** LDR. No.024/2017, is to the effect that, it was incumbent on a party seeking remedies from the court to prove the existence of a contract whether oral or written, and the terms and conditions under it. Therefore, to resolve this claim the Court must first establish that there existed an employment relationship between the Claimant and the Respondent.

There was no departure from her pleadings in this regard. In any case, both parties framed an issue on the matter, as evidenced in the Joint Scheduling memorandum which they both signed. In the circumstances, we find no merit in the Respondent's objection regarding this issue.

[9] Concerning whether she pleaded unlawful termination, her pleadings emphasized the fact that she was not paid a salary from February 2015 until she eventually left in May 2016. She did not state unequivocally state that she was unlawfully terminated or that she left because she was not paid to warrant it to be construed as unlawful termination. **Interfreight Forwarders (U) Ltd vEastAfrican Development Bank,** SCCA No. 33 of 1992, held that:

".... The system of pleading is necessary in litigating. It operates to define and deliver clarity and precision of the real matters in controversy between the parties upon which they can prepare and present their perspective cases upon which the court will be called to adjudicate between them. It thus serves the double purpose of informing each party what the case of the opposite party is, and which will govern the interlocutory proceedings before the trial and what the court will have to determine at the trial. Thus, issues are framed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not set up by him and not be allowed at the trial to change his case or set up a case not set up by him and be not allowed at the trial to change his case or set up a case inconsistent with what was alleged in his pleadings except by the way of amendment of the pleadings....".

- [10] Thus pleadings should disclose clearly and precisely the real issue in controversy between the parties, as opposed to a recitation of evidence, which each party intends to adduce at the trial, and parties are bound by what they say in their pleadings and in turn the Court is also bound by what the parties have stated in their pleadings as to the facts stated therein. (Also see, **Bitarabeho Christine v Edward Kakonge,** CACA No. 4 of 1999 HCB, *Palmer vs Guadagni* [1906]2 CH 494).
- [11] We respectfully do not agree that the claimant pleaded unlawful termination because her claim as stated in her memorandum of claim is for the recovery of unpaid remuneration and none of the issues framed under the Joint scheduling memorandum that was filed by both parties on 14/08/2017, concerns anything relating to unlawful termination. The issues for resolution were framed are as follows:
 - 1. Whether there is any valid and subsisting contract of employment between the Claimant and the Respondent?
 - 2. Whether the Claimants contract was ever renewed by the Respondent and if so on what terms?
 - 3. Whether the Respondent is in breach of the contract of employment with the Claimant if any?
 - 4. What remedies are available to the Claimant?
- [12] In the circumstances, we are inclined to agree with Counsel for the Respondent that the Claimant's pleadings regarding this issue were ambiguous, therefore they cannot stand. In any case, her claims hinged on non-payment of her remuneration. The issue of unlawful termination is therefore a new cause action, outside her pleadings.

Having shall now resolve issues ¹ and 2 concurrently and reframe them as follows:

Issue 1: Whether there was a valid and subsisting contract between the Claimant and the Respondent? and Issue 2: if so whether it was ever renewed by the Respondent and if so on what terms?

[13] A contract of service is defined under Section 2 of 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."

And "employee" Means any person who has entered a contract of service or apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or parastatal organization but excludes a member of the Uganda people's defense forces. "

"Employer" is defined to mean; "any person or group of persons including a company or corporation, a public, regional or local authority, a governing body 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 of persons for whom an employee works, has worked or normally works."

- [14] The relationship between an employer and employee is based on a contract of employment and the general law of contract will apply unless superseded by the terms and conditions set in the contract. As a good practice, a contract of service should be in writing because it outlines the terms and conditions of the employment and courts will only interfere with such a contract where it is ambiguous or contrary to the law. The contract is expected to provide for the legal minimum or minimum Labour standards prescribed by law.
- [15] This Court in *Kyamukama Godfrey v Makerere Business School*, LDR No. 147/2019, cited *Ready Mixed Concrete v Minister of Pensions and National Insurance* (1968), which was cited in Gwyneth Pitt, *Employment Law 9th Edition*, where Mackenna J laid down the 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, ..." and *Stevenson Jordan and Harrison v MacDonald & Evans* (1952), in which Lord Denning held that: "... under a contract of service, a man is employed as part of the business and his work is done"

*as an integral part of the business; whereas under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it."

[16] It is therefore, the position of the law that employers have management prerogative to organize their Companies or organizations in any way, including the prerogative to engage employees under different terms such as permanent or fixed terms and courts cannot interfere with this prerogative, unless it is exercised in violation of the employees' Labour rights.

The Claimant's claim is based on her engagement with the Respondent on a 3-year fixed-term contract from May 2011, therefore it was a fixed contract. Where an employer engages an employee on a fixed term contract, the expectation is that the contract is for a definite period and unless it is expressly stated therein, it does not imply automatic renewal on expiry. However, a fixed-term contract may expressly provide for automatic renewal or renewal subject to the fulfillment of certain conditions such as good performance.

- [17] Therefore, where there is no express provision relating to its renewal, no obligation is imposed on the employer to renew a fixed-term contract or to give a reason for not renewing it after it expires. However, where a fixed-term contract expires and the employer accepts the employee to continue working, without renewing the contract, it will be construed as renewed by default. This is also referred to as constructive renewal.
- [18] In the instant case, in May 2011, the Claimant was issued a fresh contract as secretary reporting to the Director of Finance under the Finance Department. The duration of the new contract was 3 years, renewable by mutual consent of the parties and on satisfactory performance by the Claimant. The contract expired in 2014. It is not in dispute that following the expiry of the contract in 2014, the claimant continued rendering her services to the Respondent. In fact, under paragraph 2 of its summary of evidence in the Joint scheduling memorandum, the Respondent stated that by mutual agreement, the claimant was retained monthly, and was paid for each month worked and each party had a right to terminate the contract at will. It is also not in dispute that the Claimant continued working until 2016.
- [19] We had an opportunity to scrutinize the appointment letter which read in part as follows:

Dear Ms. Katusiime,

I

Subject: Letter of Appointment

***I am glad to inform you that the management of Kampala international University has considered your application and offered you an appointment as a secretary of Kampala International University for three (3) years renewable by mutual consent of both parties and on satisfactory performance, (emphasis ours. This appointment takes effect from 03rd May 2011..."**

- [21] The letter clearly demonstrates that the Claimant's contract was a fixed term contract, but it was renewable by mutual consent of both parties and on satisfactory performance by the Claimant. It therefore created a legitimate expectation for renewal if the conditions were met and by allowing her to continue working, without renewing the contract, albeit on a monthly basis, the Respondent had renewed the contract by default. Although the Employment Act 2006 does not provide for constructive renewal, we are persuaded by the dicta in the Kenyan case of **Ruth Gathoni Ngotho -Kariuki* v *Presbyterian Church of East Africa and Presbyterian Foundation,** Industrial Cause No. 509 of 2010, which is of the legal proposition that failure to communicate the employers decision not to renew an employment contract within the contractual timelines and before the lapsing of the expiry date prescribed in a fixed term contract would amount to constructive renewal of the contract.
- [22] Respondent in the instant case does not deny that it accepted the Claimant's work after the expiry of her contract, and it paid her for the work on a monthly basis. By its conduct, the Respondent renewed the Claimant's contract by default. However, in its summary of evidence, the Respondent seemed to insinuate that the monthly extensions given to the Claimant did not entitle her to the rights of an employee because she could be terminated at will. We respectfully disagree with this assertion because her letter of appointment categorically provided that the contract was renewable by mutual consent of the parties and on satisfactory performance. Therefore the contract could not be varied without the consent of the claimant. Did the monthly extensions amount to a contract?
 - [23] According to RW1 Aisha Namatovu Lubega, the Claimant's contract was renewed every month, but she left the Respondent University in 2016. This indicated that the monthly renewals were rolled over from May 2014 to 2016, which was almost 2 years after the expiry of the contract.

As already discussed, the letter of appointment stated that the contract was renewable by mutual consent of the parties. That would mean that the parties had to enter a formal agreement to renew it and agree on the terms of the renewal. Although the Respondent through RW1 Aisha Nalubega stated that the contract was renewed on a monthly basis, we found no evidence on the record to that effect. The Claimant testified that, after the expiry of the contract, she continued working and she was paid on a monthly basis. We reiterate that nothing was placed on the record in the form of a mutual agreement between the parties or as evidence of monthly renewals.

In the circumstances, we are not able to determine whether the terms of the contract changed. Given the wording of Section 65(1) (b), of the Employment Act, the renewal of a contract must be based on the same terms or terms not less favourable to the employee unless both parties agreed to something else and in this case there is no evidence to this effect. Instead, the Claimant continued serving the Respondent after the expiry of her contract and she was paid for the work on a monthly basis.

- [24] In the absence of any evidence to indicate that she agreed to vary the terms of her contract, to a monthly contract, we are inclined to agree with Counsel for the Claimant that monthly employment post expiry of her contract, amounted to a variation of the contract. As already discussed, in the absence of a formal agreement, indicating that the variation of the contract was agreed by both parties, it was renewed by default or constructively and on the same terms or terms not less favourable to the employee. The intention of the letter of appointment as already discussed was to provide an opportunity for the parties to renew the employment contract by mutual consent and on satisfactory performance. Having not placed before us any mutual agreement regarding any renewal, we maintain that her contract was renewed by default/constructively under the terms of the expired contract. Therefore, the assertion that the contract was renewed on a monthly basis cannot hold.
- [25] This notwithstanding, we respectfully do not agree with counsel for the Claimant that the purported monthly contracts amounted to casual labour within the meaning of regulation 39(1) of the Employment Regulations 2011. This is because according to Section 2 of the Employment Act, "casual employee" means a person who works on a daily or hourly basis where payment of wages is due at the completion of each day's work."* The Claimant in the instant case was paid on a monthly and not a daily basis. Even then we have already established that the monthly contract was a variation of the previous contract and there was no evidence that the parties mutually agreed to the variance. The only evidence on the record is that the Claimant continued working after the expiry of the contract and she was paid for the work done monthly.
- [26] It is therefore our finding that the Respondent having accepted the Claimant to continue working after the expiry of her contract and having paid her for the work done, her contract was renewed by default/constructively. Further having found nothing on the record to indicate that the parties had mutually agreed to vary the contract, it is our finding that the contract was constructively renewed on the same terms as the expired contract.
- [27] In conclusion, the Claimant had a valid and subsisting contract by the time she left the Respondent in 2016, having been renewed by default/constructively. Issues ¹ and 2 are resolved in the affirmative.

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Issue 3: Whether the Respondent is in breach of the contract of employment with the Claimant if any?

- [28] Counsel for the Claimant argued that the Claimant ought to have been given a hearing as provided under Article 28 of the Constitution of Uganda 1995 (as Amended) and section 66(1) of the Employment Act 2016, which was not the case. This was in response to the Respondent's allegations that the Claimant had not left on her own volition but on suspension for committing acts of misconduct in the Finance department. However, there is nothing on the record to that effect and as already discussed the Claimant did not plead

termination nor did the parties frame an issue whether the Claimant was terminated or not under the Joint scheduling memorandum. It is trite that parties are bound by their pleadings and Court is only bound to resolve the issues based on the pleadings. The Claimant having not pleaded unlawful termination Court has no basis to discuss this issue.

Issue 4: What remedies are available to the Claimant?

The Claimant prayed for the following:

- a) **General Damages of Ugx.25,000,000/-**
- [29] The Claimant prayed for an award of general damages for unlawful termination. It is trite, that General Damages are intended to bring an aggrieved party to as near as possible in monetary terms to a position as he or she was in before the injury occasioned to him or her by the Respondent occurred.(see **British Transport Commission vs Gourley**[1956J]AC 155). General Damages are therefore compensatory in nature. We have established that the Claimant did not file any pleadings regarding termination from employment therefore court did not address its mind to this issue. In the circumstances, this claim has no basis it is denied.

b) Unpaid salary of Ugx.10,800,000/-

- [30] The Claimant's claim was for unpaid salary from February 2015 to May 2016 when she left the Respondent University amounting to **Ugx.10,800,000/-**. It is not in dispute that, following the expiry of her contract in May 2014, her contract was renewed by default/constructively, on the same terms. She was therefore entitled to be payment of a salary for the services she rendered after the expiry of the

contract, as stipulated under the expired contract and in accordance with Section 41 which entitles an employee to payment of wages for the work/services rendered.

- [31] According to her letter of appointment, the Claimant was entitled to payment of **Ugx.600,000/-** per month, which was paid directly into her Bank Account. We have already also established that the Claimant worked for the Respondent until May 2016, when she decided to leave. It was her contention that she was not paid from February 2015 to May 2016. However, she did not adduce any evidence to prove that she did not receive any salary from the Respondent. She did not adduce any evidence to show that the money was paid into her Account. She could not remember when she last received payment during her employment at the University. She did not adduce any Bank statement to show the last payment, moreover, she testified that " *... KIU never blocked me from accessing any documents relating to my Account.../ remained working, there were no restrictions on any document... I left on my own... I reported to my boss but I never notified him, ... I did not notify HR in writing..." As* correctly submitted by Counsel for the Respondent, the onus was on the Claimant to prove the date when she last received a salary from the Respondent, to warrant the award of her claim for unpaid salary.

Special damages must be specifically pleaded and proved (see **DFCU vs Donna Kamuli CA No.121 of 2016**). The Claimant did not adduce any evidence to show when she was last paid by the Respondent and therefore there was no basis to award her the claim of Ugx.10,800,000/=. It is therefore denied.

c) Terminal Benefits

[32] Although we established that, there was a subsisting contract between the Claimant and the Respondent, it was the Claimant's testimony that she left of her own volition, and she did not notify her boss or the Human Resources Manager. It was her testimony that she left of her own volition, and she did not tell her immediate supervisor or the Human Resources about her departure. Her evidence suggests that she terminated her own employment, by absconding from duty. The circumstances under which terminal benefits are paid to an employee have not been explicitly provided. The Employment Act 2006 is equally silent about what the definition of terminal benefits. However, terminal benefits may be provided for in a contract of service and they could be considered under Section 90 of the Employment Act which provides that any gratuity, bonus or pay other than what is provided for in the Act, paid by an employer to an employee on the cessation of his or her employment shall be considered, when calculating severance. This provision

seems to suggest that, terminal benefits, not being a statutory right can only be part of one's contract of employment and they are paid at the end of the contract. The Claimant's contract did not provide for the payment of terminal benefits therefore the claim for terminal benefits has no basis. It is denied.

d) Aggravated and Punitive Damages

[33] The claimant did not adduce any evidence of aggravating circumstances to warrant the award of Aggravated damages. They are therefore, denied.

e) Repatriation

[34] *Section 39. of the Employment Act provides for Repatriation as follows:*

(1) An employee recruited for employment at a place which is more than one hundred kilometres from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases—

(a) on the expiry of the period of service stipulated in the contract.

(b) on the termination of the contract by reason of the employee's sickness or accident.

(c) on the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and

(d) on the termination of the contract by order of the Labour officer, the Industrial Court or any other court..."

The Claimant's case does not fall under any of the above categories, therefore her claim for repatriation has no basis. It is therefore denied.

[35] in conclusion, this claim fails, with no order as to costs.

Signed in Chambers at Kampala this 17th day of May 2024.

Hon. Justice Linda Lillian Tumusiime Mugisha,

Ag. Head Judge

The Panelists Agree:

- 1. Mr. Charles Wacha Angulo,
- 2. Ms. Beatrice Aciro Okeny &
- 3. Ms. Rose Gidongo.

rm

17th May 2024 9:30 am

Appearances

- 1. For the Claimant: Mr. Ayinamanyi Alvin holding brief for Counsel Atwijukire Dennis & Ms. Katusiime Madina.
- 2. None for the Respondent.
- 3. Court Clerk: Mr. Christopher Lwebuga.

Delivered and signed by:

Hon. Justice Linda Lillian Tumusiime Mugisha, **Ag. Head Judge, Industrial Court**

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