

UGANDA / JUDGMENT

Taremwa v New Times Express Ltd (Labour Dispute Reference No. 142 of 2017) [2020] UGIC 24 (4 December 2020) [2020] UGIC 24

COURT

Industrial Court of Uganda

CASE / FILE NUMBER

Labour Dispute Reference No. 142 of 2017

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE No. 142 OF 2017

[ARISING FROM KCCA/NC/LC/094/2017)

BETWEEN

MICHAEL TAREMWA CLAIMANT

VERSUS

NEW TIMES EXPRESS LTD.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu

AWARD

Brief facts

By letter of appointment dated 20/8/2012, the claimant was employed by the respondent as a courier in the operations department. He was confirmed in the service on 1/5/2013. He was thereafter effective 3rd January 2013 appointed as supervisor in the same department. On 12/1/2017 a redundancy notice to the effect that his services would not be retained by 12/2/2017 was written. According to him in March 2017 he was rudely informed by the M. D that his employment was terminated with immediate effect.

According to the respondent, the claimant was employed as supervisor and attached to a Umeme team for delivery of bills. When the contract with Umeme collapsed, the whole team was informed of the eminent redundancy by an internal memo dated 1/7/2016. The claimant was kept in employment in the hope that the respondent would get other contracts but when this failed he was issued a notice on 12/01/2017 and then a termination on 15/3/2017.

Issues agreed

1. **Whether the claimant was unfairly terminated**
2. **What remedies are available to the claimant?**

Representation

The claimant was represented by Mr. Mugasha Mark from M/s. Ark Advocates while the respondent was represented by Mr. Gerald Kibuka Musoke from M/s. Kibuka Musoke & Tendo Advocates.

Evidence adduced

Each party adduced evidence from one witness. In his own testimony, the claimant informed court that the respondent in bad faith wrote a termination letter dated 12/1/2017 but delivered it to him on 15/03/2017. According to him the termination having been devoid of 30 days' notice mandated by law, such termination could not be fair. In cross examination the claimant clarified that he was in charge of delivery of documents including Umeme bills.

Mr. Elly Kibuka Mukasa testified on behalf of the respondent that the claimant was part of the bill delivery Umeme team; when Umeme terminated the contract the claimant was notified in 2016; he was further notified of the eminent redundancy on 12/1/2017 with a hope of getting further contracts and when this failed the claimant was terminated on 15/3/2017.

Submissions

It was submitted for the claimant that the termination was unlawful because there was no requisite notice given to the claimant before termination as provided by **Section 58(1) of the Employment Act**. Counsel argued that the termination of the claimant on 15/3/2017 with immediate effect was contrary to **Section 65(1)(a) of the Employment Act** and **Clause 7(b) of the Employment contract**.

In reply to the above submissions, counsel for the respondent argued that the claimant having been employed on the team that handled Umeme work, once Umeme terminated the contract with the respondent, the contract with the claimant was frustrated. He contended that the claimant could not claim unfair termination when he was all along aware, from June 2016 about the redundancy communication from Umeme and from the respondent.

Decision of court

There is no doubt in our minds that the claimant was an employee of the respondent and not of Umeme. From the evidence of the respondent's only witness (in re-examination,) although the redundancy notice addressed to the claimant was dated 12/1/2017, it was delivered to him on 15/3/2017 because **"there was a prospect of keeping the project and Michael was at office to maintain the office and he was paid."**

What is interesting is that this redundancy notice was signed by Elly Mukasa as General Manager of the respondent company. This being the case, it is not too farfetched to conclude that management of the respondent intentionally delayed to give the notice to the claimant because he had duties to perform in the office. It follows, therefore, that by the time he received the notice he was still an employee of the respondent despite the earlier notification to the general staff dated 1st July 2016 signed by the same Elly Mukasa on behalf of DHL domestic Management which stated (among others):

"Re: NOTICE OF REDUNDANCY OF EMPLOYMENT"

We refer to the above;

On behalf of the DHL Domestic management, we like to formally notify you that Umeme Management is under a Customer Conversion Scheme from post-paid to pre-paid electricity services, and that has led their management to discontinue our bill delivering services and have terminated effective July 15th 2016. The notice however requires that we complete the delivery cycle and not later than 31/7/2016.

While the decision is well explained we equally need to review our team's employment for the obvious reason that the work this team has diligently served has now ceased. This means we have to make redundant those team members affected with the notice of 30 days. All salary and commission arrears will be paid as due to the last day of work....."

Our understanding of the above notification is that those who were affected by the umeme termination of contract would be prepared to leave by 31/07/2016. Consequently, those who were retained by the respondent beyond 31/07/2016, were deemed not to be affected by the notification. We could give the benefit of doubt to the respondent given that the same notification intimated a review of the team's employment. This could mean that the claimant was one of those who remained after 31st July or 31st August 2016 given the 30 days' redundancy notice and as the respondent, "reviewed" employment.

This meant that the redundancy notification dated 12/1/2017 should have been given to the claimant either on the date it was written or soonest thereafter before the termination on 15/03/2017.

The claimant having not been one of those affected by the delivery cycle ending 31/7/2016 as proclaimed by the notification, he was entitled to believe that he was kept as an employee of the respondent and that his contract was not affected by the said delivery cycle. This is especially so when we consider his own evidence that he was not only dealing with Umeme deliveries but with other duties which had not come to an end by the termination of the Umeme contract.

Consequently, having not been served with the notification of redundancy dated 12/1/2017 at an appropriate time, serving him with the same on 15/3/2017 while at the same time terminating his contract, could not by any imagination be said to be effecting the notification of 1/7/2016 which had been overtaken by events. The claimant having continued in the employment of the respondent from 31/7/2016 was entitled to reasons for termination in accordance with **Section 68 of the Employment Act** and if there was a misconduct he committed he was entitled to a hearing in accordance with **Section 66 of the Employment Act**. As already noted reasons of termination of the Umeme contract could no longer hold. We therefore find that in the circumstances of this case, the termination of the claimant amounted to termination without notice, termination without reasons and termination without hearing which in total amounted to unlawful termination. The first issue is accordingly decided in the affirmative.

The next issue is: **What remedies are available to the claimant?**

1. **SALARY**

The claimant in the memorandum of claim prayed for salary for the "**duration under which the claimant was not paid.**" In his written witness statement he testified under paragraph 8 that at the time of termination he had one month's unpaid salary.

In his submission, counsel for the respondent admitted that there was one month's salary unpaid. Accordingly, we order that 772,000/= be paid to the claimant as unpaid salary.

1. **UNTAKEN LEAVE**

We agree with counsel for the claimant that in accordance with this court's decisions in **Mwaka Vs Roadmaster Cycles (U) Ltd, LDC No. 155/2014** and **Kyazze Tucker vs Busoga College Mwiri , Labour dispute claim 143/2016** , in the absence of evidence that the claimant applied and was denied leave, he/she is not entitled to payment in lieu of leave. For the same reason, this prayer is denied.

1. **SEVERANCE ALLOWANCE**

The claimant having been declared to have been unlawfully terminated, he is entitled to severance allowance in accordance with **Section 87 of employment Act**. As stipulated in **Donna Kamuli Vs DFCU Bank, Labour Dispute Claim No. 002/2015**, the claimant shall be entitled to 1 month's pay for every year worked. He started working on 1/09/2012 and was terminated on 12/3/2017, which give allowance of 4 years. Therefore he is entitled to $772,000 \times 4 = 3,088,000/=$.

1. **PAYMENT IN LIEU OF NOTICE**

As already discussed above, the notification of 15/03/2017 was overtaken by events and therefore amounted to no notice. The claimant shall be entitled to 1 month's notice – 772,000/=.

1. **COMPENSATORY ORDER FOR INJURIES SUSTAINED DURING THE COURSE OF EMPLOYMENT**

Section 1 of the workers Compensation Act, which is the interpretation section states:

“(1) In this Act, unless the context otherwise requires –

1. **“Court” means a magistrate's court, presided over by a Chief Magistrate or a Magistrate Grade 1, having jurisdiction in the Area where the accident to the worker occurred;”**

Although this court being a court equivalent to the High Court and therefore with the same powers and jurisdiction of the High Court, it is still a specialized court to handle labour matters despite the provisions of **Article 139 of the Constitution** and the **Judicature Act** that give the High Court unlimited original jurisdiction. We are therefore of the firm view that if legislation gives specific jurisdiction to specific courts, it is only proper that the court given such jurisdiction be left to exercise it unless for sufficient reason the High court or this Court opts to exercise the power under the Judicature Act. Accordingly, since there is no reason for this Court to invoke the Judicature Act, we decline to entertain the prayer under the Workers Compensation Act.

1. **GENERAL DAMAGES**

It is trite that General Damages constitute compensation for loss or inconvenience occasioned to a successful party in a suit or claim by or at the instance of the unsuccessful party so that such successful party is put back in a position he/she would have been had there not been such loss or inconvenience.

We take cognizance of the fact that the claimant was employed by the respondent at a monthly salary of 772,000/= which was abruptly stopped without any legal basis. We take judicial notice of the fact that employment in this country is not easily achievable and therefore the likelihood of somebody illegally terminated remaining unemployed for a long time is real.

Given the nature of employment and the salary at which the claimant was employed we think 7,000,000/= will be sufficient as general damages. Due to the inflationary nature of our currency all the sums awarded shall attract interest at 15% per annum from date of Award till payment in full.

In conclusion the claim succeeds in the above terms with no order as to costs.

Delivered & Signed by:

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu

Dated: 4th December 2020

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