

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 005/2018
ARISING FROM CIVIL SUIT NO.098/2014

BETWEEN

DONALD WANGI CLAIMANT

VERSUS

PEOPLE PERFORMANCE GROUP LTD..... RESPONDENT

BEFORE

1. The Hon. Head Judge, Ruhinda Asaph Ntengye

PANELISTS

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

AWARD

Brief facts

By contract dated 21/7/2015 the respondent employed the claimant as an optimization Engineer for a period of 1 year at a monthly salary of Shs. 5, 627,399/= subject to statutory deductions. According to the claimant, he was tasked to perform a certain duty which on encountering an obstacle he sought support from an employee from another service provider of the respondent who helped him to complete the task.

According to the respondent the claimant approached an employee in a competitive business enterprise with the respondent and in the process granted access to the respondent's systems and records which were used to shut down the MTN network for 3 hours causing loss to the respondent.

Issues:

1. Whether the claimant was unfairly, wrongfully or illegally dismissed.
2. Remedies if any

Representations:

The claimant was represented by Mr. Byamugisha Albert of J.B. Byamugisha Advocates while the respondent was represented by Mr. Mugasha Mark of Ark Advocates.

SUBMISSIONS

At the Closure of the hearing the claimant was given up to 18/01/2022 to file submissions and the Respondent was given up to 23/01/2022 to file a reply. However, the respondent filed submissions on 04/2/2022 (probably having waited for the claimant to file and serve in vain) and the Claimant filed on 09/2/2022.

The respondent argued that the Claimant having been dismissed while under probation, the dismissal could not be unlawful. He relied on **Section 67(1) and (2)** of the Employment Act. Counsel argued that the Claimant was given chance to provide his side of the story when he was asked to write an incident report.

Relying on **Section 58, 65 and 66** of the Employment Act, the claimant contended that he was dismissed summarily without a hearing or notice contrary to the law. He argued that the dismissal was wrong because it was against the advice of his supervisor, the Human resource officer who strongly advised against termination.

Paragraph 3 of the contract of employment provided

“(a) The contract is for one (1) year and renewable only upon the express written agreement of the parties.

(b) During probation either you or the company may terminate your appointment by giving two weeks notices of the intention to do so or upon payment of two week’s salary in lieu after probation but before 1 year, 1-day notice will be provided while on probation and one month’s notice after 1 year, all in accordance to the law. Confirmation of employment shall be subject to performance and successful completion of all assessments and assigned training courses”.

Section 67 of the Employment Act provides

“**67, Probationary contracts**

- 1) **Section 66 does not apply where a dismissal brings to an end a probationary contract.**

- 2) The maximum length of a probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee.
- 3) An employer shall not employ an employee under a probationary contract on more than one occasion.
- 4) A contract for a probationary period may be terminated by either party by giving not less than fourteen days 'notice of termination, or by payment, by the employer to the employee, of seven days' wages in lieu of notice."

Although the period of probation was not mentioned in the contract of the claimant, it is our opinion that by virtue of clause 3 of the contract, it was a probationary contract in accordance with Section 67 of the Employment Act. Since the maximum period of probation is according to law 6 months, the claimant's probation elapsed or should have lapsed six months after 21/07/2015, the starting date of employment. The claimant by virtue of a termination letter at page 10 of the respondent trial bundle was terminated on 23/11/2015 which was 4 months after the starting date and within the probationary period.

Accordingly, the termination was not unlawful given that the right of being heard was curtailed by Section 67 of the Employment Act.

The Claimant was however entitled to two weeks as salary in lieu of notice. We therefore grant the claimant 1,406,849.75/= as 2 weeks wages in accordance with Section 67 (4), of the Employment Act.

In conclusion the claimants claim of unlawful dismissal here by fails in the above terms with no orders as to costs.

Delivered & signed by:

1. The Hon. Head Judge, Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara

2. Mr. Micheal Matovu

3. Ms. Susan Nabirye

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Dated :25/02/2022