

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 96 OF 2013

DAVID MUBIRU:..... PLAINTIFF

VERSUS

NEW VISION PRINTING

& PUBLISHING COMPANY LTD :..... DEFENDANT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

a) Introduction

1. The Plaintiff seeks a declaration that he is entitled to payment of terminal benefits/gratuity, orders that the Defendant pays the Plaintiff the said terminal benefits/gratuity, interest on the gratuity at 21% per annum with effect from 28th February 2013 till payment in full and costs of the suit.

2. The Plaintiff is represented by Mr. Kaweesa Abubaker of M/s. Kaweesa & Co. Advocates and the Defendant is represented by Mr. Kirabira Tony from the Defendant's legal department.

3. On 18th January 2013, the Plaintiff resigned from the Defendant's employment as an assistant printing supervisor. His resignation was accepted by the Defendant on 27th February 2013. The Defendant did not pay the plaintiff gratuity in spite of serving the

Defendant for 19 uninterrupted years without a blemish. The Plaintiff contends that gratuity was an express term of his contract which provided that upon resignation, he would be entitled to the same benefits as those who retired from the Defendant's employment.

4. In its written statement of defence, the Defendant admitted that the Plaintiff was its employee till his resignation on 13th February 2013. As a member of the National Social Security Fund, it paid 10% of the Plaintiff's salary and deducted 5% of the Plaintiff's salary which amount will be accessed by the Plaintiff under the conditions prescribed by the NSSF law. Under the staff regulations of 2008 and the Plaintiff's terms of employment, the Plaintiff was not entitled to terminal benefits.
5. The parties proceeded by witness statements in lieu of examination in chief. The Plaintiff testified on his own behalf. The Defendant had three witnesses. DW1 was Gloria Agira, the Chief Human Resource Officer, DW2 was Mr. Francis Opoi, the Internal Audit Manager and DW3 was Zubair Musoke the then Chief Finance Officer of the Defendant. They all testified to the effect that the Plaintiff was paid the benefits under the Jubilee saving scheme which is referred to in the 2003 handbook. It was repealed by the 2008 handbook under which the Plaintiff is only entitled to the NSSF contributions.
6. The issues agreed for resolution at the scheduling conference are:
 - i) Whether the Plaintiff is entitled to terminal benefits/gratuity from the Defendant.
 - ii) What remedies are available to the parties?

Analysis

7. Although the Plaintiff was employed for nineteen years and rose through the ranks from dark room assistant when he was first employed in 1995, to assistant printing supervisor at the time of his resignation in 2013, he had only one offer letter given at the time of his employment. I have carefully looked at this offer letter dated 24th March 1995.

8. Contrary to what the Plaintiff presents, payment of his gratuity was not an express term in the contract. In paragraph two (unnumbered) his terms and conditions of service are said to be spelt out in the staff regulations book. At the time of his resignation, the applicable staff regulations book was the staff handbook of 2008. In it, benefits are under part 5. Under 5.1 titled NSSF, it is provided that “all employees shall be registered with the NSSF. Communication and coordination in relation to all NSSF issues will be managed by the Human Resources Department, provided the individual is an employee of NVPPCL.”
9. The Plaintiff acknowledged that his NSSF was paid and he has no issue with it. There is no provision for the gratuity that the Plaintiff claims in this suit. Ms. Gloria Agira, the Chief Human Resource officer at the Defendant explained that only top managers who usually were on contract were entitled to gratuity and it would be an express term in their employment contracts.
10. All the Defendant witnesses who were conversant with employment at the Defendant clarified that the Plaintiff was not a top manager. This is corroborated by the Plaintiff’s position of assistant supervisor at the time of employment. I therefore have no basis at all to say that the Plaintiff was entitled to gratuity as he claims. Issue one is resolved in the negative and the suit is dismissed.
11. To avoid acrimony between a former employee of nineteen distinguished years of service and an employer, I will not sanction the Plaintiff in costs. Each party shall bear its own costs.

I so order.

Lydia Mugambe.
Judge.
13th August 2020.